

REGISTERED
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. 371/295/B/2022-RA/7187

Date of Issue 05.09.2023

ORDER No. 711/2023-CUS (WZ)/ASRA/MUMBAI DATED 28.09.2023.
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. Anil Nair Purvankara

Respondent : Pr. Commissioner of Customs, C.S.I Airport, Mumbai

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-848/2021-22 dated 28.10.2021
[Date of issue: 01.11.2021] [F. No S/49-1105/2020]
passed by the Commissioner of Customs (Appeals),
Mumbai Zone-III.

ORDER

This Revision Application has been filed by Mr. Anil Nair Purvankara (herein referred to as 'Applicant') against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-848/2021-22 dated 28.10.2021 [Date of issue: 01.11.2021] [F. No S/49-1105/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 28.09.2018, on suspicion, the officers of Customs at the Chatrapati Shivaji Maharaj International Airport, Mumbai, intercepted the Applicant, an Indian passport holder, who had arrived from Dubai by Jet Airways Flight 9W 579, near the exit gate, after he had cleared himself through the Customs Green Channel. On being asked whether he was carrying any contraband, gold, silver, Indian or foreign currency, the Applicant replied in the negative. Not satisfied with the reply, the officers conducted personal search and examination of the baggage. Personal search of the Applicant resulted in the recovery of 03 yellow coloured metal chains and one yellow coloured metal kada, all purported to be gold. One metal chain was worn by him on his neck beneath the shirt and coat he was wearing and two metal chains were found concealed in two black coloured pouches in the inner front secret pocket of his trouser and the kada was worn on the right wrist hidden beneath the long sleeves of his shirt. Pursuant to being assayed, the said 03 gold chains and 01 gold kada of 24KT purity, collectively weighing 1281 grams and valued at Rs. 36,70,046/- were seized under the reasonable belief that the same were being smuggled into India and hence liable for confiscation under the provisions of the Customs Act, 1962. The Applicant stated that the said gold was purchased from a shop in Dubai to make jewellery for his niece for her marriage and that he thought that he could carry jewellery on person but was not sure of the quantity and that he was aware that import of gold without declaration and payment of duty is an offence punishable under the Customs Act, 1962. The Applicant admitted to

ownership, possession, non-declaration, concealment and recovery of the seized gold.

3. After following the due process of law, the Original Adjudicating Authority (OAA) viz, Additional Commissioner of Customs, Chhatrapati Shivaji International (C.S.I) Airport, Mumbai vide Order-In-Original No. ADC/SKR/ADJN/43/2020-21 dated 24.07.2020 [Date of issue: 31.07.2020] ordered the absolute confiscation of the said 03 gold chains and 01 gold kada weighing 1281 grams and valued at Rs. 36,70,046/- under Section 111 (d), (l), and (m) of the Customs Act, 1962. Personal penalty of Rs. 4,00,000/- was imposed on the Applicant under Section 112(a)(i) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide her Order-in-Appeal No. MUM-CUSTOM-PAX-APP-848/2021-22 dated 28.10.2021 [Date of issue: 01.11.2021] [F. No S/49-1105/2020] rejected the appeal without going into the merits, on the grounds that the appeal was not maintainable on account of non-payment of pre-deposit prescribed for filing appeals.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant has preferred this revision application inter alia on the following ground:

5.01. That the Applicant had submitted he challan towards the payment of mandatory pre-deposit but it was informed that the Applicant had failed to submit the copy of challan and thus the order of the AA without going into the merits of the case is erroneous and unjustified;

5.02. That the relevant provision in the context of prohibited goods is section 111 of the Customs Act, 1962 and it is not the case of the Department that gold has been notified as prohibited goods either absolutely or subject to some conditions;

5.03. 'Prohibition' under Section 111(d) of the CA, 1962 cannot be considered as a total prohibition and that expression does not bring with its fold the restrictions as a prohibition under Section 111(d) of the Act;

5.04. Gold is not 'prohibited goods' but only a 'restricted goods' and the intention behind the provisions of Section 125 is clear that the import of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole and this would not apply to a case where import/export of goods is permitted subject to certain conditions or to certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied with is not liable for absolute 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)].

