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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

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F.No. 371/304 & 272/B/WZ/2021-RA | 8409 Date of Issue : 15/12/23

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ORDER NO. 922-923 /2023-CUS (WZ) /ASRA/MUMBAI DATED 14.12.2023 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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(i) F.No. 371/304 & 272/B/WZ/2021-RA,

Applicant No. 1 (A1) : Shri. Shadab Abdul Karim Mansuri, }

(ii) F.No. 371/304 & 272/B/WZ/2021-RA

Applicant No. 2 (A2) : Shri. Ratan Ganpatlal Hinger, }

.....APPLICANTS.

Respondent : Commissioner of Customs, Pune – 411 001.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the undermentioned Orders-in-Appeal Nos. PUN-CT-APPII-000-019-020-2021-22 dated 30.06.2021 issued on 30.06.2021 from F.No. GAPPL/COM/CUSP/266 & 267/2021, issued by the Commissioner of Customs (Appeals – II), Central Tax, Pune, against common Order-in-Original No. PUNE-CUSTOMS-000-JC-03/2020-21 dated 16.07.2020 passed by Jt. Commissioner (Customs), Pune.

**ORDER**

These two revision applications have been filed by (i). Shri. Shadab Abdul Karim Mansuri and (ii). Shri. Ratan Ganpatlal Hinger (herein referred to as the Applicants or more specifically as Applicant No. 1 /(A1) and Applicant No. 2 /(A2) resp.) against the Orders-in-Appeal nos. PUN-CT-APPII-000-019-020-2021-22 dated 30.06.2021 issued on 30.06.2021 from F.No. GAPPL/COM/CUSP/266 & 267/2021, issued by the Commissioner of Customs (Appeals – II), Central Tax, Pune, against common Order-in-Original No. PUNE-CUSTOMS-000-JC-03/2020-21 dated 16.07.2020 passed by Jt. Commissioner (Customs), Pune.

2(a). Briefly stated, the issue involved in this case was that information was passed on to the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU) by Mumbai Police that smuggled gold was being handled by a syndicate of persons identified as Shazia Parveen Shaikh, Mehboob Ali Mohd. Hussain Shaikh, Tabassum Parvez Khan, Mohd. Issak Abdul Aziz Shaikh and Jaffar Akbar Khan. The articles seized and records pertaining to the case were handed over to DRI for further investigation under Customs Act, 1962 on 25-07-2018 vide letter no. O.W.No. 910/DCP (D-1)/U.XI/2018 dated 25-07-2018. Also, the custody of the above said persons along with cash of ₹ 21,13,130/- and 58 gold bars of 116.6 grams each (totally weighing 6.762 Kgs, approx.) were handed over to DRI under panchnama dated 25-07-2018.

2(b). From the investigation conducted, it was gathered that one Shabbir, an Indian national based in the UAE was engaged in smuggling of gold from Dubai to Mumbai through different carriers recruited by him. He had smuggled 77 gold bars each weighing 116.641 gms. (Total 8.981 kgs. approximately) to India through Pune International Airport having used Tabassum Khan as a carrier for the purpose. These 77 gold bars were taken over by Shazia Shaikh aided by Mehboob Ali, Mohd. Ishaq and two others named as Usman and Allah Baksh who

had been selected by Mehboob Ali. Shaziya and Mehboob jointly with the assistance of others had deceived Tabassum as well as the actual receivers of the gold bars and managed to take over the offending goods. Consequently, the police were successful in recovering 58 of the 77 gold bars from the possession of Mehboob Ali & Shaziya and cash amounting to ₹ 21,13,130/- which were handed over to DRI vide Panchnama dated 25-07-2018. Detailed investigations by DRI further revealed that Shaziya and Mehboob had disposed 19 (including 7 sold to A2) out of the 77 gold bars to different people in exchange for money.

2(c). Investigations had revealed that Mohammed Ishaq had assisted Mehboob and Shaziya in usurping the 77 gold bars and also had helped in the disposal of 8 gold bars through Abdul Razaaq Katmani @ Rehmat. The 8 gold bars were ultimately sold to one Bharat Parmar of M/s Kaka Gold through A1. Further seven gold bars were recovered from A2, along with a cash amount of ₹ 20,00,000/-. A2 was a friend of Mehboob Ali. Out of the remaining four gold bars (out of the 19 sold), were said to have been disposed at different places by Mehboob.

