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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F. No. 371/441/B/2021-RA/8608 Date of Issue 27.12.2023

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ORDER No. 949/2023-CUS (WZ)/ASRA/MUMBAI DATED 20.12.2023.  
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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Applicant : Mr Kuldipkumar Bhamvarlal Raval

Respondent : Pr. Commissioner of Customs, C.S.I Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-365 & 366/2022-23 dated  
30.05.2022 [Date of issue: 30.05.2022] [F. No S/49-  
1465/2021 & 697/2022] passed by the Commissioner  
of Customs (Appeals), Mumbai Zone-III.

**ORDER**

This Revision Application has been filed by Mr Kuldipkumar Bhamvarlal Raval (herein referred to as 'Applicant') against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-365 & 366/2022-23 dated 30.05.2022 [Date of issue: 30.05.2022] [F. No S/49-1465/2021 & 697/2022] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that the Applicant, who had arrived from Sharjah by Flight No. IX252, was intercepted personal search of the Applicant led to the recovery of 01 gold rod concealed in the sleeves of his blazer and 01 gold chain worn by him around neck both 24KT collectively weighing 400grams and valued at Rs. 11,67,600/- were seized under the reasonable belief that the same were being smuggled into India and hence liable for confiscation under the provisions of the Customs Act, 1962. The applicant stated that completed his B.Tech, that he is presently employed in Ramadi Kitchen Industries, Dubai. His address at Dubai is PO Box 234902. The Applicant admitted to ownership, possession, non-declaration, concealment and recovery of the seized gold.

3. After following the due process of law, the Original Adjudicating Authority (OAA) viz, Additional Commissioner of Customs, Chhatrapati Shivaji International (C.S.M.I) Airport, Mumbai vide Order-In-Original No. ADC/VDJ/ADJN/101/2021-22 dated 05.07.2021 ordered the confiscation of the said 01 gold rod and 01 gold chain both 24KT collectively weighing 400grams and valued at Rs. 11,67,600/- under Section 111 (d), (l), and (m) of the Customs Act, 1962. The OAA gave the Applicant the option to redeem the said seized gold under Section 125 of the Customs Act, 1962 on payment of redemption fine of Rs. 2,00,000/- in lieu of confiscation in addition to payment of the applicable customs duty. Personal penalty of Rs. 1,00,000/- was imposed on the Applicant under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant and the Respondent Department filed an appeal with the Appellate Authority viz, Commissioner of Customs



(Appeals), Mumbai Zone-III, who vide her Order-in-Appeal No. MUM-CUSTOM-PAX-APP-365 & 366/2022-23 dated 30.05.2022 [Date of issue: 30.05.2022] [F. No S/49-1465/2021 & 697/2022] set aside the Order-in-Original dated 05.07.2021 and ordered the absolute confiscation of the impugned gold. The personal penalty imposed by the OAA was not interfered with by the AA.

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. The Appeal Commissioner ought to have considered the observations made the Ld. Adjudicating authority in the points bearing No.19.5. 20, 20.1 and 20.2 of his order-in-original

All above observations made by the ld. Adjudicating authority clearly justified his order of release of goods, which were however not given any weightage by the ld. Appeal commissioner while rejecting the appeal.

The applicant has prayed to the revisionary authority to allow the gold jewellery for redemption on nominal fine and penalty be reduced substantially. To grant any other reliefs as deemed fit. The Applicant also filed an application for condonation of delay.

6. Personal hearing in the case was scheduled on 01.12.2023. Shri. N J Heera, Advocate appeared for the personal hearing on 01.12.2023 and reiterated earlier submissions. He further submitted that the applicant brought small quantity of gold for personal use, that there was no concealment and past history. He requested to restore the OIO as the same was correctly allowed redemption on reasonable fine and penalty.

7. At the outset, the Government notes that the Applicant has filed for condonation of delay. The Revision Application was filed on 14.10.2022. The

date of issue of the Order of the Appellate Authority is 30.05.2022. Based on the date of issue of the said Order of the Appellate Authority, the Applicant was required to file the Revision Application by 29.08.2022 (i.e. taking the first 3 months into consideration) and by 29.11.2022 (i.e. taking into consideration a further extension period of 3 months). The Applicant has accepted that there was a delay in filing the Revision Application from the date of receipt of the order. Thus it is seen that the Revision Application has been filed within the date, after considering the extended period.

