

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. 371/182/B/WZ/2022-RA

Date of Issue

02.11.23

ORDER NO. 799 /2023-CUS (WZ) /ASRA/MUMBAI DATED 30.10.2023
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. 371/182/B/WZ/2022-RA.

Applicant : Shri. Jigneshkumar Jitendrabhai Patel

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-1431-21-22 dated 19.01.2022; DOI:
19.01.2022 issued through F.No. S/49-
937/CUS/AHD/2020-21/1859 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri. Jigneshkumar Jitendrabhai Patel (herein referred to as Applicant) against the Order-in-Appeal No. AHD-CUSTOM-000-APP-1431-21-22 dated 19.01.2022; DOI: 19.01.2022 issued through F.No. S/49-937/CUS/AHD/2020-21/1859 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2(a). Brief facts of the case are that on 12.10.2019, the *Officers of Customs* had intercepted the Applicant at Surat International Airport, Surat, (SIA) where he had arrived from Sharjah by Air India Express Flight No. IX-172 / 11.10.2019 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. After removing all the metal objects in his possession, the DFMD again indicated presence of metal on the applicant. He was once again asked whether he was carrying any metallic objects in his clothes or hidden in his body. To this, the applicant replied in the negative. Again, he was requested to pass through the DFMD which indicated the presence of metal. Thereafter, a physical search of the applicant was carried out which led to the recovery of 08 nos of FM gold biscuits hidden in customised pockets in the waist area of the jeans, 10 FM gold biscuits hidden in customised pockets made on denims and kept under both soles of the feet (5 under each sole), 01 FM gold biscuit in the pocket of the jeans and 02 gold bracelets which had been hidden in the back pocket of the jeans worn by him. The gold recovered from the applicant were assayed through a Government Approved Valuer who certified that the 19 FM gold biscuits were of 24 karats, totally weighing 2216 grams and the 02 gold bracelets were of 22 karats, both weighing 45.510 grams. Thus, 19 FM gold biscuits and 02 gold bracelets, totally weighing 2261.860

grams, valued at Rs. 89,19,965/- (LMV) and having tariff value of Rs. 78,04,371/- were recovered from the applicant.

2(b). In his statement dated 12.10.2019, recorded under Section 108 of the Customs Act, 1962, the applicant revealed that the 02 gold bracelets had been purchased by him while the 19 FM gold biscuits belonged to one, Yogeshbahi Patel of Dubai and had been carried for a monetary consideration of Rs. 1,00,000/- with direction to hand over the same to a person at Surat.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Joint Commissioner of Customs, SIA, Surat vide Order-In-Original No. 10/AKM/JC-SRT/2020-21 dated 14.08.2020, DOI - 19.08.2020 issued through F.No. VIII/10-04/O&A/ADC/Jignesh/2020 ordered for the absolute confiscation of the 19 gold biscuits and 02 gold bracelets, totally weighing 2261.860 grams, valued at Rs. 89,19,965/- (LMV) and Rs. 78,04,371/- (TV) under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962. Further, a penalty of ₹ 5,00,000/- was imposed on the applicant under Section 112 (a) 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-1431-21-22 dated 19.01.2022; DOI: 19.01.2022 issued through F.No. S/49-937/CUS/AHD/2020-21/1859 upheld in to-to, 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 was alleged (by him) that his statement was recorded under fear and duress; that gold was neither prohibited nor restricted; that at the material time he had not been carrying a receipt for the gold; that he had

been intercepted prior to his declaration; that he had brought the gold from his personal savings; that he had enclosed the copy of the tax invoice in his present submissions; ; 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 an 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, such as,
- (a). In Aero Traders Pvt. Ltd vs. Ravinder Kumar Suri passed by Apex Court; [AIR-2005-SC-15];
- (b). In State of NCT of Delhi vs. Sanjeev passed by Apex Court; [2005-5-SCC-181];
- (c). In Reliance Airport Developers Pvt. Ltd. v/s. Airports Authority of India passed by Apex Court; [2006-10-JT-423(SC)];
- 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). Commr. of Customs, Lucknow vs. Mohd. Nayab & Imtiyaz Idris; 2017-357-ELT-201-Tri-All;
- (h). etc.
- 5.05. applicant has 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). Order no. 10/2019 CUS(WZ)/ASRA/MUMBAI dated 30.09.2019 in c/a Smt Fathimath Raseena Mohammed vs. Commr of Customs, CSMI Airport, Mumbai (Ingeniously concealed in undergarment, RF, PP).
- (j). 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 or allowed to be re-exported; the penalty imposed on him may be dropped / reduced; warehousing charges to be made available from receiving order; or pass such order as deemed fit.

6. Personal hearing in the case was scheduled for 23.08.2023 Shri. Rishikesh Mehra, Advocate for the applicant appeared for physical hearing on 23.08.2023 and submitted that the applicant brought some gold. He further

submitted that gold is not prohibited item. He requested to allow redemption of the same on reasonable 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 19 gold biscuits and 2 gold bracelets had been kept concealed inside specially crafted pockets; 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 substantial, of very high purity and was in primary form. The applicant clearly had failed to declare the goods to the Customs as required under Section 77 of the Customs Act, 1962 not only at the first instance, but also when the DFMD indicated the presence of metal. Even after the DFMD indicated the presence of metal, the applicant had denied that he was carrying any contraband / gold. 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. Government observes that the quantum of gold is large, of high purity, in primary form, of commercial quantity, for commercial use and it was consciously and premeditatedly not declared. Applicant was acting for monetary benefit as a carrier and the substantial quantity indicates that gold was being smuggled for commercial purpose. Gold had been concealed in a very innovative and ingenious manner. All this clearly reveals his firm intention to evade duty and smuggle the gold into India. The circumstances of the case especially the quantum and primary form indicates that the gold was for commercial purposes and that the applicant worked as a conduit and harboured no intention of declaring the gold to the Customs at the airport. All these facts have been properly considered by the Original Adjudicating Authority while absolutely confiscating the 19 gold biscuits and 2 gold bracelets, totally , valued at Rs. 89,19,965/- (LMV) and Rs. 78,04,371/-

12. 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 clever and innovative with conscious and firm intent to hoodwink the Customs and evade payment of duty, 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 the 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 large quantity of gold would have passed

undetected. The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. Such blatant 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 attempts and would deter persons who indulge in such acts with impunity. Therefore, Government finds that the OIO passed by the OAA is proper and legal and the same has been rightly upheld by the AA. In this case, judicious application of discretion in light of directions of Hon'ble Supreme Court as contained in decision at para 10, above is evident.

13. Since, in the foregoing para, Government has upheld the absolute confiscation of the gold, the question to allow re-export of the gold does not arise.

14. Government notes that the penalty of ₹ 5,00,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

15. In view of the above, the Government finds no merits in the revision application filed by the applicant. Accordingly, the revision application filed by the applicant is hereby, rejected

Shrawan
30/10/23
(SHRAWAN KUMAR)

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

ORDER No. 799 /2023-CUS (WZ) /ASRA/MUMBAI DATED 30.10.2023

To,

1. Shri. Jigneshkumar Jitendrabhai Patel, address ; Mandir Faliya, Atgam, Valsad - 396 045.

2. The Pr. Commissioner of Customs, Custom House, 1st Floor, Opp. Old High Court, Navrangpura, Ahmedabad - 380 009.
3. Jt. / Addl. Commr. of Customs, Custom House, Althan Bhimrad Road, Nr. SMC Ward Office, Althan, Surat - 395 007.

Copy to:

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