



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/10-A/B/16-RA & 1592
F.No. 371/10/B/16-RA

Date of Issue 19-02-22

ORDER NO. 55-56 /2022-CUS(WZ)/ASRA/MUMBAI DATED (02.2022
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.

(i). F.No. 371/10-A/B/16-RA

Applicant : Shri. Mohan Suleman Abdulla Hajiadam

(ii). F.No. 371/10/B/16-RA

Applicant : Shri. Shamim Ahmad

Respondent : Commissioner of Customs, Navrangpura, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the common Orders-in-Appeal
No.
(i).AHD-CUSTM-000-APP-267-15-16 [S/49-160/CUS/
AHD/2015-16] and
(ii).AHD-CUSTM-000-APP-268-15-16 [S/49-160/CUS/
AHD/2015-16], both dated 28.12.2015 passed by the
Commissioner of Customs (Appeals), Ahmedabad - 380
009.

ORDER

These two revision applications have been filed by Shri. Mohan Suleman Abdulla Hajiadam and Shri. Shamim Ahmad Kumar (hereinafter referred to as the Applicants or Applicant No. 1 /Applicant No. 2, resp.) against the commom Ordera in Appeal Nos. (i).AHD-CUSTM-000-APP-267-15-16 [S/49-160/CUS/AHD/ 2015-16 and (ii).AHD-CUSTM-000-APP-268-15-16 [S/49-160/CUS/AHD/AHD/ 2015-16], both dated 28.12.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad - 380 009.

2(a). On 11.02.2014, the applicant no. 1 arrived at SVPI Airport, Ahmedabad by Qatar Flight No. QR-534 from Doha alongwith his wife. Due to the short visits of the applicant no. 1, he was kept under surveillance by the Customs Officers. The applicant no. 1 had opted for the green channel and had handed over the disembarkation slips to the Customs wherein, it had been declared that he was not carrying / having any dutiable goods in his possessions. The applicant no. 1 had left the country on 07.02.2014 and he had returned on 11.02.2014 at Ahmedabad. The applicant no. 1 was diverted to the red channel for examination of his baggage. Aluminum like wires were found concealed in his checked-in baggage and from his another bag, a metal rod painted with black colour, fitted outside the bag to keep / hold the wheels was found. Upon scratching the aluminum like wires and metal rod, yellow metal was visible. The applicant admitted that the same was made of pure gold which had been concealed with an intent to smuggle it into the country. Thus, gold in the form of aluminum coated wires, weighing 572.180 grams and gold in the form of a black coloured metal rod weighing 466.780 grams, both wires and rod, totally weighing 1038.960 grams valued at Rs. 26,42,261/- (Tariff Value) were recovered and confiscated from the applicant no. 1 under Section 111(l) and Section 111(m) of the Customs Act, 1962.

2(b). Applicant no. 1 disclosed that the applicant no. 2, had handed over the said two bags to him at Dubai and on reaching Ahmedabad airport, he was

scheduled to hand over the two bags to him (applicant no. 2) who would then take it to New Delhi. It was informed that applicant no. 2 had already arrived at SVPI Airport, Ahmedabad by an earlier Etihad Flight EY216 which had landed some time earlier. In quick follow up action, it was ascertained that the applicant no. 2 had booked a ticket for New Delhi by Spice Jet Flight No. 104 and thereafter, he was intercepted by the Customs at the Spice Jet Counter. Applicant no. 2 informed that he had been waiting for applicant no. 1 who would hand over the two bags to him and then he would proceed to New Delhi on domestic flight.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, Ahmedabad - 380 009 vide Order-In-Original No. 68/ADC-MRM/SVPIA/O&A/2015 dated 22.04.2015 [F.No. VIII/10-84/SVPIA/O&A/2014 ordered for the absolute confiscation of the 1038.960 grams of gold under Section 111 (l) and (m) of the Customs Act, 1962, and imposed a penalty of Rs. 3,00,000/- (Rupees Three Lakhs only) on Applicant No. 1 under Section 112(b) of the Customs Act, 1962 and a penalty was of Rs. 1,00,000/- under Section 112(a) of Customs Act, 1962 was also imposed on Applicant no. 2. Further, a penalty of Rs. 1,00,000/- was imposed on applicant no. 1 under Section 114AA of the Customs Act, 1962.

