

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. 371/25/B/17-RA / ३७१

Date of Issue 21.02.2022

ORDER NO. ७५ /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 : Shri. Hitesh Talakshi Gala

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-279-17-18 dated 31.05.2017  
[S/49-264/2016-17/AP] passed by the Commissioner of  
Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri. Hitesh Talakshi Gala (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-279-17-18 dated 31.05.2017 [S/49-264/2016-17/AP] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Briefly stated the facts of the case are that the Applicant who had arrived at the CSI Airport was intercepted on 12.01.2016 by Customs at the exit gate after he had walked past the green channel and after having handed over a 'nil' Customs Declaration Form. The applicant had arrived from Bangkok via Delhi by Air India Flight No. AI-102. The examination of the applicant led to the recovery of 6 nos of cut pieces of gold bars, totally weighing 312 grams and valued at Rs. 7,26,032/- which had been kept inside the right shoe worn by him. The applicant in his statement admitted that on an earlier occasion also, he was involved in a case related to seizure of gold totally weighing 804 grams valued at Rs. 19,63,737/- registered vide F.No. SD/INT/AIU/174/2015 AP"B" and was aware that carrying gold and not declaring the same and evading Customs duty was punishable under the Customs Act, 1962. The applicant was holding Indian Passport No. N4225092 issued at Mumbai on 28.10.2015 and valid up to 27.10.2025.

3. The Original Adjudicating Authority viz, Additional Commissioner of Customs, CSI Airport, Mumbai. vide Order-In-Original No. RR/ADJN/388/2015-16 dated 11.03.2016 [F.No. AIRCUS/49/T2/748/2016 AP D] ordered for the absolute confiscation of the six cut pieces of gold bars, totally weighing 312 grams and valued at Rs. 7,26,032/- under Section 111(d), (l) & (m) of the Customs Act, 1962. Also, a penalty of Rs. 75,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the appellate authority viz, Commissioner of Customs (Appeals), Mumbai - III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-279-17-18 dated 31.05.2017 [S/49-264/2016-17/AP] did not find it necessary to interfere in the Order-In-Original passed by the Original Adjudicating Authority.

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

5.1 that he was the owner of the seized gold.

5.2. that in similar cases of concealment, the option of redemption had been granted and therefore, requested to set aside the absolute confiscation held by the appellate authority.

Applicant has prayed for setting aside the order of absolute confiscation, reduction of penalty or to grant any other relief as deemed fit.

6. Personal hearings through the online video conferencing mode was scheduled for 16.11.2021 / 23.11.2021, 03.12.2021 / 09.12.2021. Shri. Prakash Shingrani, Advocate for the applicant attended the physical hearing on 14.12.2021 and submitted that quantity of gold was small and it was for personal use. He requested to release the same on reasonable RF and penalty.

7. The Government has gone through the facts of the case, and notes that the applicant 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 applicant he had failed to mention that he was carrying dutiable goods. The gold had been consciously kept concealed inside the right shoe worn by him. Also, the applicant admitted that on an earlier occasion gold had been recovered from him. Which indicates that he was aware of the law and was also an habitual offender. From

the actions of the applicant, it is evident that the applicant had not intended to declare the same to Customs. The Government finds that the confiscation of the gold is therefore justified.

8. Based on the disclosure made by the applicant which is recorded in the Order-In-Original, the database maintained at the Revisionary Authority, Mumbai was checked and it was seen that the Respondent viz, Pr. Commissioner of Customs, CSI Airport, Mumbai has filed a revision application F. No. 380/10/B/WZ/18-RA. The file no of that case i.e. F.No. SD/INT/AIU/174/2015 AP”B” and the quantity of gold seized disclosed by the applicant matches with that in the other revisionary application no. F. No. 380/10/B/WZ/18-RA. The quantity of gold which had been seized in the other case was 12 cut pieces of gold bar valued at Rs. 19,63,737/-. Government notes that the residential address disclosed in the other case is C-1103, HDIL Premier Residency, Near Kohinoor Hospital, Kurla (West), Mumbai - 400 070 & passport no.K4544259 issued at Mumbai on 29.05.2012 valid upto 28.02.2022. Both the address as well as passport found in the other case is different from this case and it is imperative that Respondent takes up this issue with the passport authorities for appropriate action. The antecedents of the applicant indicates that he has adopted unscrupulous means and identity to engage in smuggling of gold.

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 Applicants 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. Noting the antecedents of the applicant and his previous involvement in smuggling of gold, Government notes that the applicant is a habitual / repeat offender and has exhibited a contumacious attitude towards the law. The quantity of gold seized in this case is not of consequence. The fact is that the applicant is a habitual offender, consciously and in premeditated planning had attempted to smuggle the impugned gold. Had it not been due to the alertness and diligence of the officers manning the exit gate, the applicant would have gotten away with the impugned gold without discharging the duty. . 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. The Applicant has pleaded for setting aside the Order passed by the Lower Adjudicating Authority which has been upheld by the Appellate Authority. For the aforesaid reasons, Government finds that the plea of the applicant does not deserve consideration. The Government notes that the order of absolute confiscation upheld by the Appellate authority is proper and judicious. The

Government, keeping in mind the facts of the case is not inclined to interfere with the order of absolute confiscation passed by the appellate authority. This would also act as a deterrent for attempting to smuggle the gold.

13. Government finds that the penalty of Rs. 75,000/- 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.

14. The Revision Application is accordingly dismissed.

*Shrawan*  
17/02/22  
( SHRAWAN KUMAR )

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

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

DATED 17.02.2022

To,

1. Shri. Hitesh Talakshi Gala, 1/1, Siddhart Chawl, Kajupada, Pipeline, Sakinaka, Mumbai - 400 072.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Mumbai - 400 099.

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.