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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. 371/26/B/2021-RA / 6503 : Date of Issue : 05.08.2023

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ORDER NO. 626 /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 : Mr. Liyakat Ali Hussain Patel

Respondent : Pr. Commissioner of Customs, Goa.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. GOA-CUSTM-000-APP-088-2020-21 dated 09.11.2020 [Date of issue: 09.11.2020] [F. No. A-42/CUS/GOA/2019-20] passed by the Pr. Commissioner Appeals, CGST & Customs, Goa.

**ORDER**

The Revision Application has been filed by Mr. Mr. Liyakat Ali Hussain Patel (herein referred to as the 'Applicant') against the Order-in-Appeal No. GOA-CUSTM-000-APP-088-2020-21 dated 09.11.2020 [Date of issue: 09.11.2020] [F. No. A-42/CUS/GOA/2019-20] passed by the Pr. Commissioner Appeals, CGST & Customs, Goa.

2. Brief facts of the case are that on 01.12.2019, the customs officers of Dabolim International Airport, Goa intercepted the Applicant, holding passport No. T9255035, and had arrived from Dubai by Air India flight No AI 994 after a stay of 3 days in Dubai, after he crossed the Green Channel. The search of the baggage of the Applicant resulted in the recovery of two cut pieces of gold weighing 112 grams, two keychains with silver coating weighing 48 grams and one gold ring weighing 10 grams and collectively valued at Rs. 6,71,517/- and assorted items like perfume, vitamin gel, whitening cream, Apple air pods, cigarettes, Moisturizer, Platinum kit, Apple I phone, HP Laptop collectively at Rs. 1,57,500/-. The case was adjudicated after waiver of show cause notice and the Original Adjudicating Authority (OAA) i.e. Assistant Commissioner of Customs-Apt, Customs House, Goa, vide Order-in-Original No. MCH/ITC/03/2020-Apt(ITC) dated 09.03.2020 ordered for the absolute confiscation of the gold items collectively weighing 170 grams and valued at Rs. 6,71,517 under Section 111(d), (l) and (m) of the Customs Act, 1962. The other assorted items valued at Rs. 1,57,500/- were confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962 but the Applicant was given an option to pay redemption fine of Rs. 16,000/- in lieu of confiscation for the same. Penalty of Rs. 90,000/- was imposed on the Applicant under Section 112(a) of the Customs Act, 1962.

4. Aggrieved with this Order-in-Original, the Applicant filed an appeal before the Appellate Authority (AA) viz, Pr. Commissioner of Customs (Appeals), CGST & Customs, Goa, against the absolute confiscation of gold valued at Rs. 6,71,517/- and imposition of penalty of Rs. 90,000/-. The Appellate Authority, vide Order-in-Appeal No. GOA-CUSTOM-000-APP-088-2020-21 dated 09.11.2020 [Date of issue: 09.11.2020] [F. No. A-42/CUS/GOA/2019-20] upheld the order of the OAA and rejected the appeal.

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 AA failed to apply his mind while issuing the OIA and relied upon Notification No. 12/2012-Cus dated 17.03.2012 which was superseded by Notification No 50/2017 dated 30.06.2017 and neither of the notifications are applicable in the present cases and gold imported by the Applicant cannot be considered as prohibited goods and therefore not liable for absolute confiscation;

5.02. That the basic difference between Notification No. 12/2012-Cus dated 17.03.20212 and Notification No 50/2017 dated 30.06.2017 is with regard to the quantity of gold allowed to be imported by an eligible passenger but both the notifications stipulate conditions for import of gold at concessional rate of duty and do not stipulate that gold is a prohibited goods;

5.03. That in the instant case, no concrete basis has been revealed in the SCN/OIO/OIA to consider the gold as prohibited goods while in the case of OM Prakash Bhatia vs. Commr. of Customs, Delhi which has been relied upon, the gold brought by the petitioner in that case did not fulfil the basic eligibility criteria under Notification No. 12/2012;

5.04. Gold is not 'prohibited goods' but only a 'restricted goods' and is not liable for absolute confiscation. Import of gold is no longer prohibited and therefore it is the duty of the adjudicating authority, if he is of the view that it is liable to confiscation, to permit its redemption on appropriate fine. That if the goods are restricted to import, the Government fixes some sort of barrier to import and the importer has to overcome such procedures which have to be completed. That restriction to import any goods is decided by the government under foreign trade policy amended from time to time.