5.05. That Notification No. 50/2017-Customs dated 30.06.2017 is not relevant to the present case and 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;

5.06. That it is not the case of the Department that the gold has been notified as prohibited goods either absolutely or subject to certain conditions and no other legal provision is mentioned in the SCN by which import of gold has been prohibited and even Baggage Rules do not prohibit the importation of gold and its purpose is only to extend the facility of exemption from duty by way of providing of free allowances in respect of bonafide baggage goods which are generally household goods and goods of personal use and therefore, non-coverage of any goods under Baggage Rules such as gold only means that free allowance and exemption from duty is not allowed on such goods;

The Applicant has relied upon the following case laws in support of his contention:

- (i) Om Prakash Bhatia vs. Commr. of Customs, Delhi [2003(155) eLT 423(SC)]
- (ii) Shaikh Jamal Basha s. UOI [1997(91) ELT 277(AP)]
- (iii) UOI vs. Dhanak Ramji [2003(248) ELT 128(Bom)]

- (iv) Sapna Sanjiv Kohli vs. Commr. of Customs, Mumbai [2010(253) ELT A52(SC)]
- (v) Decision of the division bench of the Punjab and Haryana High Court in the case of Horizon Ferro Alloys Pvt Ltd vs. UOI

5.07. That Section 125 of the Customs Act, 1962 vests the power to grant redemption of confiscated goods and it is seen that Section 125 divides the goods in two categories, one category relates to goods which are prohibited and the second category deals with all other goods. That the distinction between the categories is made on the basis of offences allegedly committed in the matter and in the second category the goods have to be invariably redeemed by giving an option to the person concerned to get the same redeemed by paying the redemption fine and in the case of the first category the adjudicating authority is given discretion to either absolutely confiscate the goods or allow redemption. The Applicant has relied on the following case laws in support of their contention:

- (i) Chellani Mukesh [2012(276) ELT 129 (GOI)]
- (ii) Suresh Kumar Agarwal vs Collector of Customs [1998 (103) ELT 18(AP)]
- (iii) Bhargav Patel vs CC, Mumbai [Appeals NO C/381/10] [2015-TIOL - 1951-CESTAT-Mum] and cases relied upon
- (iv) Sujahi vs. Commr. of Customs, Meenambakkam Airport [Order No 39/14-Cus]

5.08. That there are no specific guidelines demarcating the cases where absolute confiscation should be ordered in similar cases and in such situation the judicial precedence alongwith the overall circumstances of the case are taken into account for adjudging the matter and that in the instant case there are no enough grounds for absolute confiscation of the gold. Reliance has been placed on the following cases:

- (i) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (ii) Dhanak Ramji vs. CC (Airport), Mumbai [2009(237 (E.L.T 280 (Tri-Mm)]

- (iii) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].
- (iv) Mohd Zia Ul Haque vs. Addl. Commissioner of Customs, Hyderabad [2014(214) E.L.T 849 (GOI)]
- (v) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (vi) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri-Mumbai)]
- (vii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (viii) Mohamed Ahmed Manu vs Commr. of Customs Chennai [2006(205) ELT) 383 (Tri-Chennai)]
- (ix) Mohd. Zia Ul Haque vs. Addl Commr. of Customs, Hyderabad [2014(214) ELT 849(GOI)]

5.09. That the intention behind the provisions of Section 125 of CA, 1962 is clear that import of goods such as arms, ammunition, addictive substances viz, drugs which would cause danger to healthy, welfare, morals of people as a whole cannot be allowed under any circumstances and such goods have to be confiscated absolutely but gold is no of that kind;

5.10. That the settled legal position with regards to vesting of discretion is as per the following cases:

- (i) Commr of Cus, Delhi IV vs. Achiever International [2012(286) ELT 180(Del)]
- (ii) Shri Rama Sugar Industries Ltd vs. State of AP [(1974) 1SCC 534)]
- (iii) Rajaram Bohr vs. UOI [2015(322) ELT 337 (Cal)]

5.11. That penalty imposed on the Applicant was disproportionate and imposition of heavy penalty on the Applicant is not sustainable; Applicant has made submissions about import of gold which has no relevance to the instant case and hence not mentioned;

5.12. 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 in respect of the above contention and also where redemption fine and penalty was reduced to 10% and 5% of value:

- (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 Copiers [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.

