

REGISTERED  
SPEED POST



सत्यमेव जयते

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

F.No. 371/152 (I to II)/B/WZ/2022-RA | Co. 52 Date of Issue 04.07.2023

ORDER NO. ~~566-567~~ /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.

Applicants : Shri Pareshkumar Parsottambhai Patel  
Shri Mihir Divyang Mehta

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

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-1588/2021-22 dated 31.01.2022 [Date  
of issue: 03.02.2022] [F. No. S/49-1100/2020-Appeal]  
passed by the Commissioner of Customs (Appeals),  
Mumbai Zone-III.

**ORDER**

The Revision Application has been filed by Shri Pareshkumar Parsottambhai Patel and Shir Mihir Divyang Mehta (herein referred to as the 'Applicant No 1' and 'Applicant No. 2' respectively and as "Applicants" collectively) against the Order-in-Appeal No. MUM- CUSTM-PAX-APP-1588/2021-22 dated 31.01.2022 [Date of issue: 03.02.2022] [F. No. S/49-1100/2020-Appeal] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2.1. Brief facts of the case are that on 26/27.01.2019, on the basis of intelligence and profiling, the officers of Air Customs, Chatrapati Shivaji International Airport, Mumbai, intercepted Applicant No. 1, an British passport holder, who had arrived by Indigo Flight No. 6E 62 from Dubai. Applicant No. 1 was asked whether he was carrying any contraband or gold either on his person or in his baggage, to which he replied in the negative. Not being satisfied with his reply, personal search of the Applicant No. 1 was conducted and one heavy piece of chain purportedly of gold was found to be worn around his waist and concealed beneath the jeans worn by him was recovered.

2.2. On being asked Applicant No 1 stated that the yellow metal chain purportedly to be gold was given to him by one Ajay Mozaria in Dubai with instructions to hand it over to Applicant No. 2, who had come to receive him outside the arrival hall of CSMI Airport. Applicant No. 2 was intercepted outside the arrival hall and he admitted that he had come to receive the gold brought by Applicant No 1.

2.3. Pursuant to being assayed, the crude gold chain of 24K purity weighing 1048 grams and valued at Rs. 31,43,329/- was seized under the reasonable belief that the same was being smuggled into India and was thus liable to confiscation under the provisions of the Customs Act, 1962.

2.4. Applicant No.1 stated that he was not the owner of the crude gold chain and that the seized gold chain was handed over to him by Ajay Mozaria alongwith two invoices and was to handover the gold to Applicant No. 2. Applicant No.1 admitted to possession, carriage, non-declaration and recovery of seized gold.

3. After following the due process of law, the Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original (OIO) No. ADC/SKR/ADJN/37/2020-21 dated 13.07.2020 [Date of issue: 15.07.2020] ordered for the absolute confiscation of the impugned crude gold chain of 24Kt weighing 1048 grams valued at Rs. 31,43,329/- under Section 111 (d), (l) & (m) of the Customs Act, 1962. A penalty of Rs. 3,50,000/- each was imposed on the Applicant No.1 and Applicant No. 2 under Section 112(a)(i) of the Customs Act, 1962.

4. Aggrieved with this Order, the Applicants filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide Order-in-Appeal No. MUM- CUSTM-PAX-APP-1588/2021-22 dated 31.01.2022 [Date of issue: 03.02.2022] [F. No. S/49-1100/2020-Appeal] upheld the order passed by the OAA.

