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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/94/B/WZ/2021-RA / 8166 Date of Issue 04.12.2023

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ORDER NO. 877 /2023-CUS (WZ)/ASRA/MUMBAI DATED 30.11.2023  
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.

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**F.No. 371/94/B/WZ/2021-RA**

Applicant : Shri. ILYAS ISMAIL SHAIKH

Respondent : Pr. Commissioner of Customs, Chhatrapati Shivaji  
Maharaj International Airport, Sahar, Andheri (East),  
Mumbai - 400 099.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-1438/2019-20 dated 28.01.2021  
issued on 12.02.2021 through F.No. S/49-968/2019  
passed by the Commissioner of Customs (Appeals),  
Mumbai - III.

**ORDER**

This revision application has been filed by Shri. ILYAS ISMAIL SHAIKH (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1438/2019-20 dated 28.01.2021 issued on 12.02.2021 through F.No. S/49-968/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that on 14.01.2019, the Officers of Customs intercepted the applicant who had arrived at the Chhatrapati Shivaji Maharaj International Airport (CSMI), Mumbai from Bangkok by Air India Flight No AI 1331 / 14.01.2019. Applicant was intercepted near the exit gate after he had cleared himself through the green channel. Detailed examination of his baggage as well as his personal search was conducted, however, nothing incriminating was found. During the inquiry, it was revealed that applicant had dropped on packet near Oversize Cargo Belt in mishandled baggage area opp. belt no. 5 in the Arrival Hall of CSMI Airport. Upon verification, one black coloured packet lying unattended was found lying near Oversize Cargo Belt in mishandled baggage area opp. belt no. 5 in the Arrival Hall. The applicant identified and accepted that the packet belongs to him and that he had dropped the same. On opening the said packet, 3 nos of cut pieces of gold, totally weighing 634 grams and valued at Rs. 18,61,107/- was found. The Government Approved Valuer certified that the 3 cut pieces of gold, weighed 634 grams were of 24Kts purity and valued it at Rs. 18,61,107/-.

2(b). The applicant in his statement recorded under Section 108 of the Customs Act, 1962 admitted that he was the owner of the 3 cut pieces of gold bars; that the gold had been purchased from a loan from his father and his personal savings; that he had paid Rs. 15 lakhs for the gold at Bangkok; that he had carried the money while travelling to Bangkok; that out of fear he had

dropped the gold near Oversize Cargo Belt in mishandled baggage area opp. belt no. 5 in the Arrival Hall of CSMI Airport; that he did this to avoid payment of Customs duty; that he was aware that importation of gold without a declaration was an offence; that he did not have any invoice for the gold;

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/160/2019-20 dated 20.09.2019 [DOI : 20.09.2019] issued through S/14-5-117/2019-20/Adjn (SD/INT/AIU/17/2019 AP'A'), ordered for the absolute confiscation of the 634 grams of gold, valued at Rs. 18,61,107/- under under Section 111 (d), (1) and (m) of the Customs Act, 1962. Further, a penalty of Rs. 1,90,000/- 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 (AA) i.e. Commissioner of Customs (Appeals), Mumbai - III who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1438/2019-20 dated 28.01.2021 issued on 12.02.2021 through F.No. S/49-968/2019 held that the OAA had rightly confiscated the gold absolutely and that redemption in such cases could not be claimed as a right and had upheld in to-to, the OIO passed by the OAA.

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

5.01. that notification no. 50/2017-Cus dated 30.06.2017 was only an exemption notification and applicant had not claimed the same. It cannot be made applicable in the present case; that this notification was only an exemption notification and did not stipulate that gold was prohibited and the eligibility of the applicant for concessional rate of duty was never an issue claimed by the applicant.; that even the

Baggage Rules does not prohibit the importation of gold; the applicant has cited the following case laws;

(a). Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C).

(b). Madras High Court in, Commissioner Of Customs (Air) vs Samynathan Murugesan 2010-254-ELT-Madras upheld by Apex Court, on 27 April, 2009., and

(c). In T. Elavarasan Vs Commissioner of Customs (Airport), Chennai 2011 (266) ELT 167 (Mad),

(d). Hon'ble Andhra Pradesh High Court in the case of Shaikh Jamal Basha vs Government of India - 1997 (91) ELT 227(AP),

(e). In the the case of U.O.I vs. Dhanak Madhusudan Ramji Versus [2003(248) ELT 128 (Bom)],

(g). Sapna Sanjeev Kohli Vs Commissioner of Customs, Alrport, Mumbai [2010(253) ELT A52(SC)];

