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SPEED POST



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

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F.No. 371/07-A/B/2020-RA(MUM) / 99.45 Date of Issue : 03.08.23

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ORDER NO. 563 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.07.2023  
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.

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Applicant : Shri. Nilotpal Mrinal.

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Subject : Revision Application filed, under Section  
129DD of the Customs Act, 1962 against the Order-in-  
Appeal No. MUM-CUSTM-PAX-APP-633/19-20 dated  
31.10.2019 through F.No. S/49-205/2019 passed by the  
Commissioner of Customs (Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by Shri. Nilotpal Mrinal (herein after referred to as the Applicant) against the Order-In-Appeal No. MUM-CUSTOM-PAX-APP-633/19-20 dated 31.10.2019 through F.No. S/49-205/2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that the applicant arrived from Dubai by Emirates Flight No. EK-502 on 24.10.2017 and had approached the PRO counter and met the on-duty Customs PRO. The applicant was taken to the baggage screening machine (BSM) where his hand bag was screened. 5-6 mobile phones were found in the hand bag. Since, the applicant had informed that these were old and used mobile phones, he was allowed to go. However, later, at the exit gate, the applicant was intercepted by the officers of the Air Intelligence Unit (AIU) and detailed examination of his baggage and personal search, led to the recovery of the dutiable items as listed at Table No. 1 below.

**Table No. 01.**

Sr. No.	Description of goods	Value in Rs.
1.	Gold items recovered 1. Two crude gold kadas 2. One crude gold chain 3. Five crude gold bars	<b>28,69,414/-</b>
2.	4 pcs of I-pad Pro 512 GB @70,000/- each	2,80,000/-
3.	2 pcs of pad pro 256 GB@65,000/- each	1,30,000/-
4.	2 pcs of DELL Laptop (Inspiron)@40,000/- each	80,000/-
5.	5 pcs of Apple watches series 3@30,000/- each	1,50,000/-
6.	3 pcs of Samsung S3 gear watches@25,000/- each	75,000/-
7.	2 pcs of platinum Glutamine@1500/- each	3,000/-
8.	1 packet of Nutrex LPO6CLA 180 soft gel	4,000/-
9.	10 pkts containing 1 pc each on Mont Blanc resin Pen BP8486@20,000/- each	2,00,000/-
10.	10 pkts containing 1 pc each of Mont Blanc resin 112685 RB Urban@20,000/- each	2,00,000/-
11.	7 pcs of I-phone 8 plus gold 64GB@72,000/- each	5,04,000/-

12.	5 pcs of I-phone 8 plus grey 64GB@68,000/- each	3,40,000/-
13.	1 pc of I-phone 8 plus Silver 64GB	70,000/-
14.	10 pcs of I-phone 8 Gold 64GB@60,000/- each	6,00,000/-
15.	5 pcs of I-phone 8 Gold 256GB@75,000/- each	3,75,000/-
16.	4 cartons of Dunhill cigarettes@1000 each	4,000/-
17.	25 nos of Davidoff perfumes @1,500/- each	37,500/-
	<b>Total Value of Dutiable goods Sl. No. 2 to 17.</b>	<b>30,52,500/-</b>
	<b>Total Value of recovered goods (gold and dutiable goods) is</b>	<b>59,21,914/-</b>

2(b). The aforesaid recovery consisted of crude gold kadas, crude gold chain, 5 crude gold bars and dutiable goods like laptop, I-pads, watches, pens, I-phones, cigarettes, perfumes etc. The gold items were assayed by a Govt. Approved Valuer who certified that the gold items totally weighed 1050 grams, were of 24KT purity and valued at Rs. 28,69,414/-. The dutiable goods were collectively valued at Rs. 30,52,500/- on the basis of on-line shopping sites like Amazon, Flipkart, E-bay etc.

2(c). In the statements recorded under Section 108 of the Customs Act, 1962, the applicant admitted that he had opted for the green channel and had been intercepted after green channel, that examination of his baggage led to the recovery of dutiable goods valued at Rs. 30,52,500/-; that personal search of his body led to the recovery of two crude gold kadas, one crude gold chain, five crude gold bars having FMs and of 999.0 purity, which had been wrapped in envelopes. All together the gold totally weighed 1050 grams and was valued at Rs. 28,69,414/-; that he was a frequent traveler; that he had brought these goods not for sale but to give as gifts to his relatives and friends; that he had with him the gold kada, gold bracelet, 2 gold chains which he had got exchanged in Dubai with 2 gold kadas of total 30 tolas, one gold chain of 10 tola and one gold bar of 10 tola and thereafter, had purchased 4 more gold bars of 10 tolas each; that he was director/owner of 4 companies, all registered at Mumbai