5. Aggrieved with the above order of the Appellate Authority, the Applicants has filed this common revision application on the following grounds:

5.01. That the officers were not acting on the basis of intelligence and profiling but were conducting a roving enquiry which the Applicant claims is illegal in respect of searches;

5.02. That in respect of searches in all fiscal laws is that there has to be specific information leading to reasonable belief that a specific type of violation has been committed. The Applicant has relied upon the following case laws in support of their contention:

(i) Mohammed Serajuddin vs. R.C.Misra [1983(13) E.L.T. 1370(SC)]

- (ii) Gopal Kishan vs. R.N.Sen [1983(13) E.L.T 1434(SC)]
- (iii) P.K.Ghosh vs. K.M. Mazodia [2000(117) E.L.T 14(Cal)]
- (iv) UWE Hoppe vs. CCP [1988(37) E.L.T 561 (T)]
- (v) Innovation, Secunderabad vs. CBEC [1984(15) E.L.T 91(AP)]
- (vi) Bishnu Kumar Shreshta vs. UOI [1984(27) E.L.T 369(Cal)]
- (vii) Rai Bahadur Sebh Sreeram Durga Prasad (I) Ltd vs. DC. Customs Dent  
[AIR 1965(AP)294]
- (vii) Pukhraj vs. P.R.Kohli [A.J.R 1962 SC 1559]

5.03 That there was no attempt on the part of Applicant No. 1 to smuggle the gold since the recovery was made when he was inside the arrival hall and there is no mention in the panchnama that the Applicant No. 1 was intercepted after he had crossed the green channel and that the Applicant was not allowed to declared the chain to Customs; that the AIU officers who detained him on detection of gold are not 'proper officers' under Section 77 of the Customs Act, 1962;

5.04. That there is nothing on record to prove that there was any circumstantial or direct evidence suggesting attempt to import of gold and mere 'preparation' does not amount to 'attempt'. The Applicant has relied upon the following case laws in support of their contention:

- (i) State of Maharashtra vs. Mohd Yakub & ors [1983(13) E.L.T. 1637]
- (ii) Abhayanand Mishra vs. State of Bihar [1962 2 SCR 241]
- (iii) Malkiat Singh vs. State of Punjab [(1969) 2 SCR 663]
- (iv) Asgarali Pradanta vs. Emperor[(1934) ILR61 Cal 54]
- (v) Md. Liakat Ali vs. CC, Kolkata [2008(222) E.L.T 295(Tri-Kolkata)]

5.05 That the statements were recorded under coercion and threat to suit their story for booking a false case and the statements are involuntary, thus making the circumstances that led to the recovery of the gold chain did not constitute proof to establish guilt of the Applicant No. 1 and thus should be

granted benefit of doubt. The Applicant has relied upon the following case laws in support of their contention:

- (i) Smt Selvi and ors vs. State of Karnataka [2010(3) Supreme 558]
- (ii) Balwinder Singh vs. State of Punjab
- (iii) Thulasiammal and ors vs. JS GOI [1984(30) E.L.T 415(Mad)]

5.06. That the Applicant No. 1 did not act as a carrier for anyone for monetary consideration. That the investigation did not expose the chain of alleged smuggling activities and the department failed to prove the questionable role of the Applicant that he contributed to the promotion of smuggling and that the evidence gathered during investigation was liable to be discarded merely because they do not give rise to adverse consequences against the Applicant;

The Applicant has relied upon the following case laws:

- (i) State of Maharashtra vs. Laxmichand Varhomal Chugani

5.07. That the impugned show cause notice is bad in law on the ground that the show cause notice has prejudged and pre-determined the entire issue and left nothing for the adjudicating authority to enquire into and when the authority has already closed their minds in respect thereto the quasi-judicial proceedings it cannot be held to be in accordance with law or in compliance with the principles of natural justice. The Applicant has relied upon the following case laws in support of their contention:

- (i) Raghunandan Jalan vs. Collector of Central Excise [1981(8) E.L.T. 476 Cal]
- (ii) V.C, Banaras Hindu University vs. Shrikant [(2006) 11 SCC 42]
- (iii) SBQ Steels vs. Commr. of Cus, C.Ex and ST [2013(1) TMI 359 (Andhra HC)]
- (iv) Raghunandan Jalan vs. Collector of Central Excise [1981(8) E.L.T. 476(Cal)]
- (v) Poona Bottling Co vs. UOI

