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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

**F.No. 371/416/B/WZ/2022-RA**

/502

Date of Issue:

23.01.2024

ORDER NO. 55/2024 CUS (WZ)/ASRA/MUMBAI DATED 13.01.2024  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,  
1962.

**Applicant : Shri. Surajbhan Yadav**

**Respondent: Principal Commissioner of Customs, Ahmedabad**

**Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal No. AHD-  
CUSTM-000-APP-265-22-23 dated 07.06.2022 through  
F.No. S/49-347/CUS/AHD/ 2021-22 passed by  
Commissioner of Customs (Appeals), Ahmedabad.**

**ORDER**

This Revision application has been filed by Shri. Surajbhan Yadav (hereinafter referred to as the Applicant) against the Order-in-Appeal No. AHD-CUSTM-000-APP-265-22-23 dated 07.06.2022 through F.No. S/49-347/CUS/AHD/ 2021-22 passed by the Commissioner of Customs ((Appeals), Ahmedabad

2 Brief facts of the case are that on 20-11-2019, Shri Surajbhan Yadav, the applicant on arrival at SVPI, Airport, Ahmedabad from Abu Dhabi by Ethiad Flight No. EY-288 was intercepted by the Customs Officers for detailed checking after he had opted for clearance through green channel. The applicant was asked whether he had any dutiable/restricted item to declare, in response to which the applicant replied in negative. The applicant was asked to walk through the DFMD Machine, nothing objectionable was noticed. The applicant was carrying a brown coloured checked in baggage and Screening of the checked-in baggage was carried out. Since some suspicious dark image were seen, detailed examination of his baggage was carried out. The Customs officers cut-opened a portion of the bottom side of the trolley bag and found some yellow coloured metallic foils (appeared to be gold) pasted in the bottom of the trolley bag. The other goods stuffed in the trolley bag were two toy motor cars, two mini speakers, one crayon box, one Bed sheet pack, pencil sharpeners, one measuring tape and magnetic bracelet, which were also screened in the scanning machine. All these objects displayed dark images indicating the presence of gold/heavy metal. Metallic items appearing to be gold were recovered when all these objects were opened with a screw driver. The Government Approved Valuer submitted his Valuation report as under:

TABLE

Sr No	Description of the metallic substance recovered	Object from which the impugned gold was recovered	Quantity (weight in grams)	Market Value	Tariff Value
1.	Gold Thin strip	Measuring Tape	116 690	460926	396559
2	Round Shaped gold pieces with Rhodium coating	Mini Speaker	126 550	499873	430068
3	Sharpener Blade shaped gold pieces with white rhodium painting	Sharpener	114 390	451841	388743
4.	Small cut pieces of gold thick strip with white rhodium coating	Magnetic Bracelet	234.410	925920	796619
5	Big pieces of gold strip (straight)	Toy Car	197.270	779217	670402
6	Big pieces of gold ("E" shaped plate	Toy Car	269.370	1064012	915427
7.	Gold foil affixed with black colour gum on boarder (folded)	Trolley Bag, Bed sheet, Packing Material and crayon box	742.240	2931848	2522428
			1800 920	7113634	6120247

The Government Approved Valuer certified the above articles of gold weighing 1800.920 grams to be having purity 999.0 and the total local market value to be Rs.71,13,634/- and Tariff Value to be Rs.61,20,247/-. The same were seized by the officers under the reasonable belief that the said goods were smuggled into India and same is liable for confiscation under Customs Act, 1962. After due process of investigation Show cause Notice was issued to the applicant on 07-07-2019.

3. The Original Adjudicating Authority (OAA), viz Joint Commissioner, Customs, Ahmedabad vide Order-in-Original No. 96/JC/SM/O&A/2020-21 dated 26-02-2021 ordered for the absolute confiscation the impugned gold i e articles of gold weighing 1800.920 grams to be having purity 999.0 and the total local market value of Rs.71,13,634/- and Tariff Value of Rs 61,20,247/- under

Section 111 (d), (i), (l) and (m) of the Customs Act, 1962 . A penalty of Rs. 5,00,000/- was also imposed on the applicant under Section of 112 (a) and (b) of Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-265-22-23 dated 07 06.2022 issued through F.No. S/49-347/CUS/AHD/2021-22 did not find it necessary to interfere in the OIO passed by the OAA.