3. After due process of the law, the Original Adjudicating Authority, viz Additional Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/382/2018-19 dated 24.12.2018 (DOI : 26.12.2018) issued through F.No. S/14-5-19/2018-19/Adjn [SD/INT/AIU/287/2017-AP'B'] ordered for the
- (a). absolute confiscation of the seized gold articles i.e. two crude kadas, one crude chain and five crude gold bars, totally weighing 1050 grams and valued at Rs. 28,69,414/- and other electronic goods, watches and pens valued at Rs. 30,01,500/- namely, 4 pcs of I-pad PRO 512 GB, 2 pcs of I-pad PRO 256 GB, one piece of Dell laptop, 5 pcs of Apple watches series 3, 3 pcs of Samsung S3 Gear watches, 10 pkts of Mont Blanc resin pen 8486, 10 pkts of Mont Blanc Resin Pen 112685RB Urban, 7 pcs of I-phone 8 plus gold 64GB, 5 pcs of I-phone 8 plus grey 64GB, one pc of I-phone 8 plus Silver 64GB, 10 pcs of I-phone 8 gold 64GB, 5 pcs of I-phone 8 gold 256GB and 25 nos of Davidoff Perfumes, collectively valued at Rs. 58,70,914/- under Section 111(d), (l) and (m) of the Customs Act, 1962,
  - (b). absolute confiscation of the 04 cartons of Dunhill cigarettes valued at Rs. 4000/- under Section 111(d), (l) and m of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992, Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2014,
  - (c). the release of one Dell laptop valued at Rs. 40,000/-, 2 pcs of platinum glutamine valued at Rs. 3000/- and one pc of Nutrex LP06CLA 180 soft gel under free allowance admissible under the Baggage Rules, 2016,
  - (d). imposed a personal penalty of Rs. 6,60,000/- on the applicant under Section 112 (a) and (b) of the Customs Act, 1962,
  - (e). imposed a personal penalty of Rs. 2,00,000/- on the Customs PRO on duty, under section of 112 (a) 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), Mumbai - III who passed Orders-In-Appeal No. MUM-CUSTM-PAX-APP-622 & 633/19-20 dated 31.10.2019 issued through F.No. S/49-205/2019 modified the OIO dated 24.12.2018 as under.

(a). In so far as the applicant is concerned the AA upheld the order of the adjudicating authority absolute confiscating the offending goods except goods covered under free allowance and also upheld the penalty imposed on him and

(b). In so far as the penalty imposed on the Customs PRO is concerned, the AA held that the charge of abetment under Section 112 of the Customs Act, 1962 was unsustainable.

5. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds that;

- 5.01. that the orders passed by the lower authorities is not proper and is bad in law and was passed without following natural justice;
- 5.02. that he had worn the jewellery while departing to Dubai; that he had not declared the same;
- 5.03. that the electronic goods had been taken on credit; that the electronic goods had been over-valued by the Customs;
- 5.04. that the gold was not for commercial purpose; that since he had worn the gold jewellery, the Baggage Rules, 2016 was not applicable in his case as the gold was not in the baggage;
- 5.05. that the gold jewellery had not been concealed; that he had not violated Section 77 of the Customs Act, 1962 inasmuch as non-declaration of gold was concerned as he had worn the gold jewellery; that the place of recovery had not been mentioned and the same was silent in the order;
- 5.06. that the electronic goods were gifts to his wife; that gifts and personal use items imported in reasonable quantity were permitted and are bonafide items;
- 5.07. that gold bars were not prohibited and that re-export should be permitted; that on the issue of gold not being prohibited they rely on the case of Commissioner of Customs vs. M/s. Atul Automations Pvt. Ltd [2019-TIOL-35-SC-CUS];
- 5.08. that the allegation that the goods had been smuggled was wrongly applied to his case and the Section 111 of the Customs Act, 1962 was not applicable to his case;

- 5.09. that penalty under Section 112 of the Customs Act, 1962 was wrongly applied to their case;
- 5.10. that import of gold by passengers was governed by Notification no. 3/2012-Cus dated 16.01.2012; the notification did not prohibit import of gold or gold ornaments but only exempts duty to the extent mentioned therein;
- 5.11. that considering the said notification, the order of confiscation had been passed without any legal foundation; that the allegation of smuggling of gold jewellery was not sustainable; and consequently, the order of confiscation and levy of penalty are liable to be set aside;
- 5.12. that the Customs Act, 1962, or the Baggage Rules, 2016 or Para 2.20 of the FTP (2009-14) did not stipulate that a passenger of Indian Origin entering India cannot wear gold ornaments on his person; that the Customs Act, 1962 and Baggage Rules, 2016 do not forewarn passengers entering India; that on the issue of vague laws they rely on the order of the Apex Court viz, Kartar Singh vs. State of Punjab 1994-3-SCC-569];
- 5.13. that they relied on the following case laws;
  - (a). Vigneswaran Sethuraman vs. UOI [2014-308-ELT-394(Ker)]; that neither the Customs Act, 1962 or the Baggage Rules, 1998 stipulate that a foreign tourist entering India cannot wear gold ornaments on its person; that further no such warning was provided to foreign tourist;
  - (b). Mohamed Ansar Abdul Gafoor vs. Asstt. Commr. Of Customs, Chennai [2016-338-ELT-585(Mad)]; that goods were allowed to be re-shipped on payment of redemption fine;
- 5.14. that warning on the cigarette packs was not mandatory if the same was for personal use; that warning is mandatory in cases when cigarettes are for distribution, or supply for a valuable consideration or for sale in India. However, it was not applicable to the present case as admittedly the cigarettes were brought for personal use and that the department had not proved contrary; therefore, the applicant has prayed that the same may be permitted clearance on payment of applicable Customs duty or ordered to be re-exported;
- 5.15. that re-export of other goods such as laptop, I-pads, I-phones, watches etc imported by the applicant may be permitted; that the same had been overvalued by the Customs else they were within permitted limits which did not require a declaration;

