

REGISTERED  
SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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F.No. 371/210-212/B/WZ/2022-RA/8194 : Date of Issue : 05.12.2023

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ORDER NO. 880-882/2023-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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Applicant No. 1.(A1) : Shri. Santosh Suresh Vaswani,  
Applicant No. 2.(A2) : Shri. Sunil Karamchandani,  
Applicant No. 3.(A3) : Shri. Suresh Pohumal Rajani.

.....**APPLICANTS.**

Respondent : Pr. Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal Nos.  
AHD-CUSTM-000-APP-1423 to 1425/2021-22 dated  
17.12.2021 issued on 17.12.2021 through F.Nos.  
S/49-817 to 819/CUS/AHD/20-21 passed by the  
Commissioner of Customs (Appeals), Ahmedabad.

**ORDER**

These 3 revision applications have been filed by (i). Shri. Santosh Suresh Vaswani, (ii). Shri. Sunil Karamchandani and (iii). Shri. Suresh Pohumal Rajani [hereinafter all 3 referred to as the Applicants and more specifically, as Applicant No. 1 (A1); Applicant No. 2 (A2) or Applicant No. 3 (A3)] against the Orders-in-Appeal Nos. AHD-CUSTOM-000-APP-1423 to ), 1425/2021-22 dated 17.12.2021 issued on 17.12.2021 through F.Nos. S/49-817 to 819/CUS/AHD/20-21 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2(a). Briefly stated facts of the case are that the applicant no. 1 who had arrived at the Sardar Vallabhbhai Patel International Airport [SVPIA], Ahmedabad from Mumbai as a domestic passenger by Air India Flight No. AI-031 / 15.03.2019 was intercepted by Customs Officers on 15.03.2019 after he had cleared himself through the Green channel facility. A1 had failed to declare the dutiable goods in his possession. He was asked to pass through the Door Frame Metal Detector [DFMD] which indicated the presence of metal. A sankalwali gold chain weighing 462.990 grams and valued at ₹ 14,00,360/- was recovered from the possession of A1 which he had worn around his neck. A1 revealed that this thick sankalwali gold chain was given to him near the food court at Mumbai International Airport by A3 who was an International passenger. A Government Approved Valuer certified that the sankalwali chain was made of gold of purity 999 i.e. 24 karats, weighing 462.990 gms and valued at ₹ 14,00,360/- (TV) and ₹ 15,27,867/- (MV).

2(b). In his statement recorded under Section 108 of the Customs Act, 1962, A1 revealed that on previous occasions he had brought gold

alongwith A2 who was a frequent traveller to Bangkok and had smuggled small quantity out of the airport in similar manner; that on this occasion, A2 and his friend, A3 had travelled to Bangkok on 13.03.2019 and had returned to Mumbai on 14.03.2019 by Air India Flight No. AI-331/14.03.2019; that A3 had handed over the sankalwali gold chain to him (i.e. A1) at the food court located in the CSMI Airport; that thereafter he travelled as domestic passenger to Ahmedabad on Air India Flight no. AI-031 / 15.03.2019; that A3 had also travelled as an International passenger on Air India Flight no. AI-031 / 15.03.2019; that A2 had moved out at CSMI Airport; that he (A1) had invested ₹ 3.25 lakhs in the sankalwali gold chain; that he was aware that carrying gold without declaring the same was an offence under the Customs Act.

2(c). Numerous Summons were issued to A2 and A3 to join the investigations. However, they both had failed to join the investigations.

3. The Original Adjudicating Authority (OAA) viz. Jt. Commr (Customs), Ahmedabad vide his common Order-In-Original no. 29/JC/SM/O&A/HQ/2019-20 dated 19.08.2020 issued through F.No. VIII/10-29/SVPIA/O7A/HQ/2019-20, ordered for the absolute confiscation the sankalwali gold chain, weighing 462.990 grams and valued at ₹ 14,00,360/- under Section 111(d), (i), (l) and (m) of the Customs Act, 1962. A penalty of ₹ 85,000/-, ₹ 65,000/- and ₹ 65,000/- were imposed on A1, A2 and A3 resp. , under Section 112(a) & (b) of the Customs Act, 1962.

