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SPEED POST



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

F.No. 371/187/B/WZ/2022-RA / 6319 : Date of Issue : 23.08.2023

ORDER NO. 604 /2023-CUS (WZ)/ASRA/MUMBAI DATED 22.08.2023
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.

Applicant : Shri. Narendra Jivandas Karani.

Respondent : Pr. Commissioner of Customs, Chhatrapati Shivaji
Maharaj International [CSMI] Airport, Level - 2,
Terminal - 2, Sahar, Andheri East, Mumbai - 400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1676/2021-22 dated 15.02.2022
issued on 16.02.2022 through F.No. S/49-1212/2020
passed by the Commissioner of Customs (Appeals),
Mumbai - III.

ORDER

This revision application has been filed by Shri. Narendra Jivandas Karani (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1676/2021-22 dated 15.02.2022 issued on 16.02.2022 through F.No. S/49-1212/2020 passed by the Commissioner of Customs (Appeals), Mumbai-III

2(a). Brief facts of the case are that the applicant who had arrived from Dubai at the CSMI Airport, Mumbai on 15.03.2019 by Emirates flight no. EK-500 / 14.03.2019 and was intercepted by the Customs Officers after he had cleared himself alongwith his baggage through the green channel. To query whether he was carrying any contraband, the applicant had replied in the negative. A personal search of the applicant led to the recovery of 5 gold chains and 1 cut piece of gold which had been kept in his pant pocket. Nothing incriminating was found in the baggage carried by him. The 5 gold chains and one cut piece of gold were assayed through a Government Approved Valuer who certified that the same were of 24 KT purity (999%), totally weighing 549 grams and valued at ₹ 16,60,505/-.

2(b). In his statement recorded under Section 108 of the Customs Act, 1962, the applicant claimed ownership of the gold recovered from his possession; that he was a businessman earning nearly Dirhams 25000 per month; that he admitted to ownership, possession, knowledge, carriage, non-declaration and recovery of the gold; that he was aware that non-declaration of the gold was an offence;

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Joint. Commissioner of Customs, CSMIA, Mumbai vide Order-In-Original No. JC/GKG/ADJN/11/2020-21 dated 16.10.2020 issued through F.No. S/14-5-63/19-20 Adjn {SD/INT/AIU/516/2018 AP-C, ordered

for the absolute confiscation of the 5 crude gold chains and one cut piece of gold, totally weighing 549 grams and valued at ₹ 16,60,505/- Section 111 (d), (l) and (m) of the Customs Act, 1962. Further, a penalty of ₹ 2,00,000/- was imposed on the applicant under Section 112 (a)(i) of the Customs Act, 1962.

4. Aggrieved with this order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1676/2021-22 dated 15.02.2022 issued on 16.02.2022 through F.No. S/49-1212/2020, rejected the appeal.

5. Aggrieved with the above order of the appellate authority, the Applicant has filed this revision application and in the exhaustive submissions, the grounds of revision are as under;

5.01. that Gold was not prohibited goods. It was submitted that gold was not a prohibited item and was only a restricted item. Prohibition relates to goods which cannot be imported or exported by any one, such as arms, ammunition, drugs etc. The intention behind the provisions of Section 125 is that import/export of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole. This would not apply to a case where import/export of goods is permitted subject to certain conditions or to a certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied with. In such a situation, the release of such goods confiscated would not cause any danger or detriment to public health. Admittedly, import/export of gold is permitted subject to certain conditions, therefore, it would not fall under the prohibited category as envisaged under the said of Section 125 of the Customs Act, 1962. that they have relied on the undermentioned case laws;

(a). Hon'ble High Court of Calcutta decision in the case of Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009 (241) ELT 182 (Cal.);

(b). Notification 50/2017- Customs dated 30-6-2017 does not prohibit the importation of goods in any manner and it only specifies the eligibility criteria only for the purpose of exemption from Custom duty

in respect of the imported goods which is not the issue in the instant case.;

(c). Hon'ble Supreme Court of India in the case of Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C);

(d). In Shaikh Jamal Basha Vs Government of India 1997 (91) ELT 277(AP) the Hon'ble High Court held that Gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorisedly can be redeemed

