

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. 371/287/B/WZ/2021-RA | 7653 Date of Issue 26.10.2023

---

ORDER NO. 786/2023-CUS (WZ) /ASRA/MUMBAI DATED 25.10.2023  
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.

---

**REVISION APPLICATION : F.No. 371/287/B/WZ/2021-RA.**

Applicant : Shri. Kapil Makhanlal Vishnani

Respondent : Pr. Commissioner of Customs (Airport), Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. AHD-  
CUSTM-000-APP-288-21-22 dated 27.07.2021; DOI:  
27.07.2021 issued through F.No. S/49-  
251/CUS/AHD/2020-21 passed by the Commissioner of  
Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri. Kapil Makhanlal Vishnani (*herein referred to as Applicant*) against the Order-in-Appeal No. AHD-CUSTOM-000-APP-288-21-22 dated 27.07.2021; DOI: 27.07.2021 issued through F.No. S/49-251/CUS/AHD/2020-21 passed by the *Commissioner of Customs (Appeals)*, Ahmedabad.

2(a). Brief facts of the case are that on 05.03.2019, the Officers of Customs had intercepted the Applicant at Sardar Vallabhbhai Patel International Airport, Ahmedabad (SVPIA) where he had arrived from Dubai by Spice Jet Flight No. SG-016 / 05.03.2019 and had opted for the green channel facility. To the query put forth to him regarding possession of any dutiable goods, he had replied in the negative. The applicant was asked to pass through the Door Frame Metal Detector (DFMD) machine which indicated presence of metal on his person. Even after removing all the metal objects in his possession, the DFMD indicated presence of metal. Thereafter, the applicant was requested to change the jeans worn by him. When he passed through the DFMD, there was no indication of presence of any metal which meant that the jeans that had been worn by the applicant contained some metallic objects. This pair of jeans was subjected to X-ray, which indicated presence of metal in the waist area of the jeans. Thereafter, the stitches of the jeans in the waist area were cut open, and two rectangular packets wrapped in adhesive tape were retrieved. Two gold bars totally weighing 233.290 grams of 999 purity valued at ₹ 7,15,547/- (T.V) were recovered from the applicant.

2(b). Applicant informed that the said gold bars did not belong to him and had been given to him by his father's friend to be delivered to a person at Jaipur. He would receive ₹ 10,000/- for the same.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Asstt. Commissioner of Customs, SVPIA, Ahmedabad vide

Order-In-Original No. 10/AP/LP-AC/SVPIA/2020-21 dated 31.07.2020, DOI - 31.07.2020 issued through F.No. VIII/10-110/SVPIA/O&A/HQ/2019-20 ordered for the absolute confiscation of the two gold bars, totally weighing 233.290 gms and valued at ₹ 7,15,547/- (T.V) and a LMV of ₹ 7,82,688/- under Section 111 (d), (i), (1) and (m) of the Customs Act, 1962. Further, a penalty of ₹ 70,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeals), Ahmedabad who vide Order-in-Appeal No. AHD-CUSTOM-000-APP-288-21-22 dated 27.07.2021; DOI: 27.07.2021 issued through F.No. S/49-251/CUS/AHD/2020-21 upheld in toto, the OIO passed by the OAA.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

5.01.that though it was true that the gold had been recovered from his possession, it is alleged that his statement was recorded under fear and duress; that gold was neither prohibited nor restricted; that at the material time he had been carrying a receipt for the gold; which had not been taken on record; that the orders of the lower authorities was patently erroneous; that he was unable to declare the gold as the practice of distribution of disembarkation cards / declaration had been discontinued by the airlines; that on oral declaration too was a declaration under Section 77 of the Customs Act, 1962; that he relied upon the case of Naresh Lokumal Serai vs. Commr. of Customs (Exports), Raigad, 2006-203-ELT-580-Trib-Mum on this issue;

5.02. that section 125 of the Customs Act, 1962 clearly laid down that where the goods are not prohibited and in the event of confiscation, these goods have to be released on redemption fine and the OAA had no option; that on this issue they relied on the case of Commr. of Customs (AIR) vs. P. Sinnasamay passed by Hon'ble High Court, Madras in CMA No. 1638 of 2008;

5.03. that on the issue of use of discretion by the OAA, the applicant has relied on a host of case laws passed at various forums like Apex Court, High Courts etc.

5.04. that they have relied on the undermentioned case laws wherein release of gold had been ordered;

- (a). Yakub Ibrahim Yusuf vs CC, Mumbai 2011 (263) ELT 685
- (b). Shaikh Jamal Basha vs Government of India 1997 (91) ELT 277 (AP)
- (c). VP Hameed vs Collector of Customs, Mumbai 1994 (73) ELT 425 (Tri)
- (d). T. Elavarasan vs Commissioner of Customs (Airport), Chennai 2011 (266) ELT 167 (Mad)
- (e). A.Rajkumari vs CC, Chennai 2015 (321) ELT 540 (Tri-Chennai)
- (f). UOI vs. Dhanak M. Ramji; 2009(248) ELT 127 (BOM) which has been upheld by the Apex Court - 2010-252-ELTA102(SC).
- (g). etc.