4. Aggrieved by this order, the applicants i.e. A1, A2 & A3 filed appeals before the Appellate Authority viz, Commissioner of Customs (Appeals), Ahmedabad, who vide his Orders-in-Appeal Nos. AHD-CUSTM-000-APP-1423 to ), 1425/2021-22 dated 17.12.2021 issued on 17.12.2021 through

F.Nos. S/49-817 to 819/CUS/AHD/20-21 did not find any merits in the appeals and rejected the same

5. The Applicants have filed revision applications having common grounds of appeal which are as under;

5.01. that the retracted statement of A1 dated 15.03.2019 should not have been relied upon in the absence of corroboration in material facts; that the statement recorded under Section 108 of the Customs Act, 1962 requires two facts, (i) that it is true and (ii) it is voluntary; that a retracted statement cannot be used against the maker of the statement; that he has relied upon the following case laws;

(i). Rafikul Alam & Others vs. State of West Bengal; 2008;

(ii). Padala Veera Reddy vs. State of Andhra Pradesh and others – 1989-Supp. 2 SCC 706

(iii). Supreme Court in Navaneethakrishnan vs. State, Inspector of Police

(iv). Pon Adhithan vs. Dy. Dir, NCB, Madra; 1999-6-SCC-1;

(v). Mohtesham Mohd. Ismail [2007-220-ELT-SC];

(vi). Asstt. Coll. Of C.Ex, Rajamundry vs. Duncan Agro Industries – JT2000-8-SC530.;

(vii). Vinod Solanki vs. UIO 2009-233-ELT-157 SC;

(viii). DRI vs. Mahendra Kumar Singhal 2016-333-ELT-250-Del.

(ix). Commissioner of C.Ex, Ahmedabad – III vs. Deora Wires N Machines Pvt. Ltd, 2016-322-ELT-393-Guj

(x). Etc.

5.02. that A2 and A3 had not been examined during the course of the investigation of the case; that penalty imposed on them on the basis of statement of co-accused was not justified; that he has relied on State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru [2005-11-SCC-600]; Ravinderan @ John vs. Supdt. Of Customs [2007-6-SCC-410 SC] etc;

5.03. that the criminal nexus between the accused person had not been clearly proved and hence, A1, A2 and A3 were not liable for penal action;

5.04. that the statement of co-accused should not have been relied upon; that if the statement of a co-accused tried to exculpate any accused, the same was not relevant as per the provisions of the Evidence Act.; that he has relied on; Ravinderan @ John vs. Supdt. Of Customs [2007-6-SCC-410 SC]; Chonampara

Chellappan vs. State of Kerala – AIR-1979-SC-1761; HS Ramakrishna vs. Commr. of Customs; High Court of Karnataka – 2010-259-ELT-17(Kar); Pradeep Kumar vs. Sate, 1994-RLR-117; etc;

- 5.05. that A1 was a domestic passenger and gold was not a prohibited item; that Gold is not prohibited goods. It was submitted that gold was not a prohibited item and was 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 was 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 was 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 had 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 was 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. that they have relied on the undermentioned case laws;
- (a). Hon'ble High Court of Calcutta decision in the case of Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009 (241) ELT 182 (Cal.);
  - (b). Notification 50/2017- Customs dated 30-6-2017 does not prohibit the importation of goods in any manner and it only specifies the eligibility criteria only for the purpose of exemption from Custom duty in respect of the imported goods which is not the issue in the instant case.;
  - (c). Hon'ble Supreme Court of India in the case of Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C);
  - (d). In Shaikh Jamal Basha Vs Government of India 1997 (91) ELT 277(AP) the Hon'ble High Court held that Gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorisedly can be redeemed
  - (e). Apex Court in the case of Sapna Sanjiv Kohli Vs Commissioner of Customs, Mumbai [2010(253) ELT A52 (SC)] has also held that gold is not prohibited goods and accordingly the gold dust was allowed to be redeemed on payment of fine and duties;
  - (f). etc.

- 5.06. that A1 claimed ownership of the gold chain;
- 5.07. that the OIO was not an order on merits and not a speaking order.

Under the circumstance, the applicants have prayed to set aside the OIA; to unconditionally release the gold chain and to set aside the penalties imposed on the applicants and to drop further proceedings.