(e). Apex Court in the case of Sapna Sanjiv Kohli Vs Commissioner of Customs, Mumbai [2010(253) ELT A52 (SC)] has also held that gold is not prohibited goods and accordingly the gold dust was allowed to be redeemed on payment of fine and duties;

(f). in the case of Horizon Ferro Alloys Pvt. Ltd. & others vs Union of India, the division bench of Punjab and Haryana High Court has held that, If the goods are not expressly "prohibited" for importation, the petitioner company who is owner, as well as importer, would be entitled to an option to redeem the goods even upon adjudication. ;

(g). Hon'ble Supreme Court in the case of Atul Automations Pvt Ltd. while deciding on the question of allowing redemption of imported used Multi-Functional Digital Copiers, drew a distinction between goods whose import was completely prohibited and those whose import was restricted and allowed redemption of MFDs

(h). Further reliance is placed on the Order dated 4.8.2015 of the Customs Excise and Service Tax Appellate Tribunal in the matter of Bhargav B. Patel in Appeal No. C/381/10-Mum reported in 2015-TIOL-1951-CESTAT-Mum, which is in the context of Section 125 of the Act. In para 11 thereof, it was held that under Section 125 of the Customs Act, unless the importation or exportation of goods is expressly "prohibited", the Adjudication Authority is obliged to offer to the owner of the goods an option to pay fine in lieu of confiscation.

(i). In CC (Airport), Mumbai Vs Alfred Menezes 2009 (242) ELT 334 (Bom.), the Hon'ble High Court held that Section 125(1) ibid clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even respect of prohibited goods.

(j). In the case of: MOHD..ZIA UL HAOUE before Government of India T2014/314)849 GoI) redemption of the goods was allowed on payment of fine

(k). In Yakub Ibrahim Yusuf 2011 (263) EL. T. 685 (Tri. — Mumbai) the Tribunal held that option of redemption has to be given to person from whose possession impugned goods are recovered, even though he had not claimed its ownership.

(l). etc.

5.02. that the imported jewellery being of 24 karat purity could not be held liable for confiscation; the AA had held at para 8.2 and 8.3 of the OIA that since the purity was high, gold ornaments could not be made and treated that gold was not bonafide baggage item; reliance has been placed on the undermentioned case laws,

(a). Order no 57/2022-CUS(SZ)/ASRA/MUMBAI dated 10-2-22 issued by Government of India in the case of Shri Mohammed Ibrahim.

(b). Order no 188/2021-CUS(WZ)/ASRA/MUMBAI dated 17-8-21 issued by Government of India in the case of Shri Ravish Chawre and Smt Aisha Ravish Chawre.

(c). Order no 59/2022-CUS(SZ)/ASRA/MUMBAI dated 10-2-22 issued by Government of India in the case of Shri Thameem Ansari.

(d). Order no 100/2022-CUS(SZ)/ASRA/MUMBAI dated 21-2-22 issued by Government of India in the case of Shri Moideen Abdullah Kunhi.

(e). Order no 69-70/2022-CUS(SZ)/ASRA/MUMBAI dated 16-2-22 issued by Government of India in the case of Shri Shafin Raza Barkat Ali Unia and Shri Sayed Riasat Ali Sayed Mubarak Ali.

(f). Order no 262/2021-CUS(SZ)/ASRA/MUMBAI dated 13-10-21 issued by Government of India in the case of Smt Ayesha Shafiulla Sayed.

(g). Vigneshwaran Sethuraman vs Union of India – 2014 (308) ELT 394 (Ker)

(h). Directorate of Revenue Intelligence vs Pushpa Lekhumal Tolani – 2017-TIOL-298-SC-CUS

(i). In the case of COMMISSIONER OF CUSTOMS, BANGALORE Versus ADANI EXPORTS LTD- 2009 (243) E.L.T. 115 (Tri. - Bang.),

5.03. that the AA had relied on the judgement of Om Prakash Bhatia which had been over-ruled by the Apex Court, 2003-155-ELT-423-SC.; that it was held that prohibition of importation or exportation can be subject to certain prescribed conditions to be fulfilled before or after clearance and if conditions are not fulfilled, it may render the goods a prohibited goods; reliance has been placed on the under mentioned case laws;

