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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. 371/197/B/WZ/2021-RA** / 4926 : Date of Issue : 03.08.23

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ORDER NO. 568/2023-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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**(i). F.No. 371/197/B/WZ/2021-RA**

Applicant : Mineshbhai Jashubhai Patel

Respondent : Pr. Commissioner of Customs, Chhatrapati Shivaji  
Maharaj International Airport (CSMIA), Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
No. MUM-CUSTM-PAX-APP/1767/2020-21 dated  
25.02.2021 [(DOI : 05.03.2021] issued through F.No. S/49-  
426/2020 passed by the Commissioner of Customs  
(Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by Shri. Mineshbhai Jashubhai Patel (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP/1767/2020-21 dated 25.02.2021 [(DOI : 05.03.2021] issued through F.No. S/49-426/2020 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant was intercepted by Customs Officers on 19.02.2020 at CSMI Airport, Mumbai, having earlier arrived from Dubai onboard Indigo Flight No. 6E-84. The applicant had crossed the green channel and was diverted to the counter of the Customs as the applicant was wearing one crude / raw gold chain and one crude / raw gold kada on his person. The said gold jewellery i.e. one crude / raw gold chain and one crude / raw gold kada together were weighing 255 grams and valued at Rs. 9,39,256/-. The applicant had accepted the possession, ownership, non-declaration, recovery of said goods / jewellery and could not furnish any document regarding the ownership of the said goods. The applicant had stayed abroad for 4 days.

3. The Original Adjudicating Authority (OAA), viz, Dy. Commissioner, Air Customs, CSMI Airport, Mumbai vide Order-In-Original No. AirCus/49/T2/1611/2020/UNI-D dated 19.02.2020 ordered for the absolute confiscation of the gold jewellery i.e. one crude / raw gold chain and one crude / raw gold kada together were weighing 255 grams and valued at Rs. 9,39,256/- under Sections 111(d), 111(l) & 111(m) of the

Customs Act, 1962 and a penalty of Rs. 90,000/- under Section 112 (a) & (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai -III, vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP/1767/2020-21 dated 25.02.2021 [(DOI : 05.03.2021)] issued through F.No. S/49-426/2020 upheld the absolute confiscation of the said gold jewellery held by the OAA in his OIO and did not find any reason to interfere in the penalty imposed on the applicant.

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

5.01. that the OAA had failed to appreciate that the applicant had informed that the gold jewellery belonged to him; that it was his personal gold worn regularly by him; that the same were gold; that he worn the same because of his ill-health and on advise of his Ayurvedic doctor; that the gold did not have any foreign markings; that the gold jewellery had been purchased by him in 2014-15; that he had produced the bills showing its purchase; that these bills were lying at home; that he had purchased the gold jewellery with his own money; that he had worn the same gold jewellery during his travel to the UAE, that he had been holding foreign currency and was willing to pay the duty; that he could have arranged the duty from his family members; that he enjoyed good financial status; that it was wrongly considered that he had indulged in smuggling activity; that he was not acting as a carrier for anybody; that the was a businessman; that the gold jewellery was on his person and cannot be considered as concealment; that there was no ingenious concealment; that the gold was not in commercial quantity; that the gold was not in primary form; that the appellate authority had given conclusion and finding which were contrary and inconsistent with the findings of the

adjudicating authority as in para 2 it was mentioned that redemption fine of Rs. 90,000/- was imposed and penalty of Rs. 25,000/- was imposed which clearly indicates non-application of mind as the penalty imposed was Rs. 90,000/- and gold had been absolutely confiscated; that the lower authorities had not appreciated the facts with true spirit; that the lower authorities had decided the case on presumptions and assumptions only and not on real and true facts; the impugned order was illegal and bad in law.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to quash the OIA passed by the AA and to release the gold jewellery without any payment of fine or duty and to waive the penalty or pass any other order as deemed fit.

6. Personal hearing of the case was scheduled on 06.07.2023. Smt. Shivangi Kherajani, Advocate appeared on 06.07.2023 on behalf of the applicant and submitted that applicant brought small quantity of gold for personal use. She further submitted that jewellery purchase was supported by bills. She requested to allow option to redeem the goods on fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in his possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned gold jewellery i.e. one crude / raw gold chain and one crude / raw gold kada together were weighing 255 grams and valued at Rs. 9,39,256/-. By his actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay Customs duty on it. The Government finds that the confiscation of the gold 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 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 ‘Applicants’ 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 the 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. The quantity of gold jewellery under import is small and is not of commercial quantity. The applicant had worn the gold jewellery i.e. one crude / raw gold chain and one crude / raw gold kada. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under

Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

12. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government therefore, sets aside the impugned order of the appellate authority. The impugned gold jewellery i.e. one crude / raw gold chain and one crude / raw gold kada together were weighing 255 grams and valued at Rs. 9,39,256/- are allowed to be redeemed on payment of a redemption fine of Rs. 2,25,000/- (Rupees Two Lakhs Twenty-Five Thousand only). The Government finds that the penalty of Rs. 90,000/- (Rupees Ninety thousand only) imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed and the same does not merit interference.

13. Revision Application is disposed of on the above terms.

  
( SHRAWAN KUMAR )

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

**ORDER NO. 568/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.07.2023.**

To,

1. Mineshbhai Jashubhai Patel, 2, Shreeji Krupa Society, Link Road, Bharuch, Gujarat - 392 012.
2. Pr. Commissioner of Customs, Level - II, Terminal - 2, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

3. Smt. Shivangi Kherajani, Advocates, 501, Savitri Navbahar CHS, 19<sup>th</sup> Road, Khar West, Mumbai - 400 052.

4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Notice Board.