5.05. applicant has also have also relied upon the undermentioned cases,

- (a). Order No: 73/2020-CUS(WZ)/ASRA/MUMBAI DT. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan. (Concealment case Gold strips as Anklets granted RF, PP);
- (b). Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala. (Eligible passenger granted re-export);
- (c). Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri. (Eligible passenger granted re-export);
- (d). Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar. (Concealment case Gold Bars in jeans pant granted RF,PP);
- (e). Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal. (Concealment case Gold bars from socks granted RF, PP)
- (f). Order No: 20/2021 CUS(WZ)/ASRA/MUMBAI DT. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi. (Eligible passenger granted RF,PP.)
- (g). Order No: 140/2021 CUS(WZ)/ASRA/MUMBAI DT. 25.06.2021 in c/a Mohammed Gulfam v/s Commissioner of Customs Ahmedabad. (Ingenious Concealed Rectum Case granted RF,PP)
- (h). Order No: 14/2018-CUS dated 05.01.2018 of GOI in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi. (Ingenious Concealed of gold In Shoes Case granted RF,PP)
- (i). etc.

Under the circumstances, the applicant has prayed to the revision authority to allow his revision application; the gold bars taken over may be released; the

penalty imposed on him may be dropped / reduced or pass such order as deemed fit.

6. Personal hearing in the case was scheduled for 09.08.2023, 23.08.2023 Shri. Rishikesh Mehra, Advocate for the applicant appeared for physical hearing on 23.08.2023 and submitted that the applicant brought small quantity of gold for marriage of his daughter. He further submitted applicant was a bonafide passenger and has no past history of any offence. He requested to allow redemption of the same on nominal fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. Thereafter, on interception he had been asked whether he was carrying any dutiable items to which he had replied in the negative. The impugned two bars of gold had been kept concealed inside the waist area of the jeans worn by him with the express intention of hoodwinking the Customs and evading payment of Customs duty. The quantity of gold is small, of very high purity and was in primary form. The applicant clearly had failed to declare the goods to the Customs at the first instance, as required under Section 77 of the Customs Act, 1962. The stitching of the jeans was required to be cut open to retrieve the two gold bars. This reveals that the act committed by the applicant was conscious and pre-meditated. Had he not been intercepted; the applicant would have gotten away with the gold which had not been declared. Therefore, the confiscation of the gold was justified.

8. 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".

9. 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.

10. 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.*

11. The quantity of the gold under import is small and is not of commercial quantity. The two gold bars had been kept inside the waist area of the jeans which had then been stitched over to avoid detection. Government notes that at times travellers resort to such innovative methods for safe keeping and for safety reasons to avoid theft of their valuables during travel. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The quantity of gold and the facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

12. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government for the aforesaid reasons, is inclined to set aside the absolute confiscation held in the OIA and grant option to release the impugned gold on payment of a redemption fine.

13. Government notes that the penalty of ₹ 70,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 is commensurate with the

omissions and commissions committed and is not inclined to interfere in the same.

14. Accordingly, the Government sets aside the impugned order of the appellate authority. The impugned two gold bars, totally weighing 233.290 grams valued at ₹ 7,15,547/- (T.V) and a LMV of ₹ 7,82,688/ are allowed to be redeemed on payment of a redemption fine of ₹ 1,40,000/- (Rupees One Lakh Forty Thousand only). The Government finds that the penalty of ₹ 70,000/- (Rupees Seventy thousand only) imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed.

15. Revision Application is disposed of on the above terms.

*Shrawan*  
25/10/23  
(SHRAWAN KUMAR)

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

**ORDER No. 786 /2023-CUS (WZ) /ASRA/MUMBAI DATED 5.10.2023**

To,

1. Shri. Kapil Makhanlal Vishnani, **address no. 1;** MB-1/503, Pratap Apartments, Sector - 29, Pratap Nagar, Sanganer, Jaipur, Rajasthan - 302 033. **address no. 2;** Flat No. 305, 3<sup>rd</sup> Floor, Jay Bholenath Flats, Opp. Sarathi Bungalows, Sardarnagar, Ahmedabad.
2. The Pr. Commissioner of Customs, Custom House, 1st Floor, Opp. Old High Court, Navrangpura, Ahmedabad - 380 009.

Copy to:

1. Rishikesh Mehra, B/1103, Dev Vihaan, Behind 3<sup>rd</sup> Eye Residency, Motera Stadium Road, Motera, Saharmati, Ahmedabad - 380 005.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
- ✓ 4. Notice Board.