

REGISTERED  
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

F.No. 371/29/B/2021-RA

/6579

Date of Issue : ~~08.2023~~

07.09.2023

ORDER No. 636/2023-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.

Applicant : Mr. Abdul Shukkoor Madathil

Respondent : 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-087-2020-21 dated 09.11.2020  
[Date of issue: 09.11.2020] passed by the Pr.  
Commissioner (Appeals), Goa.

ORDER

The Revision Application has been filed by Mr Abdul Shukoor Madathil (herein referred to as 'Applicant') against the Order-in-Appeal No. GOA-CUSTOM-000-APP-087-2020-21 dated 09.11.2020 [Date of issue: 09.11.2020] passed by the Pr. Commissioner (Appeals), Goa.

2. Brief facts of the case are that on 30.10.2018, on the basis of intelligence, the officers of the Customs, at the Dabolim Airport, Goa, intercepted the Applicant, who had arrived from Sharjah by Air Arabia Flight No G9-0492, while attempting to exit through the Customs Green Channel. On being asked whether he had anything to declare to the Customs, the Applicant replied in the negative. Not being satisfied with his reply personal search and search of his baggage was conducted. The search of his baggage resulted in the recovery of two rectangular metal pieces wrapped in white tape and one small piece rolled in brown colour adhesive tape. On opening the packet wrapped in adhesive tape and transparent polythene resulted in the recovery of one rectangular golden colour metal piece marked as 'FOR MELTER ASSAYER, B021040' weighing 395 grams and the second packet wrapped in adhesive tape resulted in the recovery of golden colour metal having marking '1kg Gold 995' weighing 350 grams and the on opening the third packet wrapped in brown colour adhesive resulted in the recovery of a cylindrical piece of golden colour metal weighing 10 grams.

3. Pursuant to being assayed, the three pieces of gold collectively weighing 755 grams and valued at Rs. 22,04,592/- were seized under the provisions of Section 110 of the Customs Act, 1962 under the reasonable belief that the same were being smuggled into India and hence liable to confiscation under the provisions of the Customs Act, 1962.

4. After following the due process of law, the Original Adjudicating Authority (OAA) i.e. Joint Commissioner of Customs, Goa vide Order-In-

Original (OIO) No. 08/2019-20-JC(CUS) dated 13.12.2019 ordered for the absolute confiscation of the seized 755 grams of gold valued at Rs. 22,04,592/- under Section 111 (d), (l) & (m) of the Customs Act, 1962. Penalty of Rs. 3,40,000/- respectively was imposed on the Applicant under Section 112(a) of the Customs Act, 1962. The packing material used for concealment of the gold was absolutely confiscated under Section 119 of the Customs Act, 1962.

5. Aggrieved with this Order, the Applicant filed an appeal before the Appellate Authority (AA) viz: Pr. Commissioner (Appeals), Goa, who vide Order-in-Appeal No. GOA-CUSTOM-000-APP-087-2020-21 dated 09.11.2020 [Date of issue: 09.11.2020] upheld the order passed by the OAA.

6. Aggrieved with the above order of the Appellate Authority, the Applicant has filed the Revision Application on the following grounds:

6.01. That Notification No. 50/2017 dated 30.06.2017 is only an exemption notification and it did not stipulate anywhere that gold is a prohibited goods and the eligibility of the Applicant for concessional rate of duty given in respect of gold under the said notification is not an issue in this case as the Applicant did not claim the said exemption;

6.02. That the impact of non-availability of exemption from customs duty on account of not being eligible was only that the person would be liable to pay customs duty at tariff rate or baggage rate as the case may be;

6.03. That despite the fact that the said notification no 50/2017-Cus dated 30.06.2017 did not declare the gold as prohibited goods, it cannot be held that the imported gold became prohibited goods in the event of the concerned passenger was not eligible to import the gold;

6.04. The Applicant has relied on the following case laws in support of his contention:

- (i) Decision of the Hon'ble High Court of Madras in the case of Samynathan Murugesan [2010(254) ELT
- (ii) T.Elavarasan vs. CC (Airport), Chennai [2011(266) ELT 167(Mad)

- (iii) Shaikh Jamal Basha vs. GOI [1997(91(ELT) 277(AP)
- (iv) UOI vs. Dhanak Ramji [2003(248) ELT 128(Bom)
- (v) Sapna Sanjeev Kohlu vs. CC, Mumbai [2010(253) ELT A52(SC)

6.05. 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;

6.06. 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 Yusuf vs. CC, Mumbai [2011(263) ELT 685(Tri. Mumbai)
- (iii) Neyveli Lignite Corporation Ltd vs. UOI [2019(242) ELT 487(Mad)]

6.07. 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. Comnmissioner 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) 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

6.08. 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;