2(d). Further, during search of the residence of A1, foreign currency amounting to EURO 52,500/- and Indian Currency worth ₹ 4,71,500/- was recovered and seized. A1 in his statement dated 25-09-2018 recorded under section 108 of the Customs Act, 1962, stated that he had travelled to Dubai multiple times and had smuggled 14 gold bars into India; that these gold bars had been sold to one Bharat who had a jewellery shop viz, M/s. Kaka Gold, Zaveri Bazar, Mumbai; that at times Bharat paid him in Indian Rupees for these smuggled gold bars; that this cash would be converted into foreign currency which was purchased from one Nasir Ismail of M/s Citizen Novelties, Kartar Bhavan, Colaba; that the foreign currency was taken abroad for purchase of goods and gold bars; that he had sold all the smuggled gold bars to Bharat Parmar only; that the foreign currency and

Indian currency recovered from his residence under panchnama dated 25-09-2018 were the sale proceeds of smuggled gold which he had received from Bharat Parmar; that Abdul Razaaq Katmani also known as Rehmat was his friend; Rehmat had told him that his friend had 8 foreign marked gold bars which were smuggled into India and had asked him whether he could sell the same in market; that he had agreed to it; that he had taken the 08 gold bars and had sold the same to Bharat; that Bharat paid ₹ 28,64,678/- in cash for the 8 gold bars which he had handed over to the said person i.e. friend of Rehmat; that he did not remember the name of the person who handed over the gold.

2(e). In the investigations, it was alleged that A1 had knowingly helped Mehboob Ali through Abdul Katmani and Mohd. Ishaq in disposing the 8 foreign marked gold bars smuggled into India. The gold bars had been sold to Bharat Parmar of M/s. Kaka Gold who was known to him. Further, it was alleged that the Indian currency and foreign currency totally amounting to ₹ 49,68,650/- recovered from the residence of A1 were the sale proceeds of the foreign marked gold smuggled by the appellant in the past as admitted by him in his statements.

2(f). During search at the residence of A2 on 25-07-2018, seven gold bars weighing 116.6 gms. each were recovered. During further search on 26-07-2018 of his Maruti Alto 800 car, cash of ₹ 20,000,00/- was recovered. In his dated 26-07-2018 recorded under section 108 of the Customs Act, 1962, A2 had confirmed that he had received seven gold bars from Mehboob in lieu of money lent by him; that ₹ 20 lakhs were given by Mehboob. In his statement dated 25-07-2018 recorded under section 108 of the Customs Act, 1962, Shri Mehboob Ali had confirmed that he had sold seven gold bars to A2; that he (Mehboob) had sold 8 gold bars to Pathan through Ishaq for ₹ 28,60,000/-, out of which ₹ 20,00,000/- was given to the A2 2; In his statement recorded on 27-07-2018 under section 108 of the Customs Act, 1962, Mohd. Issak Abdul Aziz Shaikh confirmed that on

being requested by Mehboob on 23.07.2018 to sell eight gold bars smuggled by Tabassum and Mehboob, he contacted a person named Rehmat; that, Rehmat contacted a person named "Pathan" who received eight gold bars and handed over ₹ 28,64,920/- in cash; that he had given the entire cash of ₹ 28,64,920/- to Mehboob.

2(g). In the investigations, it was alleged that A2 who was a friend of Mehboob Ali had bought the seven gold bars from him in lieu of the money lent by him; that he had knowledge that the gold was foreign marked and smuggled by Mehboob; that he had taken possession of ₹ 20,00,000/- given to him by Mehboob Ali which was the sale proceeds of the smuggled gold.