5.05. That 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) Yakub Ibrahim Yusf vs. CC, Mumbai [2011(263) ELT 685(Tri. Mumbai)
- (iii) Neyveli Lignite Corporation Ltd vs. UOI [2019(242) ELT 487(Mad)]

5.06. That there are a series of judgements where redemption of absolutely confiscated gold has been allowed The Applicant has relied on the following case laws:

- (i) Hargovind Das K. Joshi vs. Collector of customs [1992 (61) ELT 172(SC)]
- (ii) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (SC)]
- (iii) Gauri Enterprises vs. CC, Pune [2002 (145) ELT (705) (Tri Bangalore)]

- (iv) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (v) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (vi) VP Hameed vs. Collector of Customs Mumbai 1994(73) ELT 425 (Tri)
- (vii) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (viii) Kadar Mydin vs. Commnissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (ix) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai
- (x) Vatakkal Moosa vs. Collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xi) Halithu Ibrahim vs. CC [2002-TIOL 195 CESTAT-MAD]
- (xii) Krishnakumari vs. CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xiii) S.Rajagopal vs. CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xiv) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]
- (xv) Union of India vs. Dhanak M. Ramji [2009 (248) E.L.T. 127 (Bom.)]
- (xvi) Peringatil Hamza vs CC (Airport), Mumbai [2014 (309) ELT 259 (Tri Mumbai)]
- (xvii) R. Mohandas vs. CC, Cochin [2016 (336) ELT 399 (Ker)]
- (xviii) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].
- (xix) Shaik Mastani Bi vs. CC, Chennai [2017(345) E.L.T 201( Mad)]
- (xx) Bhargav Patel vs CC, Mumbai [Appeals NO C/381/10]
- (xxi) Gauri Enterprises vs. CC, Pune [2002(145) E.L.T 705 (Tri-Bang)]
- (xxii) Om Prakash Bhatia vs. Commr. Of Customs Delhi [2003(155) E.L.T.423(SC)]
- (xxiii) Etc

5.07. That the decisions relied upon by the Commissioner of Customs (Appeals) are not applicable to the case and the Commissioner (Appeals) failed to discuss as to how the facts of the cases relied upon by him fit the factual situation of the case of the Applicant;

5.08. That under the doctrine of stare decisis, 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. This decision becomes an example, or authority for judges deciding similar issues later. That while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind;

5.09. That while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The applicant has relied upon 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)ELT 577(SC)]

5.10. That there should be consistency in favour of 'formal' justice i.e that two cases are the med (in relevant respects) should be treated in the same way and it would be inconsistent to treat them differently;

5.11. That concerns of consistency provide some justification for treating earlier decisions as sources of law rather than approaching each question anew when it arises again;

5.12. That if the earlier decision was wrong, then the person subject to it may have been treated or less favourable than they should have been treated and

if they were treated more favourable then clearly that should have been corrected;

5.13. 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 and is binding on or persuasive for a court or tribunal when deciding subsequent cases with similar issues or facts;

5.14. That as regards allowing redemption of the seized goods, Section 125 of the Customs Act, 1962 provides the option of redemption can be given in the case of seized goods are not prohibited and gold is not a prohibited item and can be imported and such imports are subject to certain conditions and restrictions including the necessity to declare the goods on arrival at the Customs station and make payment at the rate prescribed. Reliance has been placed on the following case laws:

- (i) Shaik Jamal Basha vs. Government of India [1992(91) ELT 277(AP)]
- (ii) Mohd Zia Ul Haque vs. Addl. Commissioner of Customs, Hyderabad [2014(214) E.L.T 849 (GOI)]
- (iii) Mohammed Ahmed Manu vs. CC, Chennai [2006(205) E.L.T 383(Tri-Chennai)]

