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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No.371/232-233/B/2022-RA / 249

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09.01.2024

ORDER NO. 971-972/2023-CUS (WZ) /ASRA/Mumbai DATED 29.12.2023
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.

- Applicants** : 1. Shri Mohammed Nawab Alam,
C/o J.W. 5030, Bharat Diamond Bourse,
Bandra-Kurla Complex, Bandra (E),
Mumbai - 400 051.
2. M/s MMK Enterprises,
C/o, Kunal Varma, 116, Gordhandas Building,
2nd floor, Room No.33,
Near Central Cinema, Girgaon,
Mumbai - 400 004.
- Respondent** : The Pr. Commissioner of Customs,
CSMI Airport, Sahar, Mumbai.
- Subject** : Revision Applications filed under Section 129DD of the
Customs Act. 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1085,1086/2021-22 dated
24.11.2021 passed by the Commissioner of Customs
(Appeals), Mumbai - III.

ORDER

The subject Revision Applications have been filed by Shri Mohammed Nawab Alam and M/s MMK Enterprises, Mumbai (here-in-after referred to as 'the applicant no.1' and 'the applicant no.2', respectively, when mentioned individually or 'applicants' when mentioned together) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1085,1086/2021-22 dated 24.11.2021 passed by the Commissioner of Customs (Appeals), Mumbai - III, which had disposed of appeals preferred by the Department and applicant no.1 against the Order-in-Original dated 31.05.2021 passed by the Additional Commissioner of Customs, CSMI Airport, Mumbai, which in turn had disposed of a Show Cause Notice dated 20.03.2020 issued to applicant no.1.

2. Brief facts of the case are that the applicant no.1 arrived from Bahrain on 07.10.2019 by flight no.GF-64 and was intercepted by the Customs officers at CSMI Airport, Mumbai after he crossed the Green Channel. The applicant no.1 was subjected to a personal search after he replied in the negative to the query by the officers as to whether he was carrying anything dutiable. Personal search of the applicant no.1 resulted in the recovery of one necklace and two earrings of 18KT white gold diamond studded jewellery totally valued at Rs.85,26,332/- which were seized under the reasonable belief that the same was attempted to be smuggled into India and hence liable to confiscation under the provisions of the Customs Act, 1962. During the course of his statement recorded on 07.10.2019, applicant no.1 stated that he was working as a salesman for M/s Mia Mood Jeweller, Bahrain and that the seized jewellery was carried by him on the instructions of his employer and that he had no documents in respect to the said jewellery. He further submitted that the said jewellery was supposed to be handed over to a 'Mr. Mahesh' in Mumbai and also admitted that he was aware that bringing such jewellery into the country without declaring and paying Customs duty on the same was a punishable offence under the Customs Act, 1962.

3. On the basis of investigation conducted, a Show Cause Notice dated 20.03.2020 was issued to the applicant requiring him to show cause as to

why the seized jewellery which was recovered from him should not be absolutely confiscated under Section 111(d), (l) and (m) of the Customs Act, 1962 and personal penalty under Section 112(a) and (b) of the Customs Act, 1962 should not be imposed on him.

4. After following due process of law, the original authority i.e. Additional Commissioner of Customs, CSMI Airport, Mumbai vide Order-in-Original dated 31.05.2021 ordered for confiscation of the said seized jewellery under Section 111(d), (l) and (m) of the Customs Act, 1962, however an option was given to applicant no.1 to redeem the confiscated goods on payment of redemption fine of Rs.12,00,000/-. The original authority also imposed a personal penalty of Rs.5,00,000/- on applicant no.1 under Section 112(a) and (b) of the Customs Act, 1962.