- (vi) UOI vs. ITC Ltd [1985(21) E.L.T. 655( Kar)]
- (vii) Mysore Acetate and Chemicals Co. Ltd vs. AC, C.Ex, Mysore
- (viii) MRF Ltd vs. AC.CEx. Madras [1981(8) E.L.T. 565( Mad)]
- (ix) Alembic Glass Industries Ltd vs. UOI [1989(24) E.L.T 23( Kar)]
- (x) Calcutta Discount Co Ltd vs. ITO
- (xi) Oryx Fisheries Pvt Ltd vs. UOI [(2010) 13 SCC 427]
- (xii) Siemens Ltd vs. State of Maharashtra [(2006) 12SCC 33]
- (xiii) K.L. Shephard vs UOI [(1987) 4 SCC 431]
- (xiv) Global Marine Agencies vsl CC (Prev) Jaipur [2012(9) TMI 679]
- (xv) UOI vs. Madras Steel Re-rollers Association [2012(8) TMI 788 (SC)]

5.08. Gold is not a prohibited item and is not liable for absolute confiscation. Gold is not a prohibited item for import and Section 125 of the Custom Act, 1962 provides that option of redemption can be given in case the seized goods are not prohibited and therefore absolute confiscation is not warranted in the instant case. Section 125 of the Customs Act, 1962 provides that the goods should be redeemed to the owner of the goods or the person from whose possession the goods were seized if the owner is not known. Further authority has discretion to order release of prohibited goods on payment of fine in lieu of confiscation. The Applicant has relied upon the undermentioned case laws;

- (i) Commr. Of Customs (Prev) vs. India Sales International [2009 (241) E.L.T. 182(Cal)].
- (ii) Om Prakash Bhatia vs. Commr. Of Customs Delhi [2003(155) E.L.T.423(SC)]
- (iii) Shaikh Jamal Basha vs. GOI [1992(91) E.L.T. 227 (AP)]
- (iv) Mohamed Ahmed Manu vs. CC, Chennai [2006(205) E.L.T 383(Tri-Chennai)].
- (v) Mohd Zia Ul Haque vs. Addl. Commissioner of Customs, Hyderabad [2014(214) E.L.T 849 (GOI)]
- (vi) UOI vs. Dhanak M Ramji [2003(248) E.L.T 128(Bom)]
- (vii) Sapna Sanjiv Kohli vs. CC, Mumbai [2010(253) E.L.T A52(SC)]

- (viii) Horizon Ferro Alloys Pvt Ltd vs. UOI –judgement by the Division Bench of Punjab and Haryana High Court.
- (ix) Suresh Kumar Agarwal vs. Collector of Customs, Madras [1998(103) E.L.T. 18(A.P)].
- (x) CESTAT order in the case of appeal by Bhargav B Patel [2015-TIOL-1951-CESTAT-Mum].
- (xi) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].
- (xii) Ramesh Mehta vs. Sanwal Chand Singhvi [(2004) 5 SCC 409].
- (xiii) Commr of Customs (AP) vs. Alfred Menezes [2009(242) E.L.T. 334 Bom].
- (xiv) Commr of Customs Delhi IV vs. Achiever International [2012(286) E.L.T. 180(Del)].
- (xv) Etc..

5.09. That from various judgements of the Hon'ble Courts and other forums it transpires that in cases of gold brought by the passenger and not declared to avoid payment of duty, the option of redemption under section 125 of Customs Act, 1962 can be exercised to secure ends of justice. The Applicant has relied on the following case laws in support of their contention:

- (i) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (ii) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (iii) Shri Rama Sugar Industries Ltd vs. State of AP [1974) 1 SCC 534]
- (iv) Rajaram Bohr vs. UOI [2015(322) E.L.T 337 (Cal)]

5.10. That to justify the confiscation of imported goods on the grounds that the goods are 'prohibited', the adjudicating authority has relied upon the case of Om Prakash Bhatia vs. Commissioner of Customs, Delhi [2003(155) E.L.T. 423(SC)] which was decided in the context of over invoicing of exported readymade garments;