3. After due process of investigations and the law, the Original Adjudicating Authority (OAA) i.e. the Joint Commissioner of Customs, Pune, vide a common Order-In-Original No. No. PUNE-CUSTOMS-000-JC-03/2020-21 dated 16.07.2020, among other things recovered in the case and other persons involved in the case, in respect of the applicants i.e. A1 and A2 had ordered the following; (absolute confiscation of gold and penalties imposed on the others besides A1 and A2 are not subject matter here and hence the same have not been mentioned below);

- (a). absolute confiscation of Indian and foreign currency totaling ₹ 49,68,650/-, under Section 121 of the Customs Act, 1962, seized on 10.10.2018 from A1, being sales proceeds of the smuggled gold,;
- (b). absolute confiscation of the 7 gold bars, totally weighing 0.816 kgs, collectively valued at ₹ 25,71,912/- (@₹ 31,500/-/10 gms) seized on 01.08.2018 from A2, under the provisions of section 111(d), (j), (l), (m) of the Customs Act, 1962.;
- (c). absolute confiscation of ₹ 20,00,000/- under Section 121 of the Customs Act, 1962, seized on 01.08.2018 from A2, being sales proceeds of the smuggled gold.;
- (d). penalty of ₹ 5,00,000/- was imposed on A1 under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.;
- (e). penalty of ₹ 3,00,000/- was imposed on A2 under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicants i.e, A1 and A2, preferred appeals before the appellate authority i.e. Commissioner of Customs (Appeals - II), Central Tax, Pune, who vide Orders-in-Appeal nos. PUN-CT-APPII-000-019-020-2021-22 dated 30.06.2021 issued on 30.06.2021 from F.No. GAPPL/COM/CUSP/266 & 267/2021, rejected their appeals.

5(a). Aggrieved by this Order of the appellate authority, the applicant no. 1 has filed this revision application on the undermentioned grounds of revision;

- (i). that the OAA did not have the jurisdiction to issue the impugned Show Cause Notice dated 22-1-19 under Section 124 of Customs Act, 1962; that the impugned SCN dated 22-1-19 was not sustainable and was liable to be set aside; that they rely on the case law pertaining to M/s Canon India Private Limited Vs Commissioner of Customs (Supreme Court of India), wherein the 3-Judge Bench of the Apex Court had held that DRI did not have any authority in law to issue a SCN under Section 28(4) of the Customs Act, 1962 for recovery of duties allegedly not levied or paid when the goods were cleared for import by a Deputy Commissioner of Customs who decided that the goods were exempted; that the obvious intention of the legislature was to confer the power to recover such duties not on any proper officer but only on 'the proper officer'. It held that if the Parliament intended that any proper officer could have exercised power under Section 28(4), it could have used the word 'any'; that a DRI officer was not even a proper officer under Section 28; that while giving relief in the Canon India case, the Apex Court had held he DRI officer was not a proper Officer to exercise the power under Section 28(4) and initiate recovery proceedings; therefore, the impugned SCN was not sustainable and was liable to be set aside.
- (ii). that during the course of investigation, DRI had drawn 11 panchnamas for search, seizure and valuation proceedings in the presence of stock panchas who had been selected by choice by the Investigating Officers. Therefore, the said panchnamas are invalid; that the panchas in the case were not independent and therefore the panchnamas drawn during the investigation was not reliable; that there was an irregularity in the selection of the panchas because they are not independent and therefore their selection was not in compliance of provisions of Criminal Procedure Code as well as the Act; that the panch witnesses were common to many of the

panchanamas and hence they were stock panchas; to buttress their case, they have placed reliance on the decision in the case of Gujarat High Court - Intezar Ahmed Sultan Ahmed Shaikh vs State Of Gujarat Anr. on 12 February, 1996; the landmark judgment of the Supreme Court in the case of State of Punjab v. Balbir Singh; also in the case of Matajog Dobey v. H. C. Bhari 1956 AIR(SC) 44,; and an exhaustive list of case laws;