5.13. That for concluding that the imported gold was prohibited goods and for ordering absolute confiscation of gold, the OAA relied upon the judgement in the case of Om Prakash Bhatia which has been over ruled by a larger bench of the Supreme Court;

5.14. That the OAA failed to discuss as to how the facts of the case of Om Prakash Bhatia fit the factual situation of the case of the petitioner:

5.15. That in a common law system, judges are obliged to make their rulings as consistent as reasonably possible with previous judicial decisions on the same subject. Under the doctrine of stare decisis, a lower court must honour findings of law made by a higher court. Simply put, it binds courts to follow legal precedents set by previous decisions;

5.16. 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)]

5.17. That the Applicant relies on the decision in the case of Commr. of Customs vs. M/s Atul Automation Pvt Ltd dated 24.01.2019, wherein the Hon'ble Supreme Court overruled the decision in the case of Om Prakash Bhatia. The Applicant further relied on the decision in the case of Nalinikanta Mudul wherein the Hon'ble High Court held that citing a judgement of a Court without disclosing that the fact that it had been overruled is a matter of serious concern and the decision in the case of Sunita Pandey (2018), wherein the Hon'ble Court held that a lawyer is supposed to have the knowledge of a judgement delivered by the Hon'ble Apex Court which is the law of the land and cannot make excuse for unawareness of a particular judgement of the Hon'ble Apex Court and also cannot be permitted to cite a judgement, which has already been overruled;

5.18. That the Applicant claims ownership of the goods and redemption of the gold on redemption fine and penalty and that gold is not a prohibited item and is a restricted item and consequently the person from whom it was recovered was entitled for release of the seized goods under Section 125 of the Customs Act, 1962. The Applicant has relied on the following case laws in support of his contention:

- (i) Dhanak Madhusudan Ramji vs. Commr. of Customs (Airport), Mumbai [2009 (237) ELT 280(Tri-Mum)]
- (ii) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].

- (iii) In RE: Mohd. Zia Ul Haque [T2014/314/849 GOI]
- (iv) Copier Company vsl Commr. of Customs, Chennai [2007(218) ELT 442(Tri-Chennai)]
- (v) Yaqub Ibrahim Yusuf vs. Commr. of Customs [2011(263) ELT 685]
- (vi) Judgement of the Division Bench of Punjab and Haryana High Court in the case of Horizon Ferro Alloys vs. UOI
- (vii) S. Rajagopal vs. Commr. of Customs , Trichy (Tri) [2007 (219) ELT 435 (Tri-Chennai)]

5.19. That the act of the Applicant cannot be termed as an organized crime or manifesting of an organized activity and that the Applicant was not a habitual offender and he committed a mistake only with an intention to save money and make a profit;

5.20. That the Applicant is from a respectable family and law abiding citizen and has never come under adverse remarks

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

6. The Advocate for the Applicant, vide letter dated 17.02.2023 stated that it was on record that the pre-deposit of 7.5% of penalty was paid on 31.03.2021, before the order of the AA and the same was not taken notice by the Department. He requested for early hearing in the matter.

7. Personal hearing in the case was scheduled for 28.07.2023. Shri Prakash Shingrani, Advocate appeared for the hearing on behalf of the Applicant on the scheduled date and submitted the copy of the challan for pre-deposit and stated that the required pre-deposit was made on 31.03.2021 and the OIA was passed on 28.10.2021. He further submitted that the Applicant is a Non Resident Indian and usually stays in the UAE as a professional and submitted a residence permit of UAE for the period from 22.03.2021 to 21.03.2024. He further submitted that the Applicant is a

genuine person who brought gold jewellery for a marriage in the family. He requested to allow re-export of gold jewellery on reasonable fine and minimal penalty. No one appeared for the personal hearing on behalf of the Respondent

8. Government notes that the Appellate Authority held that the Applicant failed to pay the pre-deposit amount prescribed in the Appeal under Section 129(B) of the Customs Act, 1962 and rejected the appeal on the grounds of being non-maintainable, without going into the merits of the case.

9. Government further observes that the Applicant, in the Revision Application and during the personal hearing has stated that despite the payment of mandatory pre-deposit being informed, the Appellate Authority rejected the claim without going into the merits of the case. As documentary evidence, Applicant has also produced a copy of the Challan for Rs. 30,000/- bearing DD No. 857891 dated 31.03.2021, with the endorsement from the office of the Respondent. In view of the said documentary evidence and the averment of the Applicant, Government holds the pre-deposit as having been paid and proceeds to examine the case on merits.

10. The Government has gone through the facts of the case and observes that the Applicant had brought 03 gold chains and 01 gold kada of 24KT purity, collectively weighing 1281 grams and valued at Rs. 36,70,046/- 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, on being intercepted, 03 gold chains and 01 gold kada of 24KT purity, collectively weighing 1281 grams and valued at Rs. 36,70,046/- were recovered from the Applicant and it revealed his intention not to declare the said gold and thereby evade payment of Customs Duty. The confiscation of the gold was therefore justified and thus the Applicant had rendered himself liable for penal action.

11.1. 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.”