5.11. That a lower court should honour findings of law made by the higher court that is within the appeals path of case the court hears and precedent is

a legal principle or rule that is created by a court decision. The Applicant has relied on the following case laws in support of their contention:

- (i) CCE, Calcutta vs. Alnoori Tobacco Products [2004(170) ELT 135 (SC)]
- (ii) Escorts Ltd vs. CCE, Delhi [2004 (173) ELT 113 (SC)]
- (iii) CC (Port), Chennai vs. Toyota Kirloskar [2007 (213) ELT 4 (SC)]
- (iv) Sri Kumar Agency vs. CCE, Bangalore [2008 (232) E.L.T. 577 (S.C.)]
- (v) Escorts Ltd vs. CCE, Delhi-II [2004 (173) E.L.T. 113 (S.C.)]
- (vi) CC, Customs vs. M/s Atul Automations Pvt Ltd

5.12. That the order of the Appellate Authority is not on merits and not a speaking order and is thus not maintainable and in the instant case the Appellate Authority has conveniently avoided to discuss and counter the points raised by the Applicant and has failed to take cognizance of all the submissions of the applicant without giving a reason;

5.13. That the Adjudicating/Appellate Authority is bound to follow the principles of natural justice and the law requires that to determine the issue involved, the material evidence touching the issue to be tested, the pleadings of the accused to be examined on the light of the evidence and law and conclusion has to be reached after that. The Applicant has relied upon the following case laws in support of their contention:

- (i) State of Punjab vs. K.R.Erry
- (ii) A.K. Kraipak vs. UOI
- (iii) Chintamoni Pradhan vs. Paika Samal
- (iv) Sahara India TV Network vs. CCE, Noida
- (v) JC, Income Tax vs. Saheli leasing and Ind [2010(253) E.L.T. 705(SC)]
- (vi) Vikas Enterprises vs. CCE, Allahabad
- (vii) Sharp Carbon India vs. CCE, Kanpur
- (viii) UOI vs. Sri Kumar Agencies [Guj HC]
- (ix) International Woolen Mills vs. Standard Wool (UK) Ltd



- (x) Kranti Associates Pvt Ltd vs. Masood Ahmed Khan [2011(273) E.L.T 345(SC)]
- (xi) Mahabir Prasad Santosh Kumar vs. State of UP [AIR 1970 SC 1302]
- (xii) Travancore Rayons Ltd vs. UOI [AIR 1971 SC 862]
- (xiii) Woolcombers of India Ltd vs. Woolcombers Workers Union [AIR 1973 SC 2758]
- (xiv) Siemens Engineering and Mfg. Co of India Ltd vs UOI [AIR 1973 SC 1785]
- (xv) Teststeels Ltd vs. Desai (N.M)
- (xvi) SSE Hari Nagar Sugar Mills vs. Shyam Sundar Jhunjhunwala [AIR 1961 SC 1669]
- (xvii) Bhagat Raja case [AIR 1957 SC 1606]

5.14. That Circular No 495/5/92-Cus VI dated 10.05.1993 cannot prevail over the statute and circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision. The Applicant has relied upon the following case laws in support of their contention:

- (i) Carista Herbal Products (P) Ltd vs. C.CEX Pondicherry [2019(370) E.L.T 223(Mad)]
- (ii) UOI vs. Amalgamated Plantations (P) Ltd [2016(340) E.L.T 310(Gau)]

5.15. That offer of redemption fine under Section 125 is a discretion, non offer of a redemption fine in exercise of such a discretion would be in conflict with the objects and reason of the Customs Act. The Applicant has relied upon the following case laws in support of their contention:

- (i) Mafatlal Industries [1997(89) E.L.T 247 (SC)]