5.02. that being a frequent traveler, the applicant cannot be labelled as a carrier; that the case was made of presumption; that merely because someone travels abroad frequently, it would not mean that they are engaged in smuggling activity; that allegation that applicant was a carrier was made on presumptions; that the same was baseless and untire; the applicant has cited the following case laws;

(a). Supreme Court in the case of Oudh Sugar Mills vs. UOI reported in 1978 ELT (J-172);

(b). Tribunal in the case of Madhu Food Products vs CCE reported in 1995 (76) ELT 197;

(c). In the case of UP State Sugar Corpn vs. CCE reported in 2000 (127) ELT 83;

(d). Customs, Excise and Gold Tribunal - Tamil Nadu in M/S. Dulichand Silk Mills (P) Ltd. vs C.C.E. Hyderabad on 20 April, 2001: 2001 (76) ECC 308, 2001 ECR 113 Tri Chennai, 2001 (133) ELT 468 Tri.,

5.03. that Gold is not prohibited goods. It is submitted that gold is not a prohibited item and is only a restricted item. Prohibition relates to goods which cannot be imported or exported by any one, such as arms, ammunition, drugs etc. The intention behind the provisions of Section 125 is that import/export of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole. This would not apply to a case where import/export of goods is permitted subject to certain conditions or to a certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied with. In such a situation, the release of such goods confiscated would not cause any danger or detriment to public health. Admittedly, import/export of gold is permitted subject to certain conditions, therefore, it would not fall under the prohibited category as

envisaged under the said of Section 125 of the Customs Act, 1962. They have relied upon the case of Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009 (241) ELT 182 (Cal.); that the AA erred in holding that gold is prohibited goods; that the OAA ought not have confiscated the gold absolutely, as gold is not prohibited goods; that in a catena of decisions, Tribunals, Courts and the Government of India in its orders in revision have directed that confiscated gold have to be allowed to be redeemed on payment of appropriate fines by the persons from whom they were seized and confiscated; that they have relied on the following case laws where goods had been released;

- (a). Apex Court in Hargovind Das K. Joshi Vs Collector of customs 1992 (61) ELT 172(SC);
  - (b). Apex Court in Universal Traders v. Commissioner - 2009 (240) E.L.T. A78 (SC)
  - (c). Tribunal in Gauri Enterprises Vs CC, Pune 2002 (145) ELT (705) (Tri Bangalore,
  - (d). Bombay High Court in CC (Airport), Mumbai Vs Alfred Menezes 2009 (242) ELT 334 (Bom)
  - (e). Tribunal in Yakub Ibrahim Yusuf 2011 (263) EL. T. 685 (Tri. — Mumbai)
  - (f). Andhra High Court in Shaik Jamal Basha Vs Government of India 1997 (91) ELT 277(AP)
  - (g). Tribunal in VP Hameed Vs Collector of Customs Mumbai 1994(73) ELT 425 (Tri)
  - (h). Madras High Court in T. Elavarasan Vs Commissioner of Customs (Airport), Chennai 2011 (266) ELT 167 (Mad),
  - (i). Kadar Mydin vs Commissioner of Customs (Preventive), West Bengal 2011 (136) ELT 758
  - (j). Sapna Sanjeeva Kohli vs Commissioner of Customs Airport, Mumbai 2008 (23) ELT 305
  - (k). Vattakkal Moosa vs Collector of Customs, Cochin 1994 (72) ELT (GOI)
  - (l). Halithu Ibrahim vs CC 2002-TIOL 195-CESTAT-MAD
  - (m). Krishna Kumara vs CC, Chennai 2008 (229) ELT 222 (Tri-Chennai)
  - (n). S.Rajagopal vs CC, Trichy 2007 (219) ELT 435 (Tri-Chennai)
  - (o). M.Arumugam vs CC, Trichirapalli, 2007 (220) ELT 311 (Tri-Chennai),
  - (p). etc.
- 5.03. that the decisions relied upon by the Appellate Authority were not applicable to their case; that they relied on an exhaustive list of case laws on this issue;
- 5.04. that the applicant has claimed ownership of the goods and therefore the goods should have been redeemed to him. In this case it was argued that

goods may not be redeemed to the person in the light of provisions of section 125 of the Customs Act 1962.; that in Section 125(1) provides for offer of redemption to the owner of the goods or where such owner is not known to the person from whose possession or custody such goods have been seized. Therefore, it cannot be held that the owner of the goods was not the passenger, but someone else. The offence committed by the passenger was not in dispute. It is only the decision of absolute confiscation taken in the matter is challenged; that gold should be released on reasonable fine and penalty;