5. Aggrieved by the said Order-in-Original, both, the Department and applicant no.1 filed appeals before the Commissioner (Appeals). The Department preferred the appeal on the grounds that the applicant no.1 had deliberately attempted to smuggle the said jewellery with the malafide intention to evade paying Customs duty on the same and hence the option given by the original authority to redeem the seized jewellery on payment of redemption was not legal or proper and the said jewellery should be absolutely confiscated. The applicant no.1, in his appeal, reiterated the submissions made by him before the original authority. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 24.11.2021, while rejecting the appeal filed by applicant no.1, allowed the appeal of the Department and ordered for absolute confiscation of the seized jewellery. Aggrieved, applicant no.1 and applicant no.2 viz. M/s MMK Enterprises, who have claimed ownership of the seized jewellery, have filed the subject Revision Applications.

6.1 The applicant no.1 filed the subject Revision Application on the following grounds:-

(a) That the decision of the Commissioner (Appeals) that the seized goods were classifiable as 'prohibited goods' and hence liable for confiscation

under Section 111(d), (l), (m) of the Customs Act, 1962 was incorrect in facts as well as law;

(b) That the following facts of the case were not considered by the Commissioner (Appeals) :-

- The applicant no.1 was working as a Sales Manager for M/s Mia Moon Jewellers at Bahrain and that M/s MMK Jewellers, Mumbai was one of their suppliers;
- The applicant no.1 had travelled to Mumbai 17.09.2019 from Bahrain and had collected the impugned jewellery, which was shown to him by Mr. Kunal Verma, from the premises of M/s MMK Mumbai on 18.09.2019 as sale on approval basis under the cover of 'Jhangad/Acknowledgment of Entrustment' dated 18.09.2019 along with Valuation Report and Jewellery Report;
- That the statement of applicant no.1 vide which he had stated M/s Mia Moon Jewellers to be the owners of the seized jewellery was obtained by force and that the applicant no.1 had retracted the said statement;
- That the Department did not carry out fair investigation into the relevant aspects of the case, particularly the labour bills issued by job workers, Jewellery Report and Valuation Report which proved the Indian origin of the seized jewellery;
- That in their case it was a sale on approval basis and hence there was no need to issue a tax invoice till the actual sale or six months from the date of preparation of delivery challan; that Circular no.108/27/2019-GST dated 18.07.2019 of the CBiC approved such activity of 'Sale of approval basis';
- That the only mistake committed was not following procedure which was technical in nature and the same cannot be made a ground for absolute confiscation and imposition of penalty;

- That the applicant no.1 carried the impugned jewellery from Mumbai to Bahrain on 19.09.2019 vide flight no.GF-057 for showing it their customer, who was not satisfied with the said jewellery, and hence the applicant no.1 travelled back to Mumbai on 07.10.2019 for returning the impugned jewellery to M/s MMK Enterprises, Mumbai; that even if the customer had agreed to purchase the jewellery the same would be carried back to Mumbai as the sale would have happened in Mumbai only in terms of their agreement with M/s MMK Enterprises; that the applicant no.1 was under a bonafide belief that since he had carried the impugned jewellery under the authority of 'Jhangad/Acknowledgment of Entrustment' dated 18.09.2019 there was no need to declare the said jewellery to the Customs on his departure on 18.09.2019 and his arrival on 07.10.2019; that this was an inadvertent mistake;

- That the applicant no.1 was not a carrier and that he carried the said jewellery as he was an employee of M/s Mia Moon Jewellers and that his travel tickets were also arranged by M/s Mia Moon Jewellers;

That none of the above facts were considered by the Commissioner (Appeals) before arriving the conclusion;

(c) That the seized jewellery did fall within the ambit of 'prohibited goods' as defined under the Customs Act, 1962; that the Commissioner (Appeals) had misconstrued the second part of the definition of prohibited goods in holding that the conditions for import of the impugned jewellery were not complied with and hence the same were prohibited goods which was devoid of any merit and logic;

(d) That once the item in question did not qualify as a prohibited item there was no case for confiscation of the said goods; that Section 111(m) of the Act was with respect to an incorrect and hence the same would not be applicable in this case, as no declaration itself was made by him; and hence the Commissioner (Appeals) was incorrect on this count and hence the impugned Order-in-Appeal should be set aside;