11.2. 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, 1962.

12. 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 Applicant thus liable for penalty.

14. 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. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. 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.

15. 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.”

16.1. Government further observes that there are a catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

- a) In the case of Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, [2022(382) E.L.T. 345 (All)], the Lucknow Bench of the Hon'ble High Court of Allahabad, has held at Para 22 that *"Customs Excise & Service Tax Appellate Tribunal Allahabad has not committed any error in upholding the order dated 27.08.2018 passed by the 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."*
- b) The Hon'ble High Court of Judicature at Madras, in the judgment in the case of Shaik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.
- c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T, 399 (Ker.)] has, observed at Para 8 that *"The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any such person from whom such custody has been seized..."*
- d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252)E.L.T. A102(S.C)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

- e) Judgement dated 17.02.2022 passed by the Hon'ble High Court, Rajasthan (Jaipur Bench) in D.B. Civil Writ Petition no. 12001 / 2020, in the case of Manoj Kumar Sharma vs. UOI and others.

16.2 Further, The Hon'ble High Court, Madras, in a judgement passed on 08.06.2022 in WP No. 20249 of 2021 and WMP No. 21510 of 2021 in respect of Shri. Chandrasegaram Vijayasundaram and 5 others in a matter of Sri Lankans collectively wearing 1594 gms of gold jewellery 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 the 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.

16.3. Government, observing the ratios of the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

17. In view of the foregoing paras, the Government finds that as the Applicant had not declared 03 gold chains and 01 gold kada of 24KT purity, collectively weighing 1281 grams and valued at Rs. 36,70,046/- at the time of arrival, the confiscation of the same was justified. The quantum of gold under import is not large and is not of commercial quantity. The impugned gold jewellery recovered from the Applicant were worn by the Applicant and recovered from his trouser pocket and was not concealed in an ingenious manner. The Applicant is well placed financially and has provided the reasons and source of funds and has claimed to be for being gifted to his niece on her wedding and nothing contrary has been proved. There are no allegations that the Applicant is a habitual offender and was involved in similar offence earlier

or there is nothing on record to prove that the Applicant was part of an organized smuggling syndicate.

18. The Government finds that the quantum of gold in question, the reason for which it was brought, the Applicant being a person of good means and having given the source of income for the purchase of the gold jewellery suggests that this case is a case of non-declaration of gold jewellery by the Applicant. The absolute confiscation of the impugned 03 gold chains and 01 gold kada of 24KT purity, collectively weighing 1281 grams and valued at Rs. 36,70,046/- leading to dispossession of the Applicant of the same in the instant case is therefore harsh and not reasonable. In view of the aforesaid facts and considering that the Applicant is a Non Resident Indian, option to re-export the impugned gold jewellery on payment of redemption fine should have been allowed. Considering the above facts, Government is inclined to modify the absolute confiscation and allow the impugned gold jewellery to be re-exported on payment of a redemption fine.

19. Applicant has also pleaded for reduction of the penalty imposed on him. The market value of the gold jewellery in this case is Rs.36,70,046/-. From the facts of the case as discussed above, Government finds that the penalty of Rs. 4,00,000/- imposed on the Applicant under Section 112 (a) (i) of the Customs Act, 1962 is commensurate to the omissions and commissions of the Applicant.

20. In view of the above, the Government modifies the Order-in-Appeal No. MUM-CUSTM-PAX-APP-848/2021-22 dated 28.10.2021 [Date of issue: 01.11.2021] [F. No S/49-1105/2020] passed by the Appellate Authority and holds that the pre-deposit payable in terms of Section 129B of the Customs Act, 1962 has been paid by the Applicant and further allows the Applicant to redeem the impugned 03 gold chains and 01 gold kada of 24KT purity, collectively weighing 1281 grams and valued at Rs. 36,70,046/-, for re-export,

on payment of a redemption fine of Rs. 7,00,000/- (Rupees Seven Lakhs only).
The penalty of Rs. 4,00,000/- imposed on the Applicant under Section 112 (a)
(i) of the Customs Act, 1962 by the OAA is sustained.

21. The Revision Application is disposed of on the above terms.

Shrawan
28/9/23
(SHRAWAN KUMAR)

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

ORDER No. 711/2023-CUS (WZ)/ASRA/MUMBAI DATED 28.09.2023.

To,

1. Mr. Anil Nair Purvankara, Puthiya Veedu, Padlin Attam Kozhuval, Nileshwar, PO Kasargod, Kerala 671 314.
2. The Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, 5th Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
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. Noticeboard.