5 Aggrieved with the above Order-in-appeal, the Applicant has filed this revision application on the following grounds;

5.01. that the Commissioner (Appeal)'s Order is against law and against principles of natural justice and hence as no legal sanctity,

5.02. that the applicant has not committed any offense under the Customs Act and hence is not liable for any penal action;

5 03 that the checking and recovery of the gold were not made in the presence of the applicant;

5 04 that the applicant has not imported any foreign gold from Abu Dhabi and the goods appear to have been forcibly planted on the applicant;

5.05 that neither the SCN nor the Order discloses the name of the independent witness in whose presence the recovery was made;

5.06 that the entire adjudication order is based on inadmissible evidence and unsupported presumption;

5.07 that the vital evidence furnished by the applicant has not been considered

Applicant prayed to the revisionary authority to set aside the order of the appellate authority and to quash the personal penalty imposed on him.

6. Personal hearing in the case was held on 29-11-2023. Shri. K. P. Yadav, Advocate appeared for the hearing and submitted that applicant in his initial statement stated that the bag in which gold was concealed was given to him in Abu Dhabi. It was his mistake to carry the same. He further submitted that applicant is a poor person who had gone to Abu Dhabi for work. He further submitted that the applicant has no concern with the gold. He requested to set aside penalty on the applicant.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while opting for clearance through the green channel facility. The impugned gold of substantial quantity had been ingeniously concealed inside the goods as described in the above Table. The gold was having purity of 999% i.e. it was in primary form which indicates that the same was for commercial use. The applicant clearly had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Further, the applicant had melted and converted the gold, cleverly and ingeniously concealed inside the goods (as in the Table) to avoid detection. The nature of concealment reveals the mindset of the applicant to not only evade duty but smuggle the gold. It also reveals that the act committed by the applicant was conscious and pre-meditated. The applicant had an opportunity to declare the dutiable goods in his possession but having confidence in the nature of his concealment, he failed to avail the same. Had he not been intercepted, the applicant would have gotten away with the concealed gold and hence the confiscation of the gold was justified.

8 The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423



(S C.), has held that “ *if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. .. ... Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, “prohibited goods”

9. Further, in para 47 of the said case the Hon<sup>ble</sup> High Court has observed “*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....*”. Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the ‘applicant’ thus, liable for penalty

10 Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon<sup>ble</sup> Supreme Court in case of M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos 14633-14634 of 2020 – Order dated 17.06 2021] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice, and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

11. Government observes that besides the quantum of gold which is quite high and its purity, indicating that the same was for commercial use, the manner in which the gold was attempted to be brought into the country is vital. The impugned gold was melted and converted, thereafter, had been cleverly, consciously and ingeniously concealed which reveals the intention of the applicant. The purity and primary form of the gold indicated that the same was for commercial use. The aforesaid quantity, purity and ingenious concealment, probates that the applicant had no intention of declaring the gold to the Customs at the airport. The applicant in his statement had admitted that the trolley bag

did not belong to him and was given to him by one Husain Ansari to give this to a person in Mumbai and promised to provide work when he returns. Thus the applicant acted as a carrier and no one else has claimed the ownership of the impugned gold. All these have been properly considered by the Original Adjudicating Authority while ordering the absolute confiscation of the gold, he has held that the applicant admitted that *"he is aware that the import of the gold is a punishable offence and under Customs Act, 1962 and since the gold has been recovered from his bag he is responsible for smuggling the gold"*. The appellate authority had rightly upheld the same

12. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever, conscious and ingenious, type of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of the impugned gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. Government is in agreement with the order of the AA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity. Considering the aforesaid facts, Government is inclined not to interfere in the order of absolute confiscation passed by the AA. Government finds that the AA has rightly upheld the OIO passed by the OAA.



13. The applicant has requested to quash the penalty imposed on him. Government observes that the applicant has admitted that he was not the owner of the trolley bag and the same was given to him. Considering that the applicant is a poor person and he was used as a carrier of the impugned gold, the penalty of Rs. 5,00,000/- imposed on the applicant by the OAA under Section 112(a) & (b) of the Customs Act, 1962 and upheld by the AA appears to be excessive and Government is inclined to reduce the same.

14. In view of the above Government modifies the impugned OIA limited to the penalty imposed on the applicant, the penalty of Rs.5,00,000/- imposed under Section 112(a) and (b) is reduced to Rs.3,00,000/- (Rupees Three Lakh only).

15. Revision Application filed by the applicant is disposed on the above terms.

( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 55/2024-CUS (WZ) /ASRA/MUMBAI DATED 18.01 2024

To,

1. Shri. Surajbhan Yadav, Villtentuduahiya, Tola-Adariya, Post-Baida Bajar, Maharajganj, Uttar Pradesh-273302.
2. The Principal Commissioner of Customs, 1<sup>st</sup> Floor, Customs House, Near All India Radio, Income tax Circle, Navrangpura, Ahmedabad-380009.
3. The Commissioner of Customs (Appeals), Ahmedabad, 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009

Copy to:

1. Shri. K.P.Yadav, Advocate, Civil Court, In front of room No 7, Gorakhpur, Uttar Pradesh-273301.
2. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board