- 5.05. they have relied on the case of Government of India in the case of Mohd Zia UIHaque Vs Addl Commissioner of Customs, Hyderabad vide revision order no 443/12-Cus dated 8-8-12, 2014 (214) ELT 849 (GOI) allowed the confiscated gold to be redeemed on payment of redemption fine.
- 5.06. that they have relied upon the case of Dhanak Madhusudan Ramji Versus Commissioner of Customs (Airport), Mumbai [2009 (237) E.L.T. 280 (Tri. - Mumbai)] Department filed a writ petition against the order of CESTAT in Hon'ble High Court of Bombay. There were twin issues of ownership of goods as well as redemption of the goods. Hon'ble Court considered the issues and the order passed by the tribunal. This case was also upheld by the Apex Court [Union of India v. Dhanak M. Ramji - 2010 (252) E.L.T. A102 (S.C.)]
- 5.07. In the case of A. RAJKUMARI Versus COMMR. OF CUS. (AIRPORT-AJRCARGO), CHENNAI 12015 (321) ELT 5401. Department filed civil appeal in the Apex Court against the above said orders, Hon'ble Apex Court dismissed the appeal on the grounds of delay [Commissioner v. A. Rajkumari 2015 (321) E.L.T. A207 (S.C.)],
- 5.08. etc.

Under the circumstances, the applicant has prayed to the Revision Authority to release the gold on payment of a reasonable redemption fine and penalty and to drop further proceedings.

6. Personal hearing was scheduled for 02.08.2023, 25.09.2023. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing on appointed date i.e. 25.09.2023. Shri. Prakash Shingrani, Advocate submitted that applicant brought some gold. He further submitted that gold is not prohibited item. He requested to allow redemption of gold on reasonable fine and penalty.



7. The Government has gone through the facts of the case and notes that the applicant had abandoned a substantial quantity of gold at the airport. The applicant at random was intercepted by the Customs and on questioning had revealed that he had abandoned 3 cut pieces of gold bars apprehending getting intercepted by Customs. The gold was of high purity and was in primary form. The fact remains that the applicant had brought in substantial quantity of gold and did not intend to declare the gold and harboured an intention to evade payment of Customs duty. The applicant had failed to declare the goods to the Customs as required under Section 77 of the Customs Act, 1962. As per the records, the applicant was a frequent traveller and had travelled to India many times. Being a frequent traveller to India, he was well versed with the law and procedure. It reveals that the act of bringing the gold and abandoning the same was conscious and pre-meditated. 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 substantial and in primary form and was of high purity. Fearing being apprehended, the applicant had abandoned the gold at the airport. attempted to be smuggled into the country is not paramount, the manner in which the gold was attempted to be brought into the country is vital. The applicant is a frequent traveller to India. The OAA had para 19 of the OIO has observed that the applicant had claimed ownership of the gold only during the adjudication process. Government notes that the applicant had not produced any documentary evidence which would show that the gold belongs to him. This act was conscious, pre-planned and pre-meditated which reveals the intention of the applicant not to declare the gold and to evade payment of duty. The aforesaid quantity, purity, act of abandoning the gold, probates that he did not have any intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Original Adjudicating Authority while ordering the absolute confiscation of the gold and appellate authority had rightly upheld the same.

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 fact that the gold bars had been abandoned weighs against the applicant. Government finds that this a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record, inability of the applicant to produce any documentary evidence etc, the adjudicating authority had rightly ordered the absolute confiscation of the impugned gold.

But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Government is in agreement with the order of the AA absolutely confiscating the impugned gold. Considering the aforesaid facts, Government is inclined not to interfere in the order of absolute confiscation passed by the AA.

13. Government notes that the penalty of Rs. 1,90,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 by the OAA and upheld by the AA is commensurate with the omissions and commissions committed and therefore, is not inclined to interfere in the same.

14. For the aforesaid reasons, the Government finds that the OIA passed by the AA is legal and proper and does not find it necessary to interfere in the same. The Revision Application filed by the applicant, fails.

15. Accordingly, for the reasons stated above, the Revision Application filed by the applicant is dismissed.

  
( SHRAWAN KUMAR )

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

**ORDER No. 877/2023-CUS (WZ)/ASRA/MUMBAI DATED 30.11.2023**

To,

1. Shri. ILYAS ISMAIL SHAIKH, 22/28, Mariyam Apts., 1<sup>st</sup> Floor, Flat no. 111, Ismail Curtey Road, Mumbai – 400 003.,
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri East, Mumbai – 400 099.

Copy to:

3. Shri. Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai – 400 051.,
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Notice Board.