4. Aggrieved by this order, the two Applicants filed an appeal with the Commissioner of Customs (Appeals), Ahmedabad who vide common Orders-In-Appeal nos. (i).AHD-CUSTOM-000-APP-267-15-16 [S/49-160/CUS/AHD/2015-16] and (ii).AHD-CUSTOM-000-APP-268-15-16 [S/49-160/CUS/AHD/2015-16] both dated 28.12.2015, rejected the appeals.

5. Aggrieved with the order of the Appellate authority, the Applicants have filed these two revision applications inter alia on the grounds that;

(i). F.No. 371/10-A/B/16-RA

5.01. that applicant had not been given a chance to declare the gold at the red channel.

5.02. that the gold had been kept in the baggage of the applicant and was intercepted by a Preventive Officer of Customs who was not the proper officer to take a declaration from passengers at airport coming from abroad as per Section 77 of the Customs Act, 1962.

5.03. that the gold belonged to the applicant and he was its owner.

5.04. that the decisions relied upon by the lower authorities in denying redemption of the seized gold was not applicable to this case.

5.05. that gold was not a prohibited item and Section 125 of the Customs Act, 1962 was very clear that if the goods are not prohibited then it was obligatory to release the gold on payment of redemption fine and penalty.

5.06. that since the gold had been seized in the Customs bonded area and not outside the Customs arrival hall, the goods are not smuggled but were imported and therefore, personal penalty under Section 112(b) of the Customs Act, 1962 cannot be imposed.

5.07. that the applicant had not used any documentary evidence for the release of the gold and hence, Section 114AA of the Customs Act, 1962 was not sustainable.

Applicant no. 1 has prayed to allow the redemption of the gold on payment of redemption fine and penalty in lieu of confiscation and the personal penalty imposed under Section 112(b) of the Customs Act, 1962 may be set aside.

(ii). F.No. 371/10/B/16-RA.

5.08. that the observations of the appellate authority that applicant no. 2 was to receive the goods after clearance and that applicant no. 2 had advised applicant no. 1 was not correct.

5.09. that the applicant no. 1 had not taken the name of applicant no. 2 but of some other person.

5.10. that the applicant no 2 had not abetted applicant no. 1 to contravene the provisions of the Customs Act, 1962 and hence penalty was not imposable under such situation.

5.11. that applicant no. 2 had not contravened any provisions of the Customs Act, 1962 and hence, no penalty was imposable on him.

Applicant no. 2 has prayed to set aside the imposition of penalty on him and grant relief as deemed fit.

6. Personal hearings in the case was scheduled for 27.12.2018. After the change of the revisionary authority, personal hearing through the video conferencing mode in both the said revision applications were scheduled for 16.09.2021 / 23.09.2021, 26.10.2021 / 02.11.2021 and 08.11.2021. Shri. S.S Arora, Advocate appeared online and submitted that gold be released on reasonable RF and penalty. He requested to drop penalty under Section 114AA and on co-applicant who did not commit any act attracting penalty under Section 112(a) of the Customs Act, 1962.

7. The Government has gone through the facts of both the cases. Government notes that a common order was passed by the original adjudicating authority in the case of both these applicants. Also, the appellate authority had passed a common / simultaneous order and disposed of both the appeals filed by these two applicants. Hence, the decision in the two revision applications i.e. RA nos. (i). F.No. 371/10-A/B/16-RA and (ii). F.No. 371/10/B/16-RA is being taken up in a common / simultaneous order.

8. The Applicant no. 1 was intercepted after he had opted for the green channel and had handed over a nil disembarkation slip categorically declaring that he did not possess any dutiable goods. The gold of high purity had been converted into wires and a rod. The wires then had been coated with aluminum and the rod was painted with a black colour, to hide detection by Customs. The applicant no. 1 had used a very ingenious method to smuggle in gold and evade detection and payment of Customs duty. Moreover, the short trip made abroad

by the applicant no. 1 made him ineligible to carry such a large quantity of gold. Also, the quantum of gold indicated that the same was for commercial use. The gold in the form of wires and a rod had been discovered only when the Applicant no. 1 was thoroughly checked. The Applicant did not declare the gold bars as required under Section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and in the form of wires / rod and it was an ingenious concealment designed to avoid detection. The confiscation of the gold is therefore justified and the Applicant no. 1 has rendered himself liable for penal action.