5.16. That circulars issued by CBEC and CBIT do not bind the assessee and the assessee has a right to challenge the correctness of the circular before a quasi-judicial authority constituted under the relevant statute;

5.17. That the fight between the assessee's and the revenue department regarding the applicability and precedential value of the circulars issued by the Board has been put to an end by issuing a clarification vide Circular No. 1006/13/2015-CX dated 21.09.2015. Also that clarificatory circulars cannot amend or substitute statutory rules. The Applicant has relied upon the following case laws in support of their contention

- (i) Bengal Iron Corporation vs. Commercial Tax Officer
- (ii) Bhagwati Developers vs. Peerless General Finance & Investment Co.
- (iii) Cases pertaining to Paper Products, Hindustan Aeronautics Ltd, Dhiren Chemicals
- (iv) Kalyani Packaging Industry vs. UOI [1164(5) TMI 78 (SC)]
- (v) Commr of CEx vs. Ratan Melting and Wire Industries [1168(10) TMI SC]
- (vi) Bhuwalka Steel Industries vs. Bombay Iron and Steel Ltd
- (vii) Harrison and Crossfield (India) Ltd vs. Registrar of Companies
- (viii) Etc...

5.18. That the Applicant No. 1 claims ownership of the gold under absolute confiscation and prays for redemption for re-export on payment of reasonable fine as after liberalization of the EXIM policy, import of golds is allowed subject to conditions. The Applicant has relied upon several cases some of which have been listed as under

- (i) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (ii) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (iii) Hargovind Das K. Joshi vs. Collector of customs [1992 (61) ELT 172(SC)]
- (iv) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (SC)]
- (v) Gauri Enterprises vs. CC, Pune [2002 (145) ELT (705) (Tri Bangalore)]
- (vi) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (vii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (viii) VP Hameed vs. Collector of Customs Mumbai 1994(73) ELT 425 (Tri)

- (ix) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (x) Kadar Mydin vs. Comnmissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (xi) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai
- (xii) Vatakkal Moosa vs. Collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xiii) Halithu Ibrahim vs. CC [2002-TIOL 195 CESTAT-MAD]
- (xiv) Krishnakumari vs. CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xv) S.Rajagopal vs. CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xvi) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]
- (xvii) Union of India vs. Dhanak M. Ramji [2009 (248) E.L.T. 127 (Bom.)]
- (xviii) Peringatil Hamza vs CC (Airport), Mumbai [2014 (309) ELT 259 (Tri Mumbai)]
- (xix) R. Mohandas vs. CC, Cochin [2016 (336) ELT 399 (Ker)]
- (xx) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].
- (xxi) Shaik Mastani Bi vs. CC, Chennai [2017(345) E.L.T 201( Mad)]
- (xxii) Bhargav Patel vs CC, Mumbai [Appeals NO C/381/10]
- (xxiii) Gauri Enterprises vs. CC, Pune [2002(145) E.L.T 705 (Tri-Bang)]
- (xxiv) In RE: Mukadam Rafique Ahmed [2011(270) E.L.T (GOI)]

5.19. That the Applicants have not committed any act of omission or commission which can be termed as a crime or manifesting of a n organized smuggling activity and the case against the Applicant fails as there is no inference that the Applicant was an offender and that he was not concerned with acquiring possession or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing or in any other manner dealing with prohibited goods which he knew or had reason to believe were liable to confiscation under Section 111 and thus was not liable to penal action under Section 112 of the Customs Act, 1962;

5.20. That Applicant No 1 was falsely implicated in the case of smuggling as a carrier and Applicant No. 2 came to the airport only to receive Applicant No. 1 and was not aware that Applicant No.1 was carrying gold and was thus falsely implicated.

Under the circumstances, the Applicants prayed the Order-in-Appeal be set aside and gold under absolute confiscation be released on payment of reasonable fine and penalty and further proceedings against them be dropped.