(a). Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori

- Tobacco Products [2004 (170) ELT 135 (SC)];
- (b). Apex Court in the case of Sri Kumar Agency vs CCE, Bangalore 2008 (232) E.L.T. 577 (S.C.),
- (c). Hon'ble Supreme Court in its judgment in the case of Escorts Ltd. Vs CCE, Delhi [2004 (173) ELT 113 (SC)];
- (d). In CC v. Elephanta Oil 2003(152) ELT 257 (SC), it was held that even if goods are confiscated and goods are allowed to be re-exported, penalty can be levied.
- (e). etc.
- 5.04. that Circular No. 495/5/92-CUs-VI dated 10.05.93 cannot prevail over the statute. Circulars are issued only to clarify the statutory provisions and it cannot alter or prevail over the statutory provisions.
- 5.05. that the applicant claimed ownership of the goods and that redemption of the gold on reasonable fine and penalty ought to be allowed.
- 5.06. that the applicant has placed reliance on a wide gamut of case laws some of which are mentioned below where redemption of gold had been allowed;
- (a). In T. Elavarasan Vs Commissioner of Customs (Airport), Chennai 2011 (266) ELT 167 (Mad), the Hon'ble High Court held that Gold is not a prohibited item and option is available to owner of goods or person from whom goods seized to pay -fine in lieu of confiscation
- (b). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [2011-263-ELT-685-Tri-Mumbai]. *Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole and makes them liable to absolute confiscation.*
- (c). In Universal Traders vs. Commissioner [2009-240-ELT-A78-SC], the apex court allowed redemption of exported goods being not prohibited.
- (d). In Gauri Enterprises vs. C.C Pune [2002-145-ELT-706-Tri-Bang], held that if similar goods had been released on fine earlier, selective absolute confiscation was not called for, Absolute Confiscation should be exception rather than a rule.
- (e). In Shaik Jamal Basha v. Government of India 1997 (91) ELT 277 (A.P.) the Hon'ble High Court held that gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorized can be redeemed.
- (f). In VP Hameed v. Collector of Customs, Mumbai - 1994 (73) ELT 425 (Tri.) it was held that there is no bar in allowing redemption of gold being an item notified under Section 123 of Customs Act, 1962 or for any other reason.

- (g). In *Kadar Mydin v. Commissioner of Customs (Preventive)*, West Bengal - 2001 (136) ELT 758 it was held that in view of the liberalised gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed.
- (h). In *Sapna Sanjeev Kohli v. Commissioner of Customs, Airport, Mumbai* - 2008 (230) ELT. 305 the Tribunal observed that the frequent traveller was aware of rules and regulations and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (i). In *Vatakkal Moosa v. Collector of Customs, Cochin* 1994 (72) ELT. 473 (G.O.I.); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (j). *Halithu Ibrahim v. CC* [2002-TIOL 195-CESTAT-MAD. = 2002 (148) ELT 412 (Tribunal)]; it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (k). *Krishnakumari v. CC, Chennai* - 2008 (229) ELT 222 (Tri-Chennai) ; it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (l). *S. Rajagopal v. CC, Trichy* - 2007 (219) ELT 435 (Tri-Chennai); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (m). *M. Arumugam v. CC, Tiruchirappalli*, 2007 (220) ELT 311 (Tri-Chennai); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (n). etc.

In view of the above submissions, the applicant has prayed to the revisionary authority to set aside the absolute confiscation and to allow the redemption of the gold on payment of a reasonable fine and penalty.

6. Personal hearing in the matter was scheduled for 18.07.2023, 25.07.2023. Shri. Prakash K. Shingrani, Advocate for the applicant appeared on 25.07.2023 and submitted that applicant is NRI and usually stays in Canada. He brought small quantity of gold jewellery for personal purposes. He further submitted that there was no concealment and

applicant is not a habitual offender. He requested for re-export of gold jewellery on reasonable redemption fine and penalty.

7. Government has gone through the facts of the case. The Government notes that the Applicant had opted for the green channel and was intercepted thereafter, while attempting to clear the assorted gold jewellery i.e. 5 crude gold chains and one cut piece of gold, totally weighing 549 grams and valued at ₹ 16,60,505/-, without declaring the same to Customs. Applicant had admitted that he had not declared the gold to evade Customs duty. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore the confiscation of the gold was justified.

