

373/106/B/17-RA

373/105/B/17-RA

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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

F.No. 373/106/B/17-RA &  
F.No. 373/105/B/17-RA

653

Date of Issue

18/02/22

ORDER NO. 69 - 70 /2022-CUS (SZ)/ASRA/MUMBAI DATED 16.02.2022  
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.

(i). F.No. 373/106/B/17-RA &

Applicant : Shri. Shafin Raza Barkat Ali Unia

(ii). F.No. 373/105/B/17-RA

Applicant : Shri. Sayed Riasat Ali Sayed Mubarak Ali

Respondent : Commissioner of Customs, Airport, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
C.Cus.I.No. 26 & 27/2017 dated 03.02.2017 [C4-I/206  
& 207/O/2016-Air] passed by Commissioner of Customs  
(Appeals), Chennai - 600 001.

ORDER

These two revision applications have been filed by Shri. Shafin Raza Barkat Ali Unia and Shri. Sayed Riasat Ali Sayed Mubarak Ali (hereinafter referred to as the Applicants or alternatively as Applicant No. 1 /Applicant No. 2, resp.) against the Order-in-Appeal No. C.Cus.I.No. 26 & 27/2017 dated 03.02.2017 [C4-I/206 & 207/O/2016-Air] passed by Commissioner of Customs (Appeals), Chennai -  
600 001.

2. The brief facts of the case are that on a reasonable belief that the applicants may be carrying some contraband in their baggage, the applicants were intercepted by Customs when they were passing through the green channel. On checking their baggage, Applicant no. 1 was found to be carrying 5500 nos of Gutkha in his baggage and 3 nos of 24 carat gold rings coated with nickel, total weight of gold was 64 gms and Applicant no. 2 was found to be carrying 5500 nos of Gutkha and 2 nos of 24 carat gold rings, total weight of gold was 38 gms. The total goods carried by applicant no. 1 had been valued at Rs. 2,17,132/- and that of applicant no. 2 had a total value of Rs. 1,40,094/- and the same were recovered and seized.

3. The Original Adjudicating Authority viz, Asstt. Commissioner of Customs (Airport), Chennai vide Order-In-Original No O.S No. 278 and 279/2016 dated 13.04.2016 ordered for the absolute confiscation of the goods i.e. gutkha and gold under Section 111 (d), (l), (m) and (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1962 and imposed a penalty of Rs. 22,000/- and Rs. 14,500/- on applicant no. 1 & 2 resp. under Section 112(a) of the Customs Act, 1962.

4. Aggrieved by this order, both the applicants filed an appeal with the appellate authority viz, Commissioner of Customs (Appeals), Chennai who vide Order-in-Appeal No. C. Cus.I. No. 26& 27/2017 dated 03.02.2017 [C4-I/206 & 207/O/2016-Air], rejected the appeals.

5. Aggrieved with the order of the Appellate authority, the Applicants have filed these two revision applications inter alia on the grounds that;

5.01. that the lower adjudicating authorities had considered similar matters for orders of redemption.

Both the applicants have prayed to set aside the absolute confiscation ordered by the appellate authority and to reduce the personal penalty and grant relief as deemed fit.

6. Personal hearings in both the cases were scheduled for 28.11.2019 / 05.12.2019. After the change of the revisionary authority, personal hearings through the video conferencing mode in both the said revision applications were scheduled for 03.11.2021 / 10.11.2021, 03.12.2021 / 09.12.2021. Shri. Prakash Shingrani, Advocate appeared in the office on behalf of both the applicants and submitted that the gold jewellery in both the cases was very small and was for personal use. He requested to release the jewellery on nominal fine and penalty.

7. Both these revision applications have been filed after 172 days from the receipt of the Order-In-Appeal. The applicants have stated that they had received the Order-In-Appeal on 10.02.2017 and had filed the revision application on 01.08.2017. Government notes that the two revision applications have been filed within the stipulated period of extension i.e. 3 months + 3 months. Government condones delay in filing the application and takes up the case for decision on merits.

8. The Government has gone through the facts of both the cases. Government notes that a common order was passed by the original adjudicating authority in the case of both these applicants. Also, the appellate authority had passed a common / simultaneous order and disposed of the both the appeals filed by these two applicants. Hence, the decision in the two revision applications i.e. RA nos. (i). F.No. 373/106/B/17-RA and (ii). F.No. 373/105/B/17-RA are being taken up for a common / simultaneous order.

9. The Government has gone through the facts of the case. The Applicants were intercepted after they had opted for the green channel and had not declared the dutiable goods in their possession. Though the quantity of gold jewellery found in their possession was small, they both were also found with 5500 packets of gutkha. Gutkha is a banned and prohibited item affecting the health of humans. The same was in commercial quantity. The gold jewellery was of 24 carats purity which is ideally not used in jewellery. The Applicants had not declared the goods as required under Section 77 of the Customs Act, 1962. The confiscation of the goods is therefore justified and the Applicants have rendered themselves liable for penal action.

10. On the issue of the 5500 nos of gutkha each, found with both the applicants, the Government notes that consumption of gutkha is a health hazard and the same has been banned / prohibited. The manufacture, sale, storage etc of gutkha is banned in India. In the said circumstances, without delving on the issue, Government holds that the all the gutkha found in the possession of the applicants have been rightly confiscated absolutely by the lower authorities. Government is not inclined to interfere on the aspect of seizure of the guthka.

11. On the issue of the seizure of jewellery, 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”.

13. 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.

14. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon’ble Supreme Court in the case of M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant*

*surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

15. Government observes that quantity of gold found with the applicants was small. The quantity indicates that it is for personal use. The concealment was not ingenious. It is more a case of non-declaration of the gold rather than smuggling of gold. The Government is inclined to allow the release of the gold on payment of a fine.

16. The absolute confiscation of the gold, leading to dispossession of the applicants of the gold in the instant case is therefore harsh and not reasonable. Government therefore, sets aside the impugned order of the appellate authority. (i). The impugned 3 gold rings weighing 64 gms found with applicant no. 1 is allowed redemption on payment of redemption fine of Rs. 40,000/- (Rupees Forty Thousand only). (ii). The impugned 2 gold rings weighing 38 gms found with applicant no. 2 is allowed redemption on payment of redemption fine of Rs. 30,000/- (Rupees Thirty Thousand only). The Government finds that the penalty of Rs. 22,000/- and Rs. 14,500/- imposed on both the applicants resp., under Section 112(a) of the Customs Act, 1962 is commensurate with the omissions and commissions committed and does not find it necessary to interfere in the same.

17. Both the Revision Applications i.e. (i). F.No. 373/106/B/17-RA & (ii). F.No. 373/105/B/17-RA are disposed of on the above terms mentioned at paras 11 & 16, above.

*Shrawan*  
*16/2/22*  
( SHRAWAN KUMAR )

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

ORDER No. *69-70* /2022-CUS (SZ) /ASRA/

DATED 16 02.2022

To,

1. Shri. Shafin Raza Barkat Ali Unia, 155, Abdula Mansion, 3<sup>rd</sup> Floor, Block A, Dongri, S.V.P Road, Mumbai - 400 009.

**373/106/B/17-RA**

**373/105/B/17-RA**

2. Shri. Sayed Riasat Ali Sayed Mubarak Ali, 2<sup>nd</sup> Samuel Street, Habib Building, 2<sup>nd</sup> Floor, Room No. 19, Mumbai – 400 009.
3. The Pr. Commissioner of Customs, Chennai – I (Airport), New Custom House, Meenambakkam, Chennai – 600 027.

Copy to:

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