6. A personal hearing in the case was scheduled for 18.10.2023, 25.10.2023. Shri. Prakash Shingrani, Advocate for the applicants appeared on 18.10.2023 and submitted that applicant was a domestic passenger and was wearing a gold chain. He further submitted that gold chain had no foreign marking and it was locally procured. He further submitted that applicant is a jeweller and has no past offence on any issue. He requested to unconditionally release the gold chain and set aside penalties on applicants 1,2 and 3.

7. The Government has gone through the facts of the case. Applicant no. 1 was a domestic passenger and admittedly, had taken the impugned gold chain from a passenger viz, Applicant no. 3 at the Mumbai International Airport and that this passenger had arrived from the International sector. Had it not been for the alertness exhibited by the Customs, A1 would have been successful in taking out the gold and evading Customs duty. It is clear that the A1 had resorted to this innovative method to evade duty. By this action, it is clear that A1 and A3 had no intention to pay the Customs duty. A1 had not declared the impugned gold as required under Section 77 of the Customs Act, 1962. The confiscation of the gold is therefore justified and thus, the A1 and A3 had rendered themselves, liable for penal action.

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 the 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 notes that the investigating agency have placed reliance solely on the statement of A1, who in his pleadings before the OAA and OIA had claimed that the same had been retracted by him. The counter or rebuttal of the same has not been made available. No investigation pertaining to the corroboration of the statement given by A1, that he has travelled in the past; that A2 was on the flight etc, have been presented before the lower authorities.

12. The quantity of gold under import is small and is not of commercial quantity. A1 has claimed part ownership of the gold. There are no allegations that the A1 is a habitual offender and was involved in similar offence earlier. 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. Absolute confiscation of the gold is harsh and unreasonable. Government is therefore, inclined to set aside the OIA and allow the gold to be redeemed on payment of a fine.

13. The penalty of ₹ 85,000/- imposed by the OAA under Section 112(a) & (b) of the Customs Act, 1962 on A1 is commensurate to the omissions and commissions committed. Government is not inclined to interfere in the same.

14. On the issue of penalty of ₹ 65,000/- on A2, Government notes that corroborative evidence on his involvement has not been unearthed and presented. No link of A2 and A1 has been shown. No statement of A2 was recorded. In view of lack of evidence against A2, penalty is set aside. A3 is the International passenger who brought gold. A3 is liable for penal action for the same. Government finds that the quantum of penalty imposed on A3 is commensurate to omissions and commissions of A3.

15. For the aforesaid reasons, the Government modifies the OIA to the extent of the following

(i). allowing the redemption of the gold sankalwali chain, weighing 462.990 grams and valued at ₹ 14,00,360 (TV) and ₹ 15,27,867/- (MV) /- on payment of a redemption fine of ₹ 2,80,000/- (Rupees Two Lakhs Eighty Thousand only);

(iii). the penalty of ₹ 85,000/- imposed on A1 under Section 112(a) and (b) of the Customs Act, 1962 is upheld.

(iii). Personal penalty of ₹ 65,000/- imposed on A2 under Section 112(a) and (b) of the Customs Act, 1962 is set aside.

(iv). Personal penalty of ₹ 65,000/- imposed on A3 under Section 112(a) and (b) of the Customs Act, 1962 is upheld.

16. The 3 Revision Applications filed by the applicants are thus, disposed of on the above terms.

  
( SHRAWAN KUMAR )

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

**ORDER No. 880-887/2023-CUS (WZ) /ASRA/MUMBAI DATED 30.11.2023**

To,

1. Shri. Santosh Suresh Vaswani, 301, Wibson Tower, Behind Nagar News, Ulhasnagar – 421 002, Thane, Maharashtra,
2. Shri. Sunil Karamchandani, 402, Radhe Palace, O.T. Section, Central Ulhasnagar, Ulhasnagar – 421 002, Thane, Maharashtra,
3. Shri. Suresh Pohumal Rajani, Flat No. 102, A-Wing, Dwarka Dham Apartment, Opposite Ramayan Nagar, Ulhasnagar – 421 002, Thane, Maharashtra.
4. Pr. Commissioner of Customs, Custom House, 1<sup>st</sup> Floor, Oppl Old High Court, Navrangpura, Ahmedabad – 380 009.

Copy to:

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