8.1. The relevant sections of the Customs Act are reproduced below :

Section 2(33)

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

Section 125

Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it *may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported

goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

8.2. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by the banks authorized by the RBI or by others authorized by DGFT and to some extent by passengers. Therefore, gold which is a restricted item for import but which was imported without fulfilling the conditions for import becomes a prohibited goods in terms of Section 2(33) and hence it liable for confiscation under Section 111(d) of the Customs Act. It is undisputed that Section (l) and (m) are also applicable in this case as the respondent had adopted an innovative method and it was not included in the declaration. Therefore, the gold was also liable for confiscation under these Sections.

9.1. 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".

9.2. 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. 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. In a recent judgement dated 17.02.2022 passed in D.B. Civil Writ Petition no. 12001 / 2020, in the case of Manoj Kumar Sharma vs. UOI and others, the Hon'ble High Court, Rajasthan (Jaipur Bench) at paras 15, 16 and 17 held as under;

*“15. The second area of concern is applicability of Section 125 of the Act. Sub-section (1) of Section 125 provides that whenever confiscation of any goods is authorized by the Act the officer adjudging it may in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force and shall in case of any other goods give to the owner of the goods or where such owner is not known the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. This provision thus comes in two parts. The first part covers the cases where importation or exportation of the goods is prohibited under the Act. In such a case discretion is given to the competent authority to offer redemption fine in lieu of confiscation. The second part covers a case where importation or Not exportation of the goods is not prohibited. In such a case there is a mandate to offer redemption fine in lieu of confiscation as the officer thinks fit. In the present case all three authorities have provided for absolute confiscation of the goods without any facility of payment of redemption fine. This in our view was not correct. This is exactly what the Andhra Pradesh High Court has held in case of **Shaik Jamal Basha Vs. Government of India reported in 1997 (91) ELT 277 (AP)**. The Division Bench of the High Court in the context of Section 125 of the Customs Act had held as under:-*

"3. But, all the same; we find the petitioner is entitled to a different relief. The order of confiscation is made under Section 111 of the Customs Act, 1962 on account of concealment. Section 125 requires that whenever confiscation of any goods is authorised by the Act, the officer adjudging it may, in the case

of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. Rule 9 of the Baggage Rules, 1978 framed under Section 79(2) of the Customs, Act, 1962 lists Gold in any form other than ornaments in Appendix B of the Rules as articles which shall not be imported free of duty. Hence gold in the form other than ornaments is entitled to be imported on payment of duty. Attempt to import gold unauthorisedly will thus come under the second part of Section 125(1) of the Act where the adjudging officer is under mandatory duty to give option to the person found guilty to pay (fine) in lieu of confiscation, Section 125 of the Act leaves option to the officer to grant the benefit or not so far as goods whose import is prohibited but no such option is available in respect of goods which can be imported, but because of the method of importation adopted, become liable for confiscation....."

16. *This view may seem incongruent with the view expressed by Gujarat High Court in case of Bhargavraj Rameshkumar Mehta (supra) which we have also followed in this judgment but flavours of Section 112 and 125 of the Customs Act are entirely different. Section 112 of the Act pertains to penalty for improper importation of goods. Section 125 on the other hand pertains to option to pay fine in lieu of confiscation. As noted sub-section (1) of Section 125 comes in two parts. Whenever confiscation of goods is authorized under the Act, as per sub-section (1) of Section 125 the adjudicating officer has a discretion to offer redemption fine in lieu of confiscation in case of goods importation or exportation whereof is prohibited. In all other cases there is a statutory mandate on the adjudicating officer to offer such redemption fine. If the interpretation of Section 112 and 125(1) is not reconciled as above, this latter portion of sub-section (1) of Section 125 which covers all cases except where the importation or exportation of the goods is prohibited, would become otiose.*

17. *Learned counsel for the respondents however heavily relied on the decision of Supreme Court in case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi reported in AIR 2003 SC 3581. Our attention was drawn to paragraph 9 and 10 of the judgment. However in our view this decision does not hold anything contrary to what we have observed in connection with Section 125 of the Customs Act. In fact it was a case in which the Supreme Court had confirmed the view*

of the Customs authorities of offering redemption fine in lieu of confiscation.”