(e) The findings of the Commissioner (Appeals) on several counts was incorrect on facts as well as law; that to prove that the impugned jewellery was made in India, he had submitted documents like Labour Bills for making the impugned jewellery, Jhangad/Acknowledgment of Trust dated 18.09.2019 issued by M/s MMK Enterprises and the Jewellery Report issued by Global Gemmological Laboratories; that the Department failed to conduct verification of the said documents; that the impugned jewellery was supported by stipulated challan (called Jhangad in trade parlance) which was signed by the received and not signed by the seller M/s MMK Enterprises as they were not required to sign it;

(f) That the findings of the Commissioner (Appeals) was entirely based on the assumptions and presumptions of the investigative authorities which cannot stand the test of law; that a false case was booked against him and that conjectures and surmises cannot take the place of legal proof;

(g) That the documents, viz. Labour Bills, Valuation Report, Acknowledgment of Entrustment and Lab Report submitted by the applicant no.1 substantiated the claim regarding the country of origin of the subject jewellery and therefore the burden of proving that the jewellery was of foreign origin was on Customs and that Customs had not been able to prove the same; and that the impugned jewellery was the same which was handed to the applicant on 18.09.2019 by M/s MMK Enterprises and carried by him from India to Bahrain on 19.09.2019;

(h) That M/s MMK Enterprises are the legal owners of the said goods as no payment was made to them or Mr. Kunal Verma towards the jeweler who had handed over the same to them for approval purposes; that he had submitted a letter to that effect to the Customs authorities and requested that the impugned jewellery be handed over to Mr. Kunal Verma of M/s MMK Enterprises; that the value of the jewellery was Rs.62,92,404/- as indicated by the certificated dated 16.09.2019 issued by the Government authorized valued viz. Shri anil Waghadkar;

(i) That the applicant by virtue of having submitted email from the security at Bharat Diamond Bourse confirming his visit to the office of M/s MMK Enterprises, valuation report, jewellery report and email from M/s

MMK Enterprises to M/s Mia Moon Jewellers attaching the Memo of Jewellery and Jhangard/Lab report had reasonably proved that the impugned jewellery were not smuggled goods as required under Section 123; that he was not provided a copy of the seizure panchanama and thus the investigation was not done in fair manner and hence his statement dated 07.10.2019 and subsequent recovery has to be held as illegal and void;

(j) That the impugned Order-in-Appeal was a non-speaking order as the Commissioner (Appeals) had not considered several submissions made by him and solely relied on his statement which had been retracted; that no penalty could be imposed on him as the goods in question was not liable for confiscation and hence no penalty was imposable under Section 112 of the Customs Act, 1962;

(k) That the impugned Order-in-Appeal was liable to be set aside and absolute confiscation was not sustainable and the impugned jewellery should be released to M/s MMK Enterprises, Mumbai who were its real owners; that his mobile and passport should be released;

In view of the above he submitted that the impugned Order-in-Appeal be set aside and their application be allowed.

6.2 The applicant no.2, viz. M/s MMK Enterprises have preferred the subject application on the following grounds:-

(a) That though the impugned Order-in-Appeal was not directly addressed to them, however, since it was against and prejudicial to them by virtue of absolute confiscation of the goods in question inasmuch as they were the rightful owners of the same and hence the present appeal; that they reiterated the earlier submissions made by Shri Alam and them;

(b) That they were the legal owners of the impugned jewellery which was handed over by them to the applicant no.1 in terms of the Jhangad on a sale on approval basis for showing it to overseas buyer; that Mrs. Marwah had given letter to Customs authorities that the said jewellery belonged to

the them and that the applicant no.1 had given a letter to the Customs authorities for handing over the said goods to them and hence the finding that the Shri Alam being the owner of the said jewellery was incorrect and fallacious;

