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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/194-196/B/2021-RA/8391 : Date of Issue : 15.12.23

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ORDER NO. 907-909 /2023-CUS (WZ)/ASRA/MUMBAI DATED 12.12.2023  
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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Applicant1 : Mr. Shahrukkhan Muniruddin Pathan

Applicant2 : Mr. Rushabhbhai Pravinbhai Goswami

Applicant3 : Mr. Mahendrasinh Zala

Respondent: Pr. Commissioner of Customs, Ahmedabad

Subject: Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-In-Appeal No. AHD-  
CUSTM-000-APP-938-940-20-21 dated 25.03.2021  
passed by the Commissioner of Customs (Appeals),  
Ahmedabad.

**ORDER**

This revision application has been filed by Mr. Shahrukkhan Muniruddin Pathan, Mr. Rushabhbhai Pravinbhai Goswami, Mr. Mahendrasinh Zala (herein after referred to as the Applicant-1, Applicant-2, Applicant-3 respectively) against the Order-In-Appeal No. AHD-CUSTOM-000-APP-938-940-20-21 dated 25.03.2021 passed by the Commissioner of Customs (Appeals), Ahmedabad

2. According to the panchnama dated 08.08.2018, Applicant-1 was intercepted at the green channel due to suspicious actions. A personal search and inspection of his belongings were conducted. Despite being asked, Applicant 1 denied carrying anything to declare. Following the removal of metallic objects and passing through the DFMD, Applicant 1 voluntarily removed items such as a belt, wallet, mobile, and a yellow metal ring from his left-hand finger. Upon further inspection, a Wills cigarette packet with abnormal weight was found, concealed with white transparent tape. The packet was passed through the X-ray screening machine, revealing 14 gold bars (10 tola each) with markings from AL-Etihad Dubai UAE. Applicant 1 had not declared these contraband goods, including 14 gold bars, one Gold kadivali Chain, and 2 gold band-type rings, which were recovered from him. The government-approved valuer, in a report dated 08.08.2018, confirmed that the recovered items, including 14 gold bars (1633.240 grams), one Gold kadivali Chain (116.610 grams), and 2 gold band-type rings (29.130 grams), were pure gold with a purity of 999.0. The total weight of these items was 1778.980 grams, with a Tariff value of Rs. 48,53,858/- and a Market Value of Rs. 54,20,552/-. Applicant 1 accepted this valuation. On 08.08.2018, Applicant 1's statement under Section 108 of the Customs Act, 1962, was recorded. In this statement, he admitted attempting to smuggle the contraband goods weighing 1778.980 grams into India with the assistance of airline staff, concealing them in a cigarette packet, a black velvet pouch, and on

his person. He revealed that Mr. Farooq Ahmed Qureshi, based in Mumbai, owned the gold bars, chain, and ring, and had covered all travel expenses, providing him with Rs. 5000/- for delivering the items. Applicant 1 stated that he was to hand over the gold to Applicant 2 and Applicant 3, employees of M/s Jetskies Fly Solutions Pvt. Ltd. and M/s. Aaroom Aviations, respectively, near the aerobridge or x-ray screening machine at Ahmedabad Airport. A show cause notice (SCN) dated 18.01.2019 was issued to Applicant-1, Applicant-2, and Applicant-3, seeking to confiscate the goods under Sections 111(d), 111(i), 111(l), and 111(m) of the Customs Act, 1962, and to impose penalties under Section 112(a) & (b) of the Customs Act, 1962.

3. The Adjudicating authority vide impugned order, has ordered for absolute confiscation of the said goods totally weighing, 1778.980 grams having Tariff value of Rs. 48,53,858/- and having Market value of Rs.54,20,552/- placed under seizure vide panchnama drawn on dated 08.08.2018, under the provisions of Sections 111 (d) (i) (l) and (m) of the Customs Act, 1962; imposed penalty of Rs.5,00,000/- on Applicant 1, penalty of Rs.1,25,000/- on Applicant 2 and penalty of Rs.1,25,000/- on Applicant 3 under the provisions of Sections 112 (a) & 112 (b) of the of the Customs Act, 1962;

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad who vide impugned Order-In-Appeal upheld the OIO passed by the OAA.

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

- i. There was non-compliance of the statutory provision under section 102 of Customs Act, 1962. Personal search carried out on Applicant-1 was illegal. Instead of considering or countering the abovesaid