- (iii). that confession of Co-accused should not have been relied upon against other accused; that the Judgment in the case of Naresh J. Sukhwani vs UOI (1996 (83) ELT 258 (SC) ) cannot be relied upon; that the OAA had relied upon the statement of co-accused Mr Bharat as a proof and corroborative evidence for establishing the allegations against the petitioner; that under para 46.2 of the impugned O-I-O it was observed that the statements of A1 were corroborated with the statements dated 25-9-18 of Bharat wherein he admitted that he had purchased 8 smuggled gold bars from A1 for Rs 28,64,678/- in cash; that the confession of the co-accused could be used only in support of other evidence and cannot be made the foundation of a conviction. If the statement amounts to confession it can be used against the co-accused under Sec.30 of the Evidence Act however, 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 they have relied on the case of State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru [(2005) 11 SCC 600]; In the case of Ravindran Alias John v. Superintendent of Customs [(2007) 6 SCC 410] of Apex Court; CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135 (SC)]; Escorts Ltd. Vs CCE, Delhi [2004 (173) ELT 113 (SC)]; CC (Port), Chennai Vs Toyota Kirloskar [2007 (213) ELT 4 (SC)]; etc.
- (iv). that foreign currency was not prohibited goods: that foreign currency has not been declared to be "prohibited goods" under provisions of either of Customs Act, 1962 or Foreign Exchange Management Regulations; A plain reading of the Regulation makes it clear that Foreign Currency as such is not prohibited goods and its import or export is subject to the permission given by the Reserve Bank of India. Further as per Regulation 7(2) of the said Regulations '(2) any person may take or send out of India foreign exchange obtained by him by drawl from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder.'; that the OAA ought not to have confiscated the currencies absolutely, as foreign currencies are not prohibited goods; that confiscated foreign currency should have been

allowed to be redeemed; that in catena of decisions, the tribunal, GOI etc in their orders have directed that confiscated currencies have to be allowed to be redeemed on payment of appropriate fines by the persons from whom they were seized and confiscated; that in all these decisions either redemption fine ordered by the appellate authority has been reduced or the order of absolute confiscation modified by offering option to redeem the goods or the case remanded with direction for making such a decision; that they have relied upon the following case laws on the subject;

- (l). Prem Kumar Vs Customs in the High Court of Delhi reported in 2016 (334) ELT 498 (Del.)
  - (m). Sh. T. Soundrarajan Vs Commissioner of Customs, Chennai - in CESTAT, Chennai.
  - (n). UNION OF INDIA Vs HARISH MULJIMAL GANDHI in Bombay High Court at Goa
  - (o). Md. LIAKAT ALI *Versus* COMM. OF CUSTOMS (PREV.), KOLKATA, WEST BENGAL in 2008(22) ELT 295 (Tri. Kolkatta)
  - (q). Customs, Excise and Gold Tribunal - Mumbai in Kishin Shewaram Loungani And others... vs Commissioner Of Customs, Acc, ... on 12 September, 2001
  - (r). Delhi High Court in Mohd. Ayaz vs Union Of India (Uoi) on 30 August, 2000
  - (s). Customs, Excise and Gold Tribunal - Mumbai in Shri Rajinder Nirula And Tilak Raj ... vs Commissioner of Customs on 25 April, 2006
  - (t). Customs, Excise and Gold Tribunal - Mumbai in Commissioner Of Customs, ... vs Harshavadan Bhagvanji Varia on 5 October, 2001.
- (v). that the currency under absolute confiscation was not the sale proceeds of smuggled gold. Therefore, the order of absolute confiscation of Currency is illegal and not sustainable: that the OAA had raised irrelevant grounds to justify the act of search and seizure; that the actions of the Customs Department was nothing but a post-recovery justification and was also hypothetical in nature; on the issue of reasonable belief they have relied on the following;
- (w). State of Gujarat vs Mohanlal Porwal, reported in 1987 (29) ELT 483 (SC)
  - (x). MK International vs Union Of India on 7 September, 2006 : 2007 (209)