6.09. 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;

6.10. 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)]

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

6.12. 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;

6.13. 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;

6.14. 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;

6.15. 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)]

6.16. 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)]

6.17. in the instant case the Commissioner (Appeals) should have examined the judgements/decisions relied upon by the appellant, facts of the cases, legal issues involved in the cases, arguments raised and cases cited by the parties, legal reasoning that is relevant to resolve those issues, judicial opinions given by the Courts, ruling of the court on questions of law, the result of the case: the court's order, and which party was successful and the applicability of ratio of the said judgements in the case being dealt:

- (i) Decision of the Hon'ble Supreme Court in the case of Bombay Dyeing and Manufacturing Company Ltd vs. BEAG
- (ii) Decision of the Hon'ble Supreme Court in the case of Islamic Academy of Education vs State of Maharashtra
- (iii) CIT vs. Sun Engineering Works (P) Ltd
- (iv) Madhav Rao Scindia vs. Union of India

6.18. 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)

6.19. 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)]

6.20. 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;

6.21. 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 his family expenses;

6.22. 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;



6.23. 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 Copier [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.

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

7. Personal hearing in the case was scheduled for 09.11.2020, 11.07.2023 or 28.07.2023. Shri Prakash Shingrani, Advocate for the Applicant, appeared for the hearing on 11.07.2023 and submitted that the Applicant had brought some quantity of gold and Applicant was not a habitual offender. He requested to allow redemption of goods on nominal fine and penalty. No one appeared for the personal hearing on behalf of the Respondent.

8. The Government has gone through the facts of the case and observes that the Applicant had brought the 03 pieces of gold collectively weighing 755

grams of gold of 24 Karat purity, which were wrapped in white and brown coloured tape and was recovered from the baggage of the Applicant. The Applicant 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 and on being asked whether he had anything to declare, he had replied in the negative. The gold was of high purity and was in primary form, indicating that the same was for commercial use. However, after being intercepted, on suspicion, the impugned gold which was cleverly wrapped in white and brown coloured tape to avoid detection was recovered from the Applicant and the method of carrying the gold adopted by the Applicant clearly revealed his intention not to declare the said gold and thereby evade payment of Customs Duty. The nature of concealment and refusal to declare the gold despite being given an opportunity reveals the mindset of the Applicant to not only evade duty but smuggle the gold. It also reveals that the act committed by the Applicant was conscious and pre-meditated. The Applicant 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 would have gotten away with the gold. The confiscation of the gold was therefore justified and thus the Applicant had rendered himself liable for penal action.

9. 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”.

10. 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.

11. 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.”*

12.1 Government observes that besides the quantum and purity of the gold, which indicates that the same was for commercial use, the manner in which it was attempted to be brought into the country is vital. The impugned gold was cleverly, consciously wrapped in white and brown tape and recovered from the baggage only after the baggage was screened and searched, which reveals the intention of the Applicant. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. As per the records, Government also notes that the Applicant was a frequent flyer which suggests that the Applicant was a carrier for a syndicate, entrusted with smuggling of gold. The issue has been dealt at length by the Appellate Authority whilst concurring with the order of the Original Adjudicating Authority. The Appellate Authority at para 10.2. and 13.2. of the Order-in-Appeal has observed as under :

*“10.2. Appellant in his statement claimed that the amount used to buy the gold was from bank loan and borrowed from his family and friends but during the course of investigation he did not divulge any evidence in respect of buying gold. This explicitly indicates that the money, to buy and smuggle the 755 grams of gold was transferred through illegal channels. The Gold smuggled by passenger cannot be construed as bona-fide baggage in terms of Section 79 of the Act. Customs Act 1962. The import of Gold as baggage by any passenger of Indian origin holding a valid passport is permissible only when he/she is coming to India after a period of stay of not less than six months abroad. The travel details of the Appellant indicate he stayed only for 05 (five) days and his previous visits were also of very short duration. Accordingly I find that Respondent has in the impugned order has rightly held that the Gold cannot be treated as bona-fide baggage and was concealed to evade Customs duty and thus, becomes liable for confiscation under the provisions of Section 111 of the Act Appellant has, also contravened the provisions of Section 11 of Foreign Trade (Development & Regulation) Act, 1992, Rule 14 of Foreign Trade (Regulation) Rules, 1993, Section 77 of the Act read with Baggage Rules, 2016 and accordingly had rendered the 755 grams of gold valued at Rs.22,04,592/- smuggled by the Appellant liable for confiscation under Section 111 (d), (l) & (m) of the Act. These facts indicate that the appellant knowingly and deliberately was engaged in smuggling of the gold. It has been held in catena*

of judgments that the statements recorded under Section 108 of the Act are in the nature of substantive evidence and culpability of the offence by the concerned persons can very much be relied upon such statement. In *K.I. Pavunny Vs. Asstt. Collector (HQ) Central Excise Collectorate, Cochin*, reported in [1997 (90) ELT 241 SC], Hon'ble Supreme Court has held as under.