12(a). In Custom Appeal No.7 of 2019 decided on 06.07.2022, in the case of Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, the Hon'ble High Court of Allahabad, Lucknow Bench at para 21 & 22 of the Order, [2022(382)ELT 345(All)], held as under;

*“21. Section 125 of the Act deals with confiscation of two separate categories of goods. It provides that in the case of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, the Officer adjudicating **may** give an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, in case of any other goods, the officer adjudicating **shall** give an option to pay in lieu of confiscation such fine as the said officer thinks fit. The Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act and this finding has not been assailed by the Appellants in this Appeal.*

22. In view of the aforesaid discussion, our answer to the first substantial question of law framed in this Appeal is that the Additional Commissioner, Customs (P.) Commissionerate, Lucknow had passed the order of confiscation of gold without taking into consideration the fact the gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act and thus the Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act.”

12(b). Further, in the above cited case, department had filed a review application which was dismissed [2023(7) Centax 236(All)].

13. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does

not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society at large. In case of goods, such as, gold which become prohibited for violation of certain conditions, the Adjudicating Authority may allow redemption

14. In the averments made during the personal hearing, the applicant has prayed to allow reshipment of the gold jewellery on payment of a nominal fine and penalty. Government notes that at the time of interception the applicant was wearing the gold chains which has been mentioned in the OIO. By his actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay duty on it. The Government finds that the confiscation of the gold was therefore, justified.

15. The Government notes that the quantity of gold was not substantial, the applicant has claimed ownership of the gold. There are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The concealment is not ingenious as the gold was found on the person of the applicant. 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 misdemeanor is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty. The Advocate for the applicant during the personal hearing held on 25.07.2023 has stated that the applicant is NRI and usually resides in Canada. A copy of the Permanent Resident Card with the validity upto 15th Feb, 2024 was handed over during the personal hearing. During the personal hearing, the applicant has prayed that the absolute confiscation of the impugned gold jewellery be set aside and the same be

allowed for re-export on the basis that he is a NRI and normally resides in Canada.

16. In a recent judgement passed by the Hon'ble High Court, Madras on 08.06.2022 in WP no. 20249 of 2021 and WMP No. 21510 of 2021 in r/o. Shri. Chandrasegaram Vijayasundarm + 5 others in a similar matter of Sri. Lankans wearing 1594 gms of gold jewellery (i.e. around 300 gms worn by each person) upheld the Order no. 165 - 169/2021-Cus (SZ) ASRA, Mumbai dated 14.07.2021 in F.No. 380/59-63/B/SZ/2018-RA/3716, wherein Revisionary Authority had ordered for restoration of OIO wherein adjudicating authority had ordered for the confiscation of the gold jewellery but had allowed the same to be released for re-export on payment of appropriate redemption fine and penalty.

17. In view of the foregoing paras, considering the quantity of gold, no past history, the gold having been found on the person of the applicant, applicant being NRI, the absolute confiscation of the same was harsh and not justified. Considering the above facts, Government is inclined to set aside the OIA passed by the AA and to allow the applicant to re-export the impugned assorted gold jewellery i.e. 5 crude gold chains and one cut piece of gold, on payment of a redemption fine as prayed for by the applicant.

18. Government finds that the penalty of ₹ 2,00,000/- imposed on the applicant under Section 112(a)(i) of the Customs Act, 1962 by the OAA is slightly high and not commensurate with the omissions and commissions committed and hence the same is required to be reduced.

19. In view of the above, the Government sets aside the order passed by the appellate authority and allows the applicant to redeem the impugned gold

jewellery i.e. 5 crude gold chains and one cut piece of gold, totally, totally weighing 549 grams valued at ₹ 16,60,505/- for re-export on payment of a redemption fine of ₹ 3,00,000/- (Rupees Three Lakhs only). The penalty of ₹ 2,00,000/- imposed on the applicant under Section 112(a)(i) of the Customs Act, 1962 is reduced to ₹ 1,50,000/- (Rupees One Lakh Fifty Thousand Only).

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


(SHRAWAN KUMAR)

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

ORDER No. 604 /2023-CUS (WZ) /ASRA/Mumbai

DATED 22.08.2023

To,

1. Shri. Narendra Jivandas Karani, A-703, Denzil Apts., 3X Lane, Lokhandwala Complex, Andheri (West), Mumbai – 400 053
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Level – 2, Terminal – 2, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

1. Shri. Prakash K. Shingrani, Advocate, 12/334, Vivek Bldg, New MIG Colony, Bandra (East), Mumbai – 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Noticeboard.