- submission of the Applicant, the Appellate Authority simply beat around the bush.
- ii. Panchas were not present during the entire proceeding on 08.08.2018. Seizure panchnama was fabricated. Applicant-1 sought for cross-examination of panchas and Officers. The Appellate Authority denied cross-examination against principles of natural justice:
  - iii. No valid seizure was made and there was no seizure order issued by the Officer. Therefore, confiscation of the goods and imposition of penalty is not sustainable:
  - iv. Applicant-1 respectfully submits that his statement was recorded by the Officers under coercion and threat to suit their story for booking a false case against him. His statement dated 08.08.2018 was involuntary as the facts recorded in the said statement were against the truth. On 08.08.2018 when he was in the custody of the Officers, he was forced and tortured
  - v. Retracted statement of Applicant-1 dated 08.08.2018 in the absence of any corroborative evidence from an independent source outside the confession cannot be relied upon in the present case.
  - vi. The fact of retrieval of photographs of co-accused Applicant-2 and Applicant-3 from the mobile phone of Applicant was false.
  - vii. Confession of co-accused cant be relied upon against other accused.
  - viii. Nexus between the accused persons not clearly proved. Therefore, Applicant -2 and Applicant-3 are not liable for any penal action:
  - ix. The panchnama was fabricated and the case against the petitioners was falsified. The Applicants submit that even if they had any intention to smuggle the gold, it was also possible that they might have changed their minds and the acts already done would be completely harmless.
  - x. Gold is not a prohibited item. The seized gold should have been released to Applicant-1.
  - xi. Applicant-1 further submits that when he was examined by the Officers, his statement with incorrect facts was recorded. The Applicant submits that allegations made in the SCN are based merely on uncorroborated and unsupported statement of the Applicant, which cannot be any basis to sustain the allegation that the Applicant acted as a carrier of the gold for monetary consideration. The entire edifice of the case was based on the statement of the Applicant without support of any corroborative evidence.

- xii. Applicant-1 submits that he is the owner of the gold totally weighing 1778.980 grams valued at Rs 48,53,858/- under absolute confiscation. He purchased the gold in Dubai with the help of his associates on credit. He did not make any attempt to smuggle the gold out of Ahmedabad airport without payment of Customs duty. He was forced, threatened and tortured by the Officers to sign the panchnama and statement. Therefore, the panchnama and statement dated 08.08.2018 cannot be relied upon.
- xiii. Applicants have placed reliance on various case laws.
- xiv. Under the circumstances, the applicants have prayed that
  - a. the gold under absolute confiscation may be released to Applicant-1 on payment of reasonable fine, penalty and further proceedings against him may be dropped.
  - b. Applicant-2 and Applicant -3 submit that they do not have any claim over the gold under absolute confiscation. They had no role in the import or smuggling of gold. The SCN calling upon them to show cause as to why the seized gold should not be confiscated is not sustainable since the gold was not seized from their possession and they didn't have any claim of ownership on it. The penalty imposed on them may be set aside since their role in smuggling is not proved. Further proceedings against them may be dropped.

6. Personal hearing in the case was scheduled on 17.08.2023. Shri. Prakash Shingarani, Advocate for the applicants appeared for personal hearing and submitted that the applicant brought some quantity of gold, applicant is not habitual offender and copy of invoice was submitted before investigation. He further submitted that section 125 of Customs Act,1962 provides for allowing redemption to person from whom goods are seized. He requested to allow redemption of gold on reasonable redemption fine and penalty.

7. The Government has gone through the facts of the case and notes that applicant-1 was in possession of gold kept within a cigarette packet. Notably, the interception occurred at the green channel, during which the applicant-1, when

questioned about carrying anything to declare, denied having any items for declaration. It reveals that the act committed by the applicant was conscious and pre-meditated and he did not harbor any intention to declare the gold in his possession and pay Customs duty. The applicant had clearly failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Had he not been intercepted; the applicant would have gotten away with the gold. The Government finds that the confiscation of the gold is therefore, justified.

8.1 The relevant sections of the Customs Act are reproduced below :

**Section 2(33)**

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

**Section 125**

*“Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :*

*Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in*

*respect of such goods.*

*(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”*

8.2 It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by the banks authorized by the RBI or by others authorized by DGFT and to some extent by passengers. Therefore, gold which is a restricted item for import but which was imported without fulfilling the conditions for import becomes a prohibited goods in terms of Section 2(33) and hence it liable for confiscation under Section 111(d) of the Customs Act. It is evident that Section (l) and (m) are also applicable in this case as the gold was kept hidden in cigarette packet and it was not included in the declaration. Therefore, the gold was also liable for confiscation under these Sections.

9.1 Government notes that the Appellate authority has held that the Applicant-1 has attempted to smuggle gold, while upholding absolute confiscation and has erred in not considering his retraction of the statement. It is a fact that Applicant-1 has retracted his statement on the very next day i.e. 09.08.2018 and thus can't be construed as an afterthought. It is also a fact that the Applicant produced the receipts for the purchase of the gold. Government notes that the Appellate authority has relied on the initial statement of the Applicant-1, ignoring its retraction and lack of evidence in corroborating the statement.

9.2 Further, in the statement dated 08.08.2018, subsequently retracted, Applicant-1 admitted that he had photographs of two unidentified individuals (later identified as Applicant-2 and Applicant-3) via WhatsApp to the mobile

number of Applicant-1. It was also stated that one of the aforementioned individuals would collect the gold upon his arrival at Ahmedabad airport, specifying locations such as near the aerobridge, the x-ray screening machine, the bathroom, or the conveyor belt. The assigned person would then return the gold to Applicant-1 outside the airport.