6. Personal hearing in the case was scheduled for 18.05.2023. Shri Prakash Shingrani, Advocate appeared for the personal hearing on the scheduled date on behalf of the Applicants. He submitted that that Applicant No1 was a British citizen and he brought one crude gold chain for personal investment purpose and the same was subsequently to be taken back. He further submitted that Applicant No.1 is not a habitual offender and there was no ingenious concealment. He requested to allow option to re-export goods on nominal redemption fine and penalty. He also requested to drop penalty on Applicant No. 2 as he had nothing to do with Applicant No. 1 bringing a crude gold chain.

7. The Government has gone through the facts of the case and observes that the Applicant had brought the crude gold chain of 24K purity weighing 1048 grams and valued at Rs. 31,43,329/- which was worn around his waist and concealed under the jeans worn by him and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The Applicant had not disclosed that he was carrying dutiable goods. The gold was of 24K purity and was in the form of a crude chain of 1048 grams indicates that the same was for commercial use. However, after being intercepted, on intelligence, the impugned gold chain which was cleverly concealed was recovered from the Applicant and the method of

carrying the gold chain adopted by the Applicant clearly revealed his intention not to declare the said gold and thereby evade payment of Customs Duty. Further, the Applicant also informed that he was not the owner of the gold chain and was handed over to him by Ajay Mozaria in Dubai with instructions to handover the same to Applicant No. 2 who was to be present at the CSI Airport. The nature of concealment and the pre-planning reveals the mindset of the Applicant to not only evade duty but smuggle the gold chain in cahoots with Applicant No. 2 and others. It also reveals that the act committed by the Applicant No. 1 was conscious and pre-meditated. The Applicant No.1 was given an opportunity to declare the dutiable goods in his possession but having confidence in the nature of his concealment, he denied carrying any gold. Had he not been intercepted, the Applicant and his accomplice would have gotten away with the gold. The confiscation of the impugned gold chain was therefore justified and thus, both the Applicants had rendered themselves liable for penal action.

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’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 ‘respondent’ 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’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.”*

11.1 Government observes that besides the quantum of gold and the purity, the admission of both the Applicants that the gold was to be sold by Applicant No. 2 indicates that the same was for commercial use. The manner in which the impugned gold chain was attempted to be brought into the country is vital. The impugned gold chain was worn by Applicant No. 1 around his waist and was cleverly, consciously and ingeniously concealed by the Applicant No. 1 beneath the jeans worn by him which reveals the intention of the Applicant. Further the pre-planned manner in which Applicant No. 1, on the instructions of one Ajay Mozaria, was to handover the impugned gold chain to Applicant No. 2 who was waiting at the Airport and who was in constant contact with Applicant No. 1 and Ajay Mozaria also revealed the criminal bent of mind of both the Applicants and a clear intention to evade duty and smuggle the gold into India in cahoots with Applicant No. 2. Government notes from the records that the Applicant No.1 had stated that he was not the owner of the impugned gold chain and was given to him at Dubai with instruction to handover the impugned gold chain to Applicant No. 2 which further suggests that the Applicant No. 1 was a carrier for a syndicate, entrusted with smuggling of the impugned gold chain and he attempted to execute the plan in tandem with Applicant No. 2 and others in Dubai.

11.2. Government notes that the Appellate Authority has discussed the contentions of the Applicants in detail and veered to the conclusion that the Original Adjudicating Authority was correct in exercising his discretion in ordering absolute confiscation of the gold. The Appellate Authority has at Para 12 and 14 of the Order-in-Appeal has observed as under :

*“12. The advocate of the appellant submitted that the appellant is not a carrier. I find that the appellant no.1 in his written statement recorded under Section 108 of the Customs Act, 1962 admitted that the subject impugned gold chain does not belongs to him and it was given by one person by name Mr. Ajay Mozaria at Dubai and instructed him to hand over to the person who would come to receive the same at the outside of CSMI Airport; that he was not offered monetary consideration but his Air ticket was arranged by Mr. Ajay Mozaria from Dubai to Mumbai. Therefore, it is evident that the appellant no.1 acted as a carrier in the subject case. I do not find any substance or evidence contrary to this fact provided by the advocate of the appellant hence I find no merit in after thought argument advanced by the appellant.”*