- ELT 15 P H - Punjab-Haryana High Court;
- (y). Bhavesh Exports Private Limited v. Assistant Collector of Customs-  
Bombay High Court.
- (z). In the case of Ramchandra v. Collector of Customs reported in 1992 (60) E.L.T. 277 (T) interms of Section 121 the following ingredients are required to be satisfied. (i) There must be a sale (ii) The sale must be of smuggled goods (iii) The sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin. (iv) The seller and purchaser and the quantity of gold must be established by the customs authorities.
- (vi). that the case against A1 was not proved beyond doubt and was made on the basis of presumption: that reliance is placed on 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
- (vii). that in criminal cases, the standard of proof should be beyond reasonable doubt.
- (viii).that the decisions of Tribunals, High Courts and Supreme Court relied upon by A1 were all rejected by the AA without proper application of mind; that the factual situation of the case of A1 fitted in with the decisions on which reliance was placed; that the AA read the decisions in isolation and failed to read the decisions as a whole in the context of the cases; that the order of AA is vitiated on account of bias violations of principles of natural justice and fair play. Therefore, the impugned O-i-A is not sustainable:
- (ix).that A1 had claimed ownership of the currency under absolute confiscation and prays for redemption of the currency; that he was the owner of the currency totally valued at Rs 49,68,650/-; that mere non-production of any document was a small concern which should not lead to an inference that he was involved in dealing with smuggled goods; that seizure of the currency was not sustainable; that non-production of documentary evidence showing legal possession or purchase does not conclude to tainted money. That they have placed reliance on the following;
- (aa). Final Order No. 172/02 dated 22.2.02 in Appeal No. C/453/98 in the case of Halithu Ibrahim v. CC (Airport), the Chennai Bench of the Tribunal
- (ab). Prem Kumar Vs Customs in the High Court of Delhi reported in 2016 (334) ELT 498 (Del.)
- (ac). Sh. T. Soundrarajan Vs Commissioner of Customs, Chennai -in

CESTAT, Chennai.

(ad). UNION OF INDIA Vs HARISH MULJIMAL GANDHI in Bombay High Court at Goa

(ae). Md. LIAKAT ALI *Versus* COMMR. OF CUSTOMS (PREV.), KOLKATA, WEST BENGAL in 2008(22) ELT 295 (Tri. Kolkatta)

(af). Customs, Excise and Gold Tribunal – Mumbai in Kishin Shewaram Loungani And others... vs Commissioner Of Customs, Acc, ... on 12 September, 2001

(ag). Delhi High Court in Mohd. Ayaz vs Union Of India (Uoi) on 30 August, 2000

(ah). Customs, Excise and Gold Tribunal – Mumbai in Shri Rajinder Nirula and Tilak Raj ... vs Commissioner of Customs on 25 April, 2006.

- (x). that A1 has prayed that that a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case as carefully scanned and the contentions raised should be taken into consideration ; that he had not committed any act of omission or commission which can be termed as a crime or manifesting of an organized smuggling activity.

Under the circumstances, A1 in his revision application has prayed to the Revision Authority for the unconditional release of the currency under absolute confiscation; to set aside the penalty imposed on him and to drop further proceedings against him.

5(b). Aggrieved by this Order, the applicant no. 2 has filed this revision application on the undermentioned grounds of revision;

- (i). that the goods seized from A2 was not liable to be confiscated under Section 111 (d), (1) and (m) of the Customs Act, 1962; that A2's house was searched and 7 Gold Bars total weighing 0.816 grams valued at ₹25,71,912/- were recovered; that A2 along with his family members had filed affidavits on date of incident claiming the Indian currency; that 3 affidavits dated 27.08.2018 were filed by A2, Devendra Lal Hinger and Smt Usha Ratan Hinger wherein it was stated that the currency belonged to the family and it was legitimate; that currency was taken from the house and panchanama dated 26.07.2018 was fabricated; that the ALTO car MH03B5412 was in the name Mehboob Ali Mohammad and does not belong to him; that A2 was claiming the currency and ready to pay

- customs duty and any other customs dues; that in the SCN there was no evidence that the currency was sale proceeds of gold; that loan was given and loan was received back; that Indian currency and gold are not prohibited nor restricted and can be released on applicable customs duty under section 125 of the Customs Act, 1962; that violation if any, was out of ignorance and was technical in nature;
- (ii). that the Show Cause Notice issued by the Respondent clearly revealed that the impugned goods/ gold were dutiable goods and not prohibited goods; that the acts and/or omissions on the part of the applicant to evade Customs duty could only be done in respect of dutiable goods and not prohibited goods; that once the department or respondent had accepted that the goods are dutiable, then the option to redeem the goods as provided under Section 125 of the Customs Act, 1962 should be granted to the applicant.
- (iii). The applicant has relied upon the undermentioned cases to defend their case;
- (a). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC], Absolute confiscation of goods without considering question of redemption on payment of fine although having discretion to do so under Section 125, matter remanded back.
- (b). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)], Section 125(1) ibid clearly mandates that it is within the power of the adjudicating authority to offer redemption of goods even in respect of prohibited goods.
- (c). T. Elvarasan v/s. Commr. Of Customs (Airport), 2011-266-ELT-167-Tri-Madras on the issue of gold chains brought from Singapore and seized on the ground of non-declaration on arrival; passenger living abroad for more than 6 months and entitled to import gold; gold not prohibited item option to redeem the goods; impugned gold ordered to be released provisionally subject to adjudication proceedings.
- (d). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [ [2011-263-ELT-685-Tri-Mumbai]. *Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole and makes them liable to absolute confiscation.*
- (e). Mohini Bhatia vs. Commr. Of Customs [1999-106-ELT-485-Tri-Mumbai on prohibited goods and restricted goods. Gold was not included in the part II of restricted item.