7.2. The Applicant in his application for condonation of delay has stated that the revision application could not be filed due to the lockdown in India due to the covid situation and requested that the delay be condoned.

7.3. For understanding the relevant legal provisions, the relevant section is reproduced below :

**SECTION 129DD. Revision by Central Government.-**

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.*

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.....

*(2) An application under sub-section (1) shall be made within three months from the date of the communication to the Applicant of the order against which the application is being made :*

*Provided that the Central Government may, if it is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.*

.....

7.4. From above, it is clear that the Applicant was required to file the Revision Application within 3 months from the communication of the Appellate Order. The delay thereafter, upto 3 months can be condoned. Since, the Revision Application is filed within the condonation period of



three months, and the reason also being genuine, Government condones the delay on the part of the Applicant in filing the application and proceeds to examine the case on merits.

7.5 The applicant stated that he is a NRI having a resident permit card of Dubai, that he is staying and working for the past many years in Dubai.

8. The Government has gone through the facts of the case and observes that the Applicant had brought said 01 gold rod and 01 gold chain both 24KT collectively weighing 400grams and valued at Rs. 11,67,600/- and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The Applicant had not disclosed that he was carrying dutiable goods. However, on being intercepted, said 01 gold rod and 01 gold chain both 24KT collectively weighing 400grams and valued at Rs. 11,67,600/- were recovered from the Applicant and it revealed his intention not to declare the said gold and thereby evade payment of Customs Duty. The confiscation of the gold was therefore justified and thus the Applicant had rendered herself liable to penal action.

8.2. 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.”*

8.3. 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 to confiscation under Section 111(d) of the Customs Act, 1962.

9. 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".

10. 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.

11. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society at large.

12. 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."*

13.1. Government further observes that there are catena of judgements, over a period of time, of the Hon'ble 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 Shaik 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.
- e) Judgement dated 17.02.2022 passed by the Hon'ble High Court, Rajasthan (Jaipur Bench) in D.B. Civil Writ Petition no. 12001 / 2020, in the case of Manoj Kumar Sharma vs. UOI and others.

13.2 In a recent judgement passed by the Hon'ble High Court, Madras on 08.06.2022 in WP no. 20249 of 2021 and WMP No. 21510 of 2021 in r/o. Shri. Chandrasegaram Vijayasundarm + 5 others in a similar matter of Sri. Lankans wearing 1594 gms of gold jewellery (i.e. around 300 gms worn by each person) upheld the Order no. 165 - 169/2021-Cus (SZ) ASRA, Mumbai dated 14.07.2021 in F.No. 380/59-63/B/SZ/2018-RA/3716, wherein Revisionary Authority had ordered for restoration of OIO wherein adjudicating authority had ordered for the confiscation of the gold jewellery but had allowed the same to be released for re-export on payment of appropriate redemption fine and penalty.

13.3 Government, observing the ratios of the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

14. In view of the foregoing paras, the Government finds that as the Applicant had not declared said 01 gold rod and 01 gold chain both 24KT collectively weighing 400grams and valued at Rs. 11,67,600/- at the time of arrival, the confiscation of the same was justified. However, though the quantum of gold under import is not substantial and it is not in commercial quantity. The Applicant provided the source of funds and has claimed to be for personal use and nothing contrary has been proved. There are no allegations that the Applicant is a habitual offender and was involved in

similar offence earlier or there is nothing on record to prove that the Applicant was part of an organized smuggling syndicate.