Under the aforesaid circumstances, the applicant has prayed that the impugned OIA passed by the AA be set aside; that the gold jewellery and 5 gold bars may be permitted to be re-exported; that the cigarettes may be permitted for clearance or allowed to be re-exported and that the electronic goods may be permitted for clearance.

6. Personal hearings in the case including option of online hearing was scheduled for 04.05.2023. Dr. Sanjay Kalra, Advocate along with the applicant attended the hearing on 04.05.2023 and reiterated their earlier submissions. They submitted that gold is not a prohibited item and other goods are not even restricted. These goods were brought for personal use and for gifts, applicant is not a habitual offender. They requested to allow the application.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the gold, mis-used his social status and misled the Customs officers and had passed through the green channel. The applicant was a frequent traveler and was aware of the law. The act of attempting to clear the gold and dutiable electronic goods was pre-meditated and deliberate with a clear intention to evade payment of Customs duty. The applicant had clearly failed to make a truthful declaration of the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Had the applicant not been intercepted, he would have gotten away without paying Customs duty on the gold, electronic goods and other items recovered from his possession. The Government finds that the confiscation of the gold, electronic goods and other dutiable goods was therefore, 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*

from the checked-in and handbag of the applicant were made on the basis of online shopping sites such as Amazon, Flipkart, Ebay etc. Government finds that the values displayed on these shopping sites are sales price which may not reflect the correct transaction value. Government finds that the valuation has not been done in accordance with the Customs Valuation Rules in a proper and judicious manner and therefore, is inclined to direct the respondent to re-evaluate the same on the basis of contemporaneous value or by following Valuation Rules. Government is inclined to release the same on redemption fine.

13. The applicant had also carried 4 cartons of Dunhill cigarettes. It is alleged that these cigarette packs do not bear the pictorial details as mandated by the Government and hence, its sale in the open-market is proscribed. Therefore, these 4 cartons of Dunhill cigarettes cannot be sold in the open market as the sale of such cigarettes is banned / proscribed. Hence, confiscation of the same is justified and Government is inclined to uphold the order passed by the AA which has upheld the absolute confiscation of the same passed by the OAA.

14. Government finds that the penalty of Rs. 6,60,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed. Therefore, Government is inclined to uphold the same.

15. In view of the above, the Government modifies the Order-in Appeal F. nos. MUM-CUSTOM-PAX-APP-633/19-20 dated 31.10.2019 through F.No. S/49-205/2019 passed by the AA as under;

(i). Insofar as the impugned gold articles i.e. two crude kadas, one crude chain and five crude gold bars, totally weighing 1050 grams and valued at Rs. 28,69,414/- is concerned, Government upholds the absolute confiscation as being legal, proper and judicious and does not find it necessary to interfere in the same.,



- (ii). Insofar as the impugned electronic goods and other items i.e. except the Dunhill cigarettes and gold is concerned, the Government sets aside the impugned order of the Appellate Authority i.e. wherein absolute confiscation is upheld and the same are allowed to be redeemed by the applicant on payment of a redemption fine of Rs. 5,00,000/- (Rupees Five Lakhs only) and applicable duties, on the values arrived at after following the Customs Valuation Rules.
- (iii). The absolute confirmation of the 4 cartons of Dunhill cigarettes is upheld.
- (iv). The free allowance allowed on one Dell laptop, two pcs of platinum glutamine and one piece of Nutrex is upheld.
- (v). The penalty of Rs. 6,60,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act,1962 is commensurate with the omissions and commissions committed.
16. Revision Application filed by the applicant is disposed of on the above terms.

  
( SHRAWAN KUMAR )

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

**ORDER No. 563/2023-CUS (WZ) /ASRA/MUMBAI DATED 31.07.2023**

To,

1. Shri. Nilotpal Mrinal, Flat No. 101, Golden Castle CHSL, Sunder Nagar, Road No. 2, Kalina, Santa Cruz (E), Mumbai - 400 098.
2. Pr. COMMISSIONER OF CUSTOMS, CSMI Airport, Level-2, Terminal-2, Sahar, Andheri (West), Mumbai - 400 099.

**Copy To,**

1. KPS Legal, 5<sup>th</sup> Floor, Hitkari House, 284, Shahid Bhagat Singh Road,  
(Near Sher-E-Punjab Hotel), Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.