*“14. I find that in the grounds of appeal it is submitted that the appellant claims ownership of the gold under absolute confiscation and prays for redemption for re-export on payment of reasonable fine and penalty. In this regard, I find that in case of Commissioner of Customs (Air) V/s P. Sinnasamy, the Hon'ble High Court of Madras w.r.t. the Civil Misc. Appeal No.1631 of 2008 has held that release or the denial of the confiscated goods under Section 125 of the Customs Act, 1962 is the discretion of the competent authority. Central Board of Excise and Customs (CBEC) vide Circular No. 495/5/92-Cus VI dated 10.5.1993 specified that in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold is question. In the present case, I find that the Adjudicating authority, after recording categorical findings of the attempted import of gold, by ingenious concealment without declaration, has exercised his discretion to order absolute confiscation of the gold. Hence, I do not find any failure on the part of the adjudicating authority to exercise his discretion under Section 125 of the Customs Act, 1962. The latter part of Section 125 of the Customs Act, 1962 obligates the release of confiscated goods (ie. other of prohibited goods) against redemption fine but, the earlier part of this provision makes no such compulsion as regards the prohibited goods and it is left to the discretion of the Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation. It is innate in these provisions that if the Adjudicating Authority does not choose to give such an option, the result would be of absolute confiscation. I find that the Adjudicating authority while*



*deciding the case has given well-reasoned arguments for absolute confiscation of the impugned ingenious concealed goods.”.*

11.3. The aforesaid circumstances of the case and concealment, probates that the Applicant No. 1 who was not the owner of the goods but a carrier, had no intention of declaring the impugned gold chain to the Customs at the airport and the pre-planned manner in which the smuggling of gold was to be executed by the Applicant No. 1 in tandem with Applicant No. 2 have been properly considered by the Original Adjudicating Authority while ordering the absolute confiscation of the impugned gold chain and has been rightly vetted by the Appellate Authority.

12. The main issue in the case is the manner in which the impugned gold chain was being brought into the Country and was being attempted to be smuggled by Applicant No. 1 in tandem with Applicant No. 2, on the instruction from associates in Dubai. The option to allow redemption of seized goods is the in 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, the impugned gold chain admittedly being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold by the Applicant who stated that he was not the owner of the gold chain, in tandem with his accomplice, 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 chain. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring 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. Government is in agreement with the order of the Appellate Authority who has after discussing the issue threadbare has vetted the order of the OAA absolutely confiscating the impugned gold chain. The absolute confiscation of the gold chain would act as a deterrent against such persons who indulge in such acts with impunity.

13. Government finds that the penalty of Rs. 3,50,000/- each imposed on Applicant No. 1 and 2 by the OAA under Section 112(a) (i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed by the Applicant.

14. For the aforesaid reasons, the Government is inclined not to interfere with the Order-in-Appeal No. MUM- CUSTM-PAX-APP-1588/2021-22 dated 31.01.2022 [Date of issue: 03.02.2022] [F. No. S/49-1100/2020-Appeal] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and upholds the same.

15. The Revision Applications are dismissed as being devoid of merit.

*Shrawan*  
31/7/23  
SHRAWAN KUMAR )

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

ORDER NO. <sup>566-</sup>567/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.07.2023

To,

1. Shri Pareshkumar Parsottambhai Patel, 1201, Ghala Building, AL Nadha, Dubai, UAE
2. Shri Mihir Mehta, J Wing, Flat No. 604, Sumer Nagar-2, S.V.Road, Borivali (West), Mumbai 400 092
3. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati Shivaji International Airport, Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai Zone-III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai – 400 059.
2. Prakash K. Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai-400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. File copy.
5. Notice Board.