- (f). In *Universal Traders vs. Commissioner* [2009-240-ELT-A78-SC], the apex court allowed redemption of exported goods being not prohibited.
- (g). In *Gauri Enterprises vs. C.C Pune* [2002-145-ELT-706-Tri-Bang], held that if similar goods had been released on fine earlier, selective absolute confiscation was not called for, Absolute Confiscation should be exception rather than a rule.
- (h). In *Shaik Jamal Basha v. Government of India* 1997 (91) ELT 277 (A.P.) 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.
- (i). In *VP Hameed v. Collector of Customs, Mumbai* - 1994 (73) ELT 425 (Tri.) it was held that there is no bar in allowing redemption of gold being an item notified under Section 123 of Customs Act, 1962 or for any other reason.
- (j). In *P. Sinnasamy v. Commissioner of Customs, Chennai* 2007 (220) ELT 308 (Tri-Chennai), the Hon'ble Court allowed redemption of absolutely confiscated gold observing that option to redeem the gold to be given as there is no bar against such option by reason of goods being an item notified under Section 123 of Customs Act, 1962 or for any other reason.
- (k). In *Union of India Vs Dhanak M. Ramji* - 2009 (248) ELT 127 (Bom.) affirmed vide 2010 (252) ELT A102 (S C) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
- (l). In *Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal* - 2001 (136) ELT 758 it was held that in view of the liberalised gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed.
- (m). In *Sapna Sanjeev Kohli v. Commissioner of Customs, Airport, Mumbai* - 2008 (230) ELT. 305 the Tribunal observed that the frequent traveller was aware of rules and regulations and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (n). In *Vatakkal Moosa v. Collector of Customs, Cochin* 1994 (72) ELT. 473 (G.O.I.); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.

- (o). Halithu Ibrahim v. CC [2002-TIOL 195-CESTAT-MAD. = 2002 (148) ELT 412 (Tribunal); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (p). Krishnakumari v. CC, Chennai - 2008 (229) ELT 222 (Tri-Chennai) ; it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (q). S. Rajagopal v. CC, Trichy - 2007 (219) ELT 435 (Tri-Chennai); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (r). M. Arumugam v. CC, Tiruchirappalli, 2007 (220) ELT 311 (Tri-Chennai); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (s). In the COMMR. OF C. EX. & S.T., LUCKNOW VI MOHD. HALIM MOHD. SHAMIM KHAN Final Order No. A/71054/2017-SM(BR), dated 13-9-2017 in Appeal No. C/70595/2016, reported in 2018 (359) E.L.T 265 (Tri-All.) ; Only prohibited goods cannot be released on payment of redemption fine Gold not being prohibited goods, cannot be confiscated absolutely - Order permitting release of such gold on payment of redemption fine in lieu of confiscation upheld.

Under the circumstances, the applicant has prayed that in view of the aforesaid case laws, the OIA be modified or set aside and the Indian currency alongwith the gold be released; the penalty be set aside; or pass any other order as deemed fit and proper.

6(a). Personal hearing in the case of A1 was scheduled for 17.08.2023, 25.09.2023. Shri. Prakash Shingrani, Advocate attended the hearing on 25.09.2023 and reiterated earlier submissions. He drew attention to cross examination of applicant before adjudicating authority and towards the fact that currency belonged to applicant. He further submitted that currency was seized from the applicant's home and applicant is not a habitual offender. He requested to allow redemption of the same on nominal fine and penalty.