5.15. That the Applicant has relied upon the following case laws in support of the contention that when goods are not eligible for import as per the import policy, re-export of such goods is permitted on payment of penalty and redemption fine. The Applicant has relied on the following case laws in support of their contention:

- i) CC vs. Elephanta Oil [2003(152) ELT 257 (SC)]
- ii) Collector vs. N Patel [1992 (62) ELT 674 (GO1)]
- iii) Kusumbhai Dahyabhai Patel vs. CC (P) [1995 (79) ELT 292 (CEGAT)]
- iv) K&K Gems vs. CC [1998(100) ELT 70 (CEGAT)]

5.16. That as held in the case of Commissioner of Customs vs. Atul Automation Pvt Ltd, wherein the Hon'ble Supreme Court clearly distinguished between what is prohibited and what is restricted and held that restricted goods can be redeemed on payment of fine, in the instant case gold should not be considered as prohibited goods and order of absolute confiscation is not sustainable. Further the Applicant has also quoted from the decision in the case of Nalainikanta Muduli (2005) and of Sunita Pandey(2018)

5.17. That the Applicant claims ownership of the goods under absolute confiscation and the gold was purchased by him for the personal use of his family members and claims redemption of the gold on reasonable fine and penalty and reiterated the case laws cited earlier in support of his contention. In addition the Applicant relied on the following cases:

- (i) Dhanak M. Ramji vs. Commr. of Customs (Airport),Mumbai [2009 (237) E.L.T. 280 (Tri-Mumbai)] and the subsequent SLP filed by the Department
- (ii) Horizon Ferro Alloys Pvt Ltd vs. UOI –judgement by the Division Bench of Punjab and Haryana High Court.
- (iii) Neyveli Lignite Corporation vs, UOI [2009(242) ELT 487(Mad)]
- (iv) Copier Company vs. Commr. of Customs, Chennai [2007(218) ELT 442(Tri-Chennai)]

5.18. That penalty imposed on the Applicant was disproportionate to the value of gold imported by him and imposition of heavy penalty on the Applicant is not sustainable;

5.19. That the Applicant did not import the small quantity of gold for making any big profit from the transaction and there is a distinction between a commercial smuggler and a person importing gold under a circumstance where there is an intention to make a small profit to meet his travel expenses and meet is family expenses;



5.20. That equal application of the same stringent policy to those who are not importing for profit should fail adequately to recognize the distinction between them and those who smuggle for commercial purpose;

5.21. That the course of action taken by the OAA must depend on the gravity and nature of the infraction by the individual Applicant and thus punishment must be proportional to the violation. The Applicants' has relied upon the following cases:

- (i) UOI vs. Mustafa & Najibhai Trading [1998(6 SCC 79]
- (ii) Management of Coimbatore DCC Bank vs. Secretary Coimbatore District Co-op Bank Employees Association [(2007) 4 SCC 669]
- (iii) Commissioner of Customs, Tuticorin vs. Sai Copiesr [2008(226) ELT 486(Mad)]
- (iv) Commissioner of Customs(Import) vs. Shankar Trading Co [2008(224) ELT 206(Bom)]
- (v) CC, Tuticorin vs. Shri Kamakshi Enterprises [2009(238) ELT 242(Mad)]
- (vi) Maa Tara Enterprises vs. CC Cochin [2009(243) ELT 730 Tri-Bang]
- (vii) Commr. of Customs, Cochin vs. Dilip Ghelani [2009(248) ELT (Tri-LB)]
- (viii) New Copier Syndicate vs. Commr. of Customs [2015(232) ELT 620(Tri-Bang)]
- (ix) Omex International vs. Commr. of Customs , new Delhi [2015(228) ELT (Tri-Del)]
- (x) Office Devices vs. Commr. of Customs, Cochin [2016-TIOL-2557-CESTAT-BANG]
- (xi) Sai International and ors vs. CC. Cochin.

5.22. That the learned Assistant Commissioner of Customs who adjudicated the case instead of taking the tariff value of gold took the market value of the gold i.e Rs. 10,84,572/- as the value for all customs purposes and thus prejudiced the Applicant.

Under the circumstances, the Applicant prayed for a reasonable order for redemption of gold under absolute confiscation on payment of reasonable fine and penalty.