15. The Government finds that the quantum of gold involved in this case is not substantial and the Applicant has claimed ownership of the impugned gold jewellery after explaining the purpose of getting the gold into the country. In the instant case, the impugned 01 gold rod was kept by the applicant on his person, i.e. in the sleeves of his blazer and 01 gold chain worn by him around neck gold rod. 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. This case is at best a case of mis-declaration rather than smuggling. Government finds that the discretion to allow the redemption of the impugned gold jewellery under Section 125 of the Customs Act, 1962 by the Original Adjudicating Authority is judicious and fair and the order absolute confiscation by the Appellate Authority is excessive and is therefore liable to be modified and the impugned gold jewellery is liable to be allowed redemption on suitable redemption fine.

15.1 The absolute confiscation of the gold bars, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Since applicant is NRI with a UAE resident permit card and is still working in Dubai. Government is inclined to accept the prayer put forth by the applicant for re-export of the impugned gold on payment of a redemption fine.

16. The Original Adjudicating Authority while allowing redemption of the seized gold has at Para 21 of the Order-in-Original has discussed the issue in detail and has ruled as under

*"20. I find from the panchanama dated 04.04.2019 that the personal search of the passenger resulted in the recovery of one yellow metallic rod, one yellow metallic chain purported to be gold. The yellow metallic rod was winded around*



*the wrist of the passenger in the sleeve of the blazer and the yellow metallic chain was worn around the neck. I find that wearing the gold jewelry on body cannot be considered as ingenious concealment.*

*20.2 I find that the Ld Advocate enclosed original tax invoices No POSAQ007230 dated 03.01.2019 and POSAQ005756 dated 29.11.2018 from Bafleh jewellery. The total weight mentioned in these invoices matches with the weight of the seized gold. The invoices were of prior date to the date of seizure. Looking at the financial status obvious from his stated monthly income, the admitted ownership of the seized gold is established. I find that the option to redemption has been granted and absolute confiscation is set aside vide Order No 12/2021-CUS (WZ)/ASRA dated 18.01.2021 by the Revision Authority, Government of India under F No 371/44/B/2015-RA/785 dated 29.01.2021. Similar view on re-demption of seized gold was taken by Revision authority vide Order no 41/2021-CUS (WZ)/ASRA dated 26.02.2021 issued under F No 371/41/B/15-RA/1635 dated 03.03.2021. Similar view is also held by the Revision Authority vide Order no 30/2021-CUS (SZ)/ASRA/MUMBAI dated 20.05.2021 issued under F No 380/17/B/16-RA issued on 02.06.2021. In view of above facts as well as the fact that this is not a case of ingenious concealment I am of the considered opinion that under section 125 of the Customs Act 1962, the option for redemption can be granted. I therefore, find this case fit for redemption. I hold it accordingly under the powers vested with me under Section 125(1) of the Customs Act, 1962."*

17. Applicant has also pleaded for setting aside the penalty imposed on him. The market value of the impugned said one crude gold chain of 01 gold rod and 01 gold chain both 24KT collectively weighing 400grams and valued at Rs. 11,67,600/-. From the facts of the case as discussed above, Government finds that the penalty of Rs. 1,00,000/- imposed on the Applicant under Section 112(a) and (b) of the Customs Act, 1962 is commensurate to the omissions and commissions of the Applicant.

18. In view of the above, the Government modifies the impugned order of the Appellate authority in respect of the absolute confiscation of the impugned gold jewellery and allows the same to be redeemed for re-export on payment of redemption fine. The said 01 gold rod and 01 gold chain both 24KT collectively weighing 400grams and valued at Rs. 11,67,600/- is allowed redemption only for re-export on payment of a fine of Rs. 2,25,000/- (Rupees Two Lakh Twenty Five Thousand only). The penalty of Rs. 1,00,000/- imposed under Section 112(a) and (b) of the Customs Act, 1962

by the Original Adjudicating Authority and upheld by the Appellate Authority is sustained.

19. The Revision Application is disposed of on the above terms.

  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 949/2023-CUS (WZ)/ASRA/MUMBAI DATED 20.12.2023.

To,

1. Mr Kuldipkumar Bhamvarlal Raval 4, Neminath Flat, Chunnilal Colony, Opposite Football Ground Colony, Kankaria Road, Ahmedabad 380022.
2. The Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
2. Shri. N J Heera, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp GPO, Fort, Mumbai 400001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Noticeboard.