6(b). Personal hearing in the case of A2 was scheduled for 25.08.2023, 15.09.202.. Shri. N.J Heera, Advocate attended the hearing on 15.09.2023 and submitted that applicant no. 2 has submitted affidavits of his three family members explaining source of funds. He requested to release the currency to applicant. During the personal hearing, the Advocate furnished copies of the following case laws relied upon by him;

- (i). Ratna Kumar Saha vs. Commr. Of Customs, Patna; 2021-375-ELT-435-Tri.-Kolkata.,
- (ii). U.O.I vs. Imtiaz Iqbal Pothiawala; 2019-365-ELT-167-Bom.,
- (iii). Tulsi Das Agarwal vs. Commr. Of Customs, Kanpur; 2003-158-ELT-725-Tri.Del.,
- (iv). Ghisshibhai Pravinkumar vs. Commr. Of Customs, Mumbai; 2001-137-ELT-1311-Tri.-Bom.,
- (v). Mohan Shet vs. Commr. Of Customs (Prev), Mumbai; 2001-129-ELT-358-Tri.-Mum.,
- (vi). Commr. Of Customs, Jaipur vs. Bharat Kumar; 1999-109-ELT-552-Tri.-Del.,
- (vii). Ramchandra vs. Coll. Of Customs; 1992-60-ELT-277-Tri.-Del.

7. At the outset, Government observes that the applicants i.e. A1 and A2 have filed separate revision applications only on the limited issue of absolute confiscation of currency and gold recovered from their residences and personal penalty against them which has been upheld by the AA. Therefore, Government proceeds to decide the case on merits only on the above limited issue of A1 and A2. Needless, to say that all other matters decided in the OIO dated 16.07.2020 passed by OAA against the other noticees have attained finality in the absence of any appeals before AA and therefore, are not the subject matter of this Revision Order.

8. The Government has gone through the facts of the case, written submissions, show cause notice, etc.

8(a). On the issue of the Indian currency and foreign currency, equivalent to a total of ₹ 49,68,650/- recovered from the house of A1, Government notes that the investigations based on statements of co-accused concluded that this money recovered from his house pertained to the sales proceeds of the smuggled gold sold in the past which he had converted to foreign currency to be used towards payment overseas for purchase of more gold. A1 had stated that he had purchased the foreign currency from Nasir Ismail Madathil of M/s. Citizen Novelties which was a pan-bidi shop located at Colaba. Nasir Ismail Madathil of M/s. Citizen Novelties, Colaba had admitted to selling EURO 52,500/- to A1. Thus, purchase of foreign currency stands corroborated. It is seen that the investigating agency had alleged that Indian as well as foreign currency recovered from the residence of A1 were sale proceeds of smuggled gold which had been allegedly purchased in the past. Government finds that no evidence in this regard has been unearthed except the statements obtained from A1 and other co-accused. It is noted that only role alleged for A1 is disposing of the purchased gold from the persons responsible for smuggling and also that currency was seized from the residence of A1. In view of these mitigating factors, Government finds that the absolute confiscation of the currency is harsh and unjustified and therefore, is inclined to release the said currency on payment of a redemption fine.

8(b). On the issue of personal penalty imposed on A1, Government notes that in his statement he had admitted to disposing of 8 gold bars, totally weighing 0.933 grams for ₹ 28,64,678/- at the request of his friend Rehmat. Investigations revealed that these 8 gold bars were part of the 77 gold bars which had been smuggled into the country. A1 had admitted that he had sold the gold bars to Bharat Parmar of M/s. Kaka Gold, Zaveri Bazar. Bharat Parmar too when confronted had confirmed that he had purchased 8 gold bars in July, 2018 from A1 for cash amount of ₹ 28,64,678/-. These facts were also corroborated by

others, especially Bharat Parmar, though retracted later. Government finds that the issue of retraction by A1 and Bharat Parmar has been dealt with in detail by the lower authorities. The fact remains that the investigations carried out by the investigating agency led to A1 which in turn resulted in the information that A1 had assisted in disposing of 8 gold bars. Government finds that for this act, penal action on A1 is justified.

8(c). Penalty imposed on A1 is commensurate to his omissions and commissions. Government is not inclined to reduce the penalty of ₹ 5,00,000/- imposed on A1 under Section 112(a) and (b) of the Customs Act, 1962.