9. 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”.

10. Further, in para 47 of the said case the Hon'ble 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 ‘Applicants’ thus, liable for penalty.

11. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon’ble 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.

12. Government also observes that the manner in which the gold was concealed i.e. ingeniously converted into wires which were coated with aluminum and a gold rod which had been painted over with black paint reveals the intention of the Applicant no. 1 not to declare the gold and evade payment of Customs duty. A lot of effort had gone into converting the gold in wires and rod and coating / painting it which also reveals that the Applicant No. 1 had been aided and abetted in his attempt to smuggle the impugned gold. It further reveals the criminal bent

of mind of the applicant no. 1 and a clear intention to evade duty and smuggle the gold into India. Also, the applicant no. 1 by virtue of his short visit abroad, was ineligible to import gold. The circumstances of the case especially that the impugned gold had been concealed in an ingenious manner, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority while absolutely confiscating the impugned gold wires and rod.

13. The other issue in the case was the quantum of the impugned gold which had been attempted to be brought into the country. The quantum indicates that the same was for commercial use. 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 and ingenious, quantity being large and commercial, possessing knowledge of the goods, clear attempt to smuggle gold wire and rod, ineligibility, etc, make it 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 and appellate authority had both rightly ordered the absolute confiscation of the impugned gold. In the instant case, the gold was cleverly, consciously, ingeniously and in a premeditated manner converted into wires and a rod and coated over which indicates that the applicant no. 1 did not have any intention to declare the same. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage such concealment as, if the gold is not detected by the Custom authorities the passenger gets away with smuggling and if not, he has the option of redeeming the gold. 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. The order of the Appellate


authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

14. Government finds that the penalty of Rs. 3,00,000/- imposed on the applicant no. 1 under Section 112(b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed and does not find it necessary to interfere in the same.

15. Government finds that once penalty has been imposed under section 112(a) / 112(b) of the Customs Act, 1962 then there is no necessity of imposing penalty under section 114AA of the Customs Act, 1962. Therefore, the penalty of Rs. 1,00,000/- (Rupees One lakh only) imposed on applicant no. 1 under Section 114AA of the Customs Act, 1962 is set aside.

16. With regard to the penalty imposed on applicant no. 2, the Government notes that both the adjudicating authority and the appellate authority have dealt with the same in great detail. The role of the applicant no. 2 has been discussed and analysed by both the lower authorities and the role played in the abetment has been brought out, clearly. The undeniable fact remains that the applicant no. 2 had been intercepted and several facts stand confirmed based on the disclosures made by the applicant no. 1. In view of the same, the Government finds that the penalty imposed on the applicant no. 2 under Section 112(a) of the Customs Act, 1962 is appropriate and commensurate with the omissions and commissions committed. Government is not inclined to interfere in the same.

17. In view of the above, with regard to revision application no. (i). F.No. 371/10-A/B/16-RA filed by applicant no. 1, the appellate order is modified only to the extent of setting aside the penalty imposed under Section 114AA of Customs Act, 1962. The revision application no. (i). F.No. 371/10/B/16-RA filed by applicant no. 2 is rejected.


(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 55-56/2022-CUS(WZ)/ASRA/

DATED 10.02.2022

To,

1. Shri. Mohan Suleman Abdulla Hajiadam, Satpul Society, C.Vejalpur Road, Godhra, Pancmahals, Pin : 389 001.
2. Shri. Shamim Ahmad, N-14 (129), Matawali Gali, Rajput Mohalla, Chauhan Bangar, Delhi - 110 053.
3. The Commissioner of Customs, Custom House, Navrangpura, Ahmedabad - 389 009.

Copy to:

1. Shri. S.S Arora & Associates, B1/71, Safdarjung Enclave, New Delhi - 110 029.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File copy,
5. Notice Board.