(c) That the Commissioner (Appeals) had erroneously held that that the goods in question were prohibited goods as there was no prohibition on the import of the item in question; that in the present case no declaration as required under Section 77 was made due to bonafide and inadvertent understanding of Applicant no.1 that no declaration was required for the impugned jewellery and hence the Commissioner (Appcals) had erred in invoking Section 77;

(d) That the findings of the Commissioner (Appeals) was incorrect on facts and law inasmuch as the Commissioner (Appeals) had failed to verify the documents, viz. Labour Bills, Acknowledgment of Entrustment dated 18.09.2019 issued by them and the Jewellery Report issued by the Global Gemological Laboratories; that the impugned jewellery was supported by stipulated challan (called Jhangad in trade parlance) which was signed by the received and not signed by the seller M/s MMK Enterprises as they were not required to sign it;

(e) That the findings of the Commissioner (Appeals) was entirely based on the assumptions and presumptions of the investigative authorities which cannot stand the test of law; that a false case was booked against him and that conjectures and surmises cannot take the place of legal proof;

(f) That the failure on the part of other people to appear for the summons issued to them cannot be a valid reason to come to a conclusion that the seized jewellery was imported/smuggled jewellery; that Mr. Kunal Verma had vide letter dated 03.08.2020 stating that they were the rightful owners of the said jewellery and that he had severe heart conditions and was undergoing treatment of the same at a hospital and hence could not respond to the summons issued to him; that the Department had failed to serve a summons by affixing the same on his residence and that the Department should have taken legal action for his non-appearance to the summons which they had failed to do;

(g) That the documents mentioned above submitted by them were not accepted by the Department that it could not be co-related to the seized goods; that such observation was incorrect; that they Department should have constructed evidence based on the mass of records maintained by them during the course of business which was not done by them to verify their claim that the goods were manufactured in India; that no visit was made by the investigating agency to the premises of the job worker;

(h) That the authorized valuers/examiners engaged by the Customs authorities had no specified that the jewellery was of Indian origin, however, he had neither specified that the same was of foreign origin either; that it cannot be presumed to be of foreign origin for the reason that the Applicant brought the same from abroad; that on the contrary the applicant no.1 had established that the jewellery was of Indian origin which was neglected by the Commissioner (Appeals); that the Customs was unable to prove that the goods in question was of foreign origin; that evidences like the image of the jewellery was retrieved from mobile of applicant no.1, the emails between them and Mr. Marwah regarding sending of the jewellery and email from the security indicating the visit of the applicant no.1 to their premises were overlooked by the investigation and had without any basis come to the conclusion that the applicant no.1 had tried to smuggle the impugned jewellery; that the entire proceedings were based on the statement of applicant no.1 and no reliance could be placed on such statements which were extracted by the Department as the same were retracted; they placed reliance on several decisions in support of their claim; that the burden of proving that the retracted statements were made voluntarily during investigation was on the Department; that there was no corroborative evidence from any independence source outside the confession of the applicant no.1;

(i) that the case laws relied upon in the Order-in-Appeal was not relevant as there was no ingenious concealment in the present case; they relied on the decision the Apex Court in the case of UOI & others vs Dhanwanti Devi and others [1996 6 SCC 44] to submit that in order to understand and appreciate the binding force of a decision it was always

necessary to see what were the facts in the case in which the decision was given;

(j) They further submitted that the impugned Order-in-Appeal was a non-speaking Order inasmuch as the case laws given by the applicant no.1 was not considered; that Section 111(d) of the Customs Act, 1962 had no application in the present case as the impugned jewellery was not a prohibited item; that Section 111(m) of the had no application as applicant had not made the declaration referred to in Section 77 due to a bonafide and inadvertent understanding that no such declaration was required in this case; and since Section 111 was not applicable no penalty was imposable under Section 112 of the Act; that the case laws relied upon by the Commissioner (Appeals) was misplaced and out of context;

In view of the above, they submitted that the impugned Order-in-Appeal be set aside and their appeal be allowed with consequential relief; that they be held as the rightful owner of the seized jewellery in question and the same be released to them.