9.3 From the above, Government notes the following points:

- i. If the above scenario was pre-planned, there would have been no need for Applicant-1 to go through the green channel.
- ii. Furthermore, there is no documented evidence proving that Officers of Customs intercepted Applicant-2 and Applicant-3 near the aerobridge, x-ray screening machine, bathroom, or conveyor belt.
- iii. The photographs of Applicant-2 and Applicant-3, sent by one Mr. Farooq Ahmed Qureshi to Applicant-1 on his mobile, are solely based on the retracted statement of the accused. There was no subsequent investigation to extract evidence from phones to corroborate these statements.

9.4 Government further notes that entire case relies solely on the statements of the accused, which were subsequently retracted. The Department has not presented any documentary evidence beyond these statements. Consequently, in the absence of corroboration of the Applicant's statement, absolute confiscation is unjustified. In the absence of any claimant to the gold the person from whom the gold has been seized is considered appropriate for allowing redemption of goods. The Apex court in the case of Hargovind Dash Vs Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi judicial authority must exercise discretionary powers in a judicious manner and not in arbitrary manner. As per the provisions of section 125 of the customs act, 1962 in case of goods which are prohibited the option of redemption



is left to the discretionary power of the authority who is functioning as a quasi judicial authority.

10. 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”.

11. 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.

12. 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.*

13. Government further observes that there are a catena of judgements, over a period of time, of the Hon'ble Apex / High Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

- a) In the case of Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, [2022(382) E.L.T. 345 (All)], the Lucknow Bench of the Hon'ble High Court of Allahabad, has held at Para 22 that "*Customs Excise & Service Tax Appellate Tribunal Allahabad has not committed any error in upholding the order dated 27.08.2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act.*"
- b) The Hon'ble High Court of Judicature at Madras, in the judgment in the case of Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.
- c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T, 399 (Ker.)] has, observed at Para 8 that "*The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any such person from whom such custody has been seized...*"
- d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252)E.L.T. A102(S.C)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

14.1. Government observes that there is no allegation that the applicant is a habitual offender and was involved in similar offence earlier. In the instant case, the impugned gold bars were kept by the applicant-1 in the cigarette packet. Government observes that sometimes passengers resort to such innovative methods to keep their valuables / precious possessions safe. Also, considering the issue of parity and fairness as mentioned above, Government finds that this is a case of non-declaration of gold.

14.2. Government finds that all these facts have not been properly considered by the lower authorities while absolutely confiscating 14 (fourteen) 24Kt gold bars each of 10 tolas weighing (total 1633.240 grams), one 24Kt Gold kadivali Chain (116.610 grams) and 2 (two) 24Kt gold band type rings (total weight 29.130 grams) totally weighing 1778.980 grams having Tariff value of Rs.48,53,858/-. Also, observing the ratios of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case. Therefore, the Government maintains confiscation of gold but allows the impugned gold to be redeemed on payment of a redemption fine.

15. The Government finds that the penalty of Rs. 5,00,000/- on Applicant-1 imposed under Section 112 (a) & (b) by the original adjudicating authority and upheld by the AA is commensurate with the omissions and commissions committed. Government finds the quantum of the penalty as appropriate. The penalty imposed on Applicant-2 and Applicant-3 is unwarranted in the absence of any reasonable evidence establishing some role in the present case and therefore, Government sets aside the penalty imposed on Applicant-2 and Applicant-3.

16. In view of the above, the Government modifies the OIA passed by the AA to the extent of absolute confiscation of the gold i.e. 14 (fourteen) 24Kt gold bars each of 10 tolas weighing (total 1633.240 grams), one 24Kt Gold kadivali Chain (116.610 grams) and 2 (two) 24Kt gold band type rings (total weight 29.130 grams) totally weighing 1778.980 grams having Tariff value of Rs.48,53,858/- and grants an option to the applicant to redeem the same on payment of a redemption fine of Rs. 10,00,000/- (Rupees Ten Lakhs Only). The penalty of Rs. 5,00,000/- imposed on Applicant-1 by OAA and upheld by AA is sustained.

17. Accordingly, Revision Application is decided on the above terms.

*Shrawan*  
12/12/23  
( SHRAWAN KUMAR )

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

ORDER No. ~~907-909~~/2023 -CUS (WZ) /ASRA/MUMBAI DATED 12.12.2023

To,

1. Mr. Shahrukkhan Muniruddin Pathan, 2530, Jambudiwala House Sindhiwad, Jamalpur Ahmedabad-380 001.
2. Mr. Rushbhbhai Pravindbhai Goswami, A-71/846 Block No 138, Hariom Apartment, Nava Wadaj Bhavsar Hostel Ahmedabad-308 013.
3. Mr. Mahendrasinh Zala, 102, Nishalwas Hansol, Gam Sardar Nagar, Ahmedabad-381475.
4. The Pr. Commissioner of Customs(Ahmedabad), Ist Floor, Custom House, Near All India radio, Income Tax Circle, Navarangpura, Ahmedabad-380009.

Copy to:

1. The Commissioner of Customs (Appeals), Ahmedabad, 7th Floor, Mrudul Tower, B/H Times of India, Ashram Road, Ahmedabad- 380009.
2. Shri. P.K Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Noticeboard.

