



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. 380/10/B/WZ/18-RA

763

Date of Issue 21.02.2022

ORDER NO. 74 /2022-CUS (WZ)/ASRA/MUMBAI DATED 17.02.2022  
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.

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

Respondent: Shri. Hitesh Talakshi Gala

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-650-17-18 dated 26.10.2017  
[S/49-534/2016/AP] passed by the Commissioner of  
Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Pr. Commissioner of Customs, CSI Airport, Mumbai (herein referred to as Applicant) against the Order in Appeal No. Order-in-Appeal No. MUM-CUSTOM-PAX-APP-650-17-18 dated 26.10.2017 [S/49-534/2016/AP] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Briefly stated the facts of the case are that the Respondent who had arrived at the CSI Airport was intercepted on 17.04.2015 by Customs at the exit gate on the basis of suspicion. The Respondent had handed over a Customs Declaration Form wherein the contents pertaining to the disclosure of dutiable goods had been left blank. The Respondent had arrived from Bangkok by Thai Airways Flight No. TG317/17.04.2015. Personal search of the baggage of the Respondent resulted in the recovery of 12 cut pieces of gold bars totally weighing 804 grams and valued at Rs. 19,63,737/- which had been concealed in a silver coloured rexin cloth which was affixed / stuck to the hand baggage compartment of the baggage trolley. The Respondent was holding Indian Passport No. K4544259 issued at Mumbai on 29.05.2012 and valid up to 28.05.2022.

3. The Original Adjudicating Authority viz, Additional Commissioner of Customs, CSI Airport, Mumbai. vide Order-In-Original No. ADC/RR/ADJN/323/2016-17 dated 29.09.2016 [F.No. S/14-5-290/2015-16 ADJN // SD/INT/AIU/174/2015 APB] ordered for the absolute confiscation of the 12 cut pieces of gold bars, totally weighing 804 grams and valued at Rs. 19.63,737/- under Section 111(d), (l) & (m) of the Customs Act, 1962. Also, a penalty of Rs. 2,00,000/- was imposed on the Respondent under Section 112 (a) and (b) of the Customs Act. 1962.

4. Aggrieved by the said order, the Respondent had filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-650-17-18 dated 26.10.2017 [S/49-534/2016/AP] allowed the release of the gold on payment of redemption fine of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only)

and the penalty of Rs. 2,00,000/- imposed on the Respondent by the Original Adjudicating Authority was upheld.

5. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds;

5.1 that the order passed by the appellate authority was not legal and proper. was the owner of the seized.

5.2. that the manner of concealment was not only ingenious but also premeditated.

5.3. that the Respondent had willfully made a false declaration had not been considered by the appellate authority.

5.4. that the gravity of the offence committed by the Respondent had not been properly considered by the appellate authority.

5.5. the applicant has cited some case laws to buttress their case.

Applicant has prayed for setting aside the order passed by the appellate authority and the order passed by the original adjudicating authority may be upheld or pass any order as deemed fit and proper.

6. The Respondent vide their letter dated 30.04.2018 has stated the following;

6.1. that the option of redemption was a subject to judicial interpretation and there are various instances wherein the higher courts have allowed the same.

6.2. that the cases cited by the applicant in their revision application was not applicable to the case of the respondent.

6.3. that the respondent has cited some case laws to buttress their case.

6.4. that there is no error in the order passed by the appellate authority.

7. Personal hearings through the online video conferencing mode was scheduled for 16.11.2021 / 23.11.2021. Shri. Prakash Shingrani, Advocate for the applicant attended the physical hearing on 14.12.2021 and submitted that Commissioner (Appeals) has passed a reasonable order and requested to maintain the same.

8. The Government has gone through the facts of the case, and notes that the Respondent had passed through the green channel and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Also, in the Customs Declaration Form filed by the Respondent he had failed to mention that he was carrying dutiable goods. The gold had been placed inside a rexin pouch which then had been consciously and ingeniously attached to the baggage trolley to evade detection. The quantity of gold is quite substantial brought for commercial use. The type of gold too indicates that it was for commercial use. From the manner of concealment adopted by the Respondent which was innovative, conscious, premeditated and ingenious, it is evident that he had harboured no intention to declare the gold to the Customs and pay Customs duty thereon. The Government finds that the confiscation of the gold is therefore justified.

9. From the records with the Revisionary Authority, Government notes that in Revision Application F.No. 371/25/B/17-RA filed by the Respondent (i.e. Shri. Hitesh Talakshi Gala), was found involved in another case wherein 312 grams of gold (i.e. six cut pieces of gold) valued at Rs. 7,26,032/- had been seized from him. In the other case i.e. pertaining to RA No. F.No. 371/25/B/17-RA, the Respondent had disclosed that he had been involved in this case were 804 gms of gold pertaining to this case no. i.e. SD/INT/AIU/174/2015 APB]. Government notes that the residential address disclosed in the other case is 1/1, Siddhart Chawl, Kajupada, Pipeline, Sakinaka, Mumbai – 400 072 & passport no. N4225092 issued at Mumbai on 28.10.2015 and valid up to 27.10.2025. Both the address as well as passport no. found in the other case is different from this case and it is imperative that Applicant i.e. Pr. Commissioner of Customs, CSI Airport, Mumbai takes up this issue with the passport authorities for appropriate action. The antecedents of the Respondent indicates that he has adopted unscrupulous means and identity to engage in smuggling of gold.

10. 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".

11. 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.

12. 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.*

13. The main issue in the case is the quantum and 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 ingenious, clever with conscious intent, quantity being large and commercial, this being a clear attempt to smuggle gold bars in primary form, 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 gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. If the gold is not detected by the Custom authorities, the passenger gets away with smuggling and if not, he has the option of redeeming the 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. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity. Therefore, the order passed by the appellate authority is liable to be set aside and the order passed by the original adjudicating authority deserves to be restored.

14. Moreover, noting that subsequently too the Respondent has indulged in smuggling activities, Government notes that the applicant is a habitual / repeat offender and has exhibited a contumacious attitude towards the law. Government finds that the plea of the Respondent to maintain the order of the appellate authority does not deserve consideration also taking into account the new revelation, albeit of an offence committed subsequently, the fact remains that the respondent has gone ahead and indulged in similar offence exhibiting a trait of habitual / repeat offender, Government notes that the Order passed by the appellate authority deserves to be set aside on this account also and the order passed by the original adjudicating authority deserves to be restored. This would also act as a deterrent for attempting to smuggle the gold.

15. Government finds that the penalty of Rs. 2,00,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed and Government is not inclined to interfere in the same.

16. In the aforesaid circumstances, the Government restores the Order-In-Original passed by the Original Adjudicating Authority.

17. The Revision Application is allowed.

  
( SHRAWAN KUMAR )

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

ORDER No. 74 /2022-CUS (WZ) /ASRA/

DATED 17/02/2022

To,

1. Pr. Commissioner of Customs, Chhatrapati Shivaji International  
Airport, Terminal - 2, Mumbai - 400 099.

2. Shri. Hitesh Talakshi Gala, C-1103, HDIL Premier Residency, Near Kohinoor Hospital, Kurla (West), Mumbai – 400 070

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.