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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/214/B/WZ/2020-RA

6449

Date of Issue

04.09.2023

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ORDER NO. 621/2023-CUS (WZ) /ASRA/MUMBAI DATED 31.08.2023  
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.

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Applicant : Shri. Mohammed Shamveel Shaikh

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-218/2020-21 dated 31.07.2020 issued on  
06-08-2020 [F.No. S/49-720/2019] passed by the  
Commissioner of Customs (Appeals), Mumbai-III.

**ORDER**

This revision application has been filed by Shri. Mohammed Shamveel Shaikh (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-218/2020-21 dated 31.07.2020 issued on 06.08.2020 through F.No. S/49-720/2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 04-02-2018, the Officers of CSMI Airport Mumbai, intercepted one passenger Shri Mohammed Shamveel Shaikh, the applicant, holding Indian Passport No. Z3067005 who had arrived from Dubai by Jet Airways Flight No. 9W-579, after he had cleared through the Green Channel and was proceeding towards the Exit gate. Personal search and examination of his two checked-in black coloured zipper trolley bags resulted in recovery of silver colour coated metal wires, purported to be gold, which were cleverly concealed inside the inner lining of the said trolley bags. The Customs officer weighed the recovered silver colour coated metal wires and found to be 464 grams. The recovered 464 grams of metal purported to be gold was examined and assayed by Government Approved Valuer who certified that 464 grams of metal wires were Crude Gold of 24KT having purity of 999% and valued at Rs.12,95,882/-. The same were seized by the officers in the reasonable belief that the same was smuggled into India in a clandestine manner in contravention of the provisions of the Customs Act, 1962. On conclusion of the investigation Show Cause Notice was issued on 02-08-2018.

3. The case was adjudicated by the Original Adjudicating Authority (OAA) i.e. the Addl. Commissioner of Customs, Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/39/2019-20 dated 15-05-2019, who ordered for the absolute confiscation of the 464 grams of metal wires which were Crude Gold of 24KT having purity of 999% and valued at Rs.12,95,882/- under under Section 111 (d), (1) and (m) of the Customs Act, 1962. Further, a penalty of Rs. 1,50,000/-



was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by 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-218/2020-21 dated 31-07-2020 [F.No. S/49-720/ 2019] upheld the order passed by the OAA.

5. Aggrieved with the above order, the Applicants have made an exhaustive submission of case laws and have submitted copies including their submissions made before the lower authorities etc. They have filed these revision applications on the following main points:

5.01 The Applicant accepted that he attempted to clear the gold without declaration and without payment of duty but denied the allegation that he acted as a carrier for Mr. Ameer Basha for monetary consideration. On 19-02-2018 he retracted the statement given by him on 04-02-2018. He submitted that the retracted statement of the applicant should not have been relied upon and quoted various case laws in this regard.

5.02. That Gold is not prohibited item for import. Therefore absolute confiscation is not warranted in this case.

5.03 That the decisions relied upon by the Adjudicating Authority are not applicable to the applicant's case.

5.04. That the Petitioner claimed ownership of the gold under absolute confiscation and requested for redemption of the goods on payment of duty and reasonable fine.

5.05. The applicant concluded by submitting that he did not commit any act of omission or commission which can be termed as crime or manifesting of an organized smuggling activity. The applicant was not a habitual offender. He submitted that he had committed the mistake only with an intention to

save a little money and make some profit. He submitted that he is from a respectable family and a law abiding citizen/businessman and has never come under any adverse remarks. He was falsely implicated in the case of smuggling as a carrier.

Under the circumstances, the applicant prayed for a reasonable order for redemption of the gold wires under absolute confiscation on payment of reasonable fine and penalty and drop further proceedings.

6. Personal hearing in the case was scheduled on 07.07.2023. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing and submitted that the applicant brought small quantity of gold for personal use. He further submitted that applicant is not a habitual offender. He requested to allow release the goods on redemption by imposing nominal fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. The impugned gold had been converted into silver colour coated metal wires and was concealed inside the inner lining of the trolley bag carried by him. This reveals the intention of hoodwinking the Customs and evading payment of Customs duty. The applicant clearly had failed to declare the goods to the Customs as required under Section 77 of the Customs Act, 1962. The method of concealment used reveals the mindset of the applicant to evade the payment of duty. It reveals that the act committed by the applicant was conscious and pre-meditated. Had he not been intercepted, the applicant would have gotten away with the gold concealed in his baggage trolley. The Government finds that the confiscation of the impugned 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 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. Government observes that the manner in which the gold was attempted to be brought in i.e. the impugned gold had been converted into silver colour coated metal wires and was concealed inside the inner lining of the trolley bag. This revealed clear intention and a systematic attempt to evade duty and smuggle the gold into India. The circumstances of the case probates that he did not have any intention of declaring the gold to the Customs at the airport. These facts have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the gold bars.

12. The main issue in the case is the manner in which the impugned gold was being brought into the Country. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment was clever and ingenious, clear attempt to smuggle gold by converting it into silver colour coated metal wires and concealing inside the inner lining of the trolley bag. This method adopted to smuggle gold is a fit case for absolute confiscation as a deterrent to such offenders. Further in his submissions he has admitted that he attempted to import the gold with the intention of making some profits. Thus, taking into account the facts on record and the gravity of



offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. The redemption of the gold will encourage non-bonafide and unscrupulous elements to resort to concealment and bring gold. Such acts of misusing the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The order of the Appellate authority upholding the order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate authority and finds that absolute confiscation is proper, legal and judicious and also penalty imposed under Section 112 (a) and (b) of the Customs Act 1962 is appropriate. Government does not find it necessary to interfere in the OIA passed by the AA.

14. Accordingly, the Revision Applications filed by the applicants is dismissed.

*Shrawan*  
31/8/23  
( SHRAWAN KUMAR )

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

ORDER NO. 621 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.08.2023

To,

1. Shri Mohammed Shamveel Shaikh, S/o Mr. Ismail Bappu Shaikh, Asadi House, New Colony Purwarga, Bhatkal, Yelawadikavoor, Uttara Kannada, Yalwadi Kavur, Karnataka-581320 .
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S. M. Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

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