7. Personal hearing in the case was held on 05.09.2023. Shri Manish G. Verma, Shri Bharat Raichandani and Shri Surbhi Soni, all Advocates, appeared online for the same on behalf of the applicants. They submitted that the goods confiscated were Indian goods. They further submitted that even if the goods were confiscated, redemption should have been allowed. They further submitted that redemption should be allowed to M/s MMK Enterprises as they were the owners of goods.

8. Government has gone through the facts of the case and observes that it is not in dispute that the applicant no.1 was carrying the impugned jewellery when he arrived in Mumbai on 07.10.2019 and that he had crossed the Green Channel without declaring the same to the Customs authorities; subsequent interception and examination by the Customs authorities led to the recovery and seizure of the said jewellery valued at Rs.85,26,332/- from applicant no.1. Government notes that the original authority had ordered for confiscation of the impugned jewellery under Section 111 of the Customs Act, 1962, (here-in-after referred to as 'the Act') however, the applicant no.1

was given an option of redeeming the same on payment of a fine of Rs.12,00,000/- and personal penalty of Rs.5,00,000/- was imposed on applicant no.1 under Section 112 of the Act. Government notes that the Commissioner (Appeals) in the impugned order, taking into account the appeal preferred by the Department against the option given to the applicant no.1 to redeem the impugned jewellery, set aside the portion of the Order of the original authority granting such redemption and ordered for absolute confiscation of the same.

9. Government notes that the applicant no.1 in the subject application has submitted that he had collected the impugned jewellery from M/s MMK Enterprises in Mumbai and due to certain turn of events was required to carry it to Bahrain and subsequently carry the same back to India. Government notes that it is in this context, the applicant no.2 has claimed ownership of the impugned jewellery and pleaded that the same may be released to them. Government notes that applicant no.1 has admitted that no declaration was made by him when he carried the said jewellery out of the country and the facts of the case indicate that he did not do so on his arrival in Mumbai on 07.10.2019 either, when the said jewellery was recovered from him. Government notes that for such cases, when a passenger intends to bring back the jewellery carried by him when going abroad, an elaborate procedure has been put in place, which involves getting the same valued from an approved valuer, photographing and sealing of the same by the concerned authorities and thereafter being examined by the Customs authorities at the time of departure of the passenger leading to issue of a Certificate by the Customs Authorities at the airport. Government notes that the applicant is admittedly working in the jewellery industry for several years and is no stranger to the Customs laws in this connection and hence his conduct cannot be treated as that of a normal passenger who could be ignorant of such procedure. Government notes that, even for arguments sake, accepting the plea of applicant no.1, would render the entire procedure laid down by the law which has been discussed above, otiose. Further, as stated earlier, it is not in dispute that the applicant did attempt to smuggle the said jewellery into the country and hence applicant no.1 will not find any shelter under the claim that the same was a bonafide mistake and an inadvertent understanding of the law.

10. Further, Government finds that applicant no.2 have stated that they are the legal owners of the impugned jewellery and have requested that the same may be released to them. They have sought to buttress their submission by furnishing copies of a few labour bills, bills for certification issued by M/s Global Gemological Laboratories and a document called 'Jhangad' which apparently is an Acknowledgment of Entrustment, apart from submitting copies of flight tickets and details of visit by applicant no.1 to their premises in Mumbai. Government finds that these documents were examined by the investigating officers and no connection was found between them and the seized jewellery. Further, Government finds that the applicant no.2 have in these proceedings submitted that the Customs Authorities should have verified their claims with the mass of documents and records maintained by them during the course of business to prove that the seized goods actually belonged to them. Further, Government also notes that they have alleged that the Summons issued to them was not in accordance with the legal provisions. Government has examined the Show Cause Notice and finds that several 'Summons' were issued to the Shri Kunal Verma, the Managing Director of M/s MMK Enterprises, the applicant no.2, on several occasions, on one occasion, the same was given to the Advocate representing them before the Customs Authorities, yet Shri Kunal Verma did not appear before the investigating authorities. Further, Government finds that the persons who issued the labour bills, which were submitted by the applicant no.2 to claim ownership of the goods in question, also failed to respond to several Summons issued by the Customs Authorities. Government finds that Shri Kunal Verma of M/s MMK Enterprises never joined the investigation and the labour bills submitted could never be verified as the persons who issued these bills also failed to tender any evidence supporting the claim made by the applicant no.2. It is in this context that Government finds the submission made by the applicant no.2, that the officers had not carried out proper investigation and had failed to examine their records, to be frivolous and incorrect as they themselves failed to join the investigations to prove their claims at that juncture and have no locus standi to now make a claim that their records were not examined by the investigating authority. Government notes that if the claim made by the applicants were correct, applicant no.2 would have presented themselves before the Customs authorities and proved that the impugned jewellery indeed belonged to them