*'Even though the Customs Officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating cognizable offence, they do not, thereby become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs Official would be admissible in evidence against them" (para 9)'*

*In view of above, I am of the strong view that the department has been able to discharge its primary onus by recording the voluntary statement of the appellant under Section 108 of the Act which is in the nature of substantive evidence and with which the onus gets passed on to the appellant in terms of Section 123 of the Act according to which the onus to prove that the seized Gold is not smuggled one lies with the Appellant. Also, in this case I do not find anything on record to come to the conclusion that the seized Gold is not smuggled one."*

*"13.2. On going through the above said discussions and case laws referred to, if compared with the present issue before me for discussion and decision, I find full justification in the impugned order considering the given facts and circumstances of the case. The adjudicating authority, in 4.11 of the impugned order' while holding the goods as prohibited, has relied upon the judgment of Hon'ble Supreme Court, in the case of *Om Prakash Bhatia v/s Commissioner of Customs 2003(155) E.L.T. 423 (S.C.)*. Further I find that that in a similar case Hon'ble High Court in the case of *Abdul Razak Vs. Union of India [2012 (275) E.L.T. 300 (Ker.)]* held that:*

*'Redemption fine and penalty - Smuggled gold - Attempt to smuggle gold by concealing the same in emergency light, mixie, grinder and car horns etc.- Even though gold as such is not a prohibited item and can be imported, such import is subject to lot of restrictions including the necessity to declare the goods on arrival at the Customs station and make payment of duty at the rate prescribed-Goods so brought is prohibitory goods as there is clear violation of statutory provisions for normal import of gold-Appellant, as a matter of right, cannot claim release of goods on payment of redemption fine and duty-As per statement given by appellant under Section 108 of Customs Act, 1962, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration - Confiscated goods not to be released on payment of redemption fine and duty under Section 125 ibid-Section 2(33) ibid. [paras 5, 6]'*

*The said judgment was maintained by Hon'ble Supreme Court [2017 (350) ELT A173]*

*In the present case, I find that circumstances do indicate that there existed attempt of evasion of Customs duty by concealing the goods i.e. Gold and not declaring the same, for which, the goods have been held to be liable for absolute confiscation. The appellant have also admitted in his statement dated*

*10.11.2018 that gold belongs to him and he did this illegal activity of smuggling to earn fast and easy money. Hence, there is no doubt that the Appellant conspired to take the impugned goods without paying duty thereon. I have considered all the facts and circumstances in totality and keeping in mind the overall facts of the case, I am of the considered view that this is not a fit case to release the Gold on payment of the redemption fine and absolute confiscation ordered by the adjudicating authority in exercise of his discretion provided under Section 125 (1) of the Customs Act, 1962 is correctly exercised Accordingly I hold the same with no further modification, as sought for by the appellant. In view of the facts of the present case and aforesaid case laws, I am of also of the opinion that no relief can be granted to the appellant in view of case laws referred by him viz Yakub Ibrahim Yusuf Vs Commissioner of Customs, [263 ELT 685 (Tri-Mumbai)] and Shaik Shahabuddin Vs Commissioner of Customs. Chennai [2001 (137) ELT 127 (Tri-Chennai)]”*

12.2. The aforesaid circumstances of the case and clever concealment, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Original Adjudicating Authority while ordering the absolute confiscation of the gold and has been rightly vetted by the Appellate Authority.

13. 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 being clever, conscious, type of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold by the Applicant, who was a frequent flyer and did not produce any evidence of legit purchase of the gold, 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. 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 OAA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity.

14. Government finds that the penalty of Rs. 3,40,000/- imposed on the Applicant by the Original Adjudicating Authority under Section 112(a) of the Customs Act, 1962 is commensurate with the omissions and commissions committed by the Applicant.

15. For the aforesaid reasons, the Government is inclined not to interfere with the Order-in-Appeal No. GOA-CUSTOM-000-APP-087-2020-21 dated 09.11.2020 [Date of issue: 09.11.2020] passed by the Pr. Commissioner (Appeals), Goa and upholds the same.

16. The Revision Application is dismissed as being devoid of merit.

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

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

ORDER No. 636/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.08.2023.

To,

1. Mr. Abdul Shukoor Madathil, Madathil House, PO Mavoor, Manathalakadavu, Kozhikode, Kerala 673 661
2. The Commissioner of Customs, Marmagoa Harbour, Vasco-Da-Gama, Goa 403 803.

Copy to:

1. The Commissioner of CGST (Appeals) Goa, 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.