9(a). Government finds that A2 was found in possession of 7 gold bars collectively weighing 0.816 kg. Investigations carried out revealed that these 7 gold bars were part of the 77 gold bars allegedly smuggled into the country. The same had been procured from someone who was involved in diverting the allegedly smuggled gold bars. Admittedly, they have known each other for some time and had business connections in the past. Government notes that the confiscation of the 7 gold bars was lawful and appropriate. However, considering the fact that quantity was small, A2 was merely trading the gold, the same was recovered from his home, and A2 not being a habitual offender, request to allow redemption appears reasonable.

9(b). Further, ₹ 20,00,000/- cash was recovered from the Alto car of A2. Government notes that A2 had admitted that this ₹ 20 lakhs were given to him by Mehboob who was scheduled to pick up the same on the next day.

9(c). A2 had submitted 3 affidavits claiming that the cash of ₹ 20 lakhs belongs to his family. At para 31.15 of the OIO, the breakup of the total cash recovered during the investigations has been given. The amount of ₹ 20 lakhs recovered



from A2 has been considered in this total. The investigating agency had attempted to link up this amount of ₹ 20 lakhs to the money earned by Mehboob on the sale of the gold bars. Government notes that the affidavits given by A2 is an afterthought, with a motive to obtain release of the Indian Currency. Considering all the facts, Government notes that the confiscation of ₹ 20 Lakhs was lawful and just. However, considering the factors mentioned above, request for allowing redemption appears reasonable and the same deserves to be considered.

9(d). Regarding 0.816 kg of gold valued at ₹ 25,71,912/- recovered from the premises of A2, the same is held liable to confiscation. However, considering that quantity of gold is not large, it was purchased by A2, A2 has no direct role in smuggling of gold, and A2 not being habitual offender, Government considers giving option to redeem the same on payment of appropriate redemption fine.

9(e). Government notes that the penalty of ₹ 3,00,000/- imposed on A2 who is the Manager of M/s. Ashok Jewellery, Cheetah Camp is commensurate with the omissions and commissions committed by him. Government is not inclined to interfere in the same.

10(a). In view of the above, in respect of A1, the Government modifies the impugned order of the appellate authority in respect of the Indian and foreign currency. The absolute confiscation of the Indian and foreign currencies equivalent to INR 49,68,650/- recovered from the residential premises of A1, is set aside and the same is allowed to be redeemed on payment of a redemption fine of ₹ 9,50,000/- (Rupees Nine lakhs fifty thousand only). The penalty of ₹ 5,00,000/- imposed on A1 under section 112(a) and (b) of the Customs Act, 1962 by the lower adjudicating authority and upheld by the appellate authority, for the aforesaid reasons, is upheld.

- 10(b). In view of the above, in respect of the revision application filed by A2,
- (i). Absolute confiscation of Indian Currency of ₹ 20 lakhs is set aside and the same is allowed to be redeemed on payment of a redemption fine of ₹ 4,00,000/- (Rupees Four lakhs only) and
  - (ii). Absolute confiscation of 0.816 kg gold valued at ₹ 25,71,912/- is set aside and the same is allowed to be redeemed on payment of a redemption fine of ₹ 5,00,000/- (Rupees Five lakhs only). Penalty imposed on A2 is upheld.

11. Accordingly, the two revision applications filed by A1 and A2 are disposed of in terms of above *i.e. para 10 ibid.*

  
( SHRAWAN KUMAR )

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

**ORDER No. 922-/2023-CUS (WZ) /ASRA/MUMBAI DATED 14.12.2023.**  
923

To,

1. Shri. Shadab Abdul Karim Mansuri, 141A, 2<sup>nd</sup> Floor, 93-94, Aaliya Mansion, Zakariya Masjid Road, Mumbai - 400 009.,
2. Shri. Ratan Ganpatlal Hinger, Flat no. 602, Bhakti Residency, Sector - 11, Sanpada, Navi Mumbai - 400 705.,
3. Commissioner of Customs, GST Bhavan, 41 / A, Sassoon Road, Pune - 411 001.

**Copy to:**

1. Shri. Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.,
2. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai - 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Notice Board.