6. Personal hearing in the case was scheduled for 11.07.2023. Shri Prakash Shingrani, Advocate appeared for the personal hearing on the scheduled date on behalf of the Applicant. He submitted that that Applicant brought small quantity of gold for personal use. He further submitted that the Applicant is not a habitual offender and requested to allow release of the goods on nominal fine and penalty.

6.1. The Advocate for the Applicant, vide letter dated 17.08.2023, submitted that that the Applicant was a NRI national and requested that reshipment of the goods be allowed.

7. The Government has gone through the facts of the case and observes that the Applicant filed the Revision Application against the order of absolute confiscation of the gold and imposition of penalty of Rs. 90,000/- under Section 112(a) of the Customs Act, 1962. Government notes that the Applicant had brought two cut pieces of gold bar weighing 112 grams which were concealed in layers of sweets, two keychains with silver coating weighing 48 grams and one gold ring weighing 10 grams concealed in a pouch having multiple ATM cards and collectively valued at Rs. 6,71,517/- and assorted items like perfume, vitamin gel, whitening cream, Apple air pods, cigarettes, Moisturizer, Platinum kit, Apple I phone, HP Laptop collectively at Rs. 1,57,500/- 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. However, after opting to clear through the green channel of Customs and on search of the baggage after being intercepted, the impugned two cut pieces of gold bar weighing 112 grams which were concealed in layers of sweets, two keychains with silver coating weighing 48 grams and one gold ring weighing 10 grams concealed in a pouch having multiple ATM cards and collectively valued at Rs. 6,71,517/- were recovered alongwith assorted items like perfume, vitamin gel, whitening cream, Apple air pods,

cigarettes, Moisturizer, Platinum kit, Apple I phone, HP Laptop collectively at Rs. 1,57,500/-. The method of carrying the gold which were cleverly concealed in layers of sweets and in a pouch adopted by the Applicant clearly revealed his intention not to declare the said gold and thereby evade payment of Customs Duty. The absolute confiscation of the impugned gold bars was therefore justified and thus the Applicant had rendered himself 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 applicant thus, liable for penalty.

10. Section 125 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 even in prohibited goods. 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. From the records submitted and the averment of the Applicant, Government notes that the Applicant had been found involved in an earlier case of smuggling of gold at the Trivandrum International Airport also, wherein gold which had been concealed in sweet pieces, using the same modus operandi as in the instant case, had been recovered from him and was seized absolutely by the OAA. From the facts of the cases, Government finds that the

Applicant is a habitual offender. The demeanour of the Applicant is required to be considered while confiscating the gold and imposing penalty. In the instant case also, Government notes that the OAA has passed a legal and judicious order which has been upheld by the Appellate Authority. Further, his past involvement in importing gold indicates that the Applicant was aware of the law and despite this brought gold and assorted items and had contumaciously, not declared the same. Therefore, considering his past antecedents, Government is not inclined to interfere with the order passed by the lower authorities.

12. The Government finds that the personal penalty of Rs. 90,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is commensurate with the omissions / commissions committed.

13. In view of the above, the Government upholds the Order-in-Appeal No. GOA-CUSTM-000-APP-088-2020-21 dated 09.11.2020 [Date of issue: 09.11.2020] [F. No. A-42/CUS/GOA/2019-20] passed by the Pr. Commissioner Appeals, CGST & Customs, Goa and does not find it necessary to interfere in the same.

14. The Revision Application is dismissed.

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

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

ORDER NO. 626/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.08.2023

To,

1. Mr. Liyakat Ali Hussain Patel, 25/27, Madina Building, 3<sup>rd</sup> Floor, Room No. 18, Zakaria Masjid Street, Chinchbunder, Mumbai 400 009.
2. The Commissioner of Customs, Marmagoa Harbour, Vasco-Da-Gama, Goa 403 803.

Copy to:

1. The Pr. Commissioner of CGST (Appeals) Goa, 4<sup>th</sup> Floor, GST Bhavan, EDC Complex, Plot No. 6, Patto Panaji, Goa 403 001
2. Shri 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.