and that it was carried by the applicant no.1 from Mumbai and then back as claimed by them. Government has examined the documents submitted by the applicants during the course of these proceedings and find that the same do not in any way prove that they pertain to the goods that were seized. There is no evidence to indicate that the goods mentioned in the Labour bills or the bills/certificates issued by the Global Gemological Laboratory bills pertain to the impugned jewellery. As regards the document viz. 'Jhangad', Government finds that it not a document that has any legal sanctity as it not an accepted document under any law. Further, Government finds that the investigating authorities had found that the same was not even signed by the applicant no.2, which they now claim that they were not required to do so; thus Government finds that the applicant no.2 has laid claim to the seized jewellery on the basis of a document on which they have not even put their signature. Thus, Government finds that none of the documents produced by the applicant no.2 support their claim of being the rightful owner of the seized jewellery. Government finds that the conduct of the applicant no.2 and the persons who purportedly issued the labour bills produced by the applicant no.2, during the investigation, raises serious questions about truthfulness of their claim and infact gives credence to the finding of the investigation that such claims are an after-thought and have been made to cover up the foiled attempt to smuggle the jewellery in question. In light of the above, Government does not find any merit in the submission of the applicant no.2 claiming ownership of the seized jewellery and hence rejects their application.

11. As discussed above, Government finds that it is not in dispute that there was an intent to smuggle the seized jewellery into the country without payment of proper Customs duty. Government finds that it was the alertness of the Customs officers that led to the detection of the said jewellery carried by applicant no.1 and that he had failed to declare the goods to the Customs authorities as required under Section 77 of the Customs Act, 1962. Government notes that it was only after examination of applicant was the impugned jewellery detected, and as stated earlier this clearly reveals that he never intended to declare the impugned jewellery to the Customs authorities on arrival and in the process evade payment of Customs Duty applicable on such jewellery.

12. Government notes that the original authority had allowed for the jewellery to be redeemed on payment of redemption fine by applicant no.1. However, the same was set aside by the Commissioner (Appeals) who vide the impugned Order-in-Appeal ordered for absolute confiscation of the said gold jewellery. Further, Government find that applicant no.1 has submitted that the seized goods are not 'prohibited goods' and hence the confiscation and consequent imposition of penalty was not in order. In this context, Government finds it pertinent to examine Section 2(33) which defines 'prohibited goods' and the same is 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”.

Government notes that as per the Foreign Trade Policy applicable during the period, gold jewellery was not freely importable. Therefore, Government notes that gold jewellery, a restricted item for import, was imported in the present case without fulfilling the conditions for import, and hence the impugned gold jewellery under seizure would fall under the category of 'prohibited goods' in terms of the Section 2(33) of the Customs Act, 1965.

13. As regards the issue of whether the said gold jewellery would be liable for confiscation or otherwise, Government finds that the Hon'ble High Court of Madras, in the case of Commissioner of Customs (Airport), Chennai-I v/s P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)], had observed as under: -

“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.....”.

Given the principles laid down by the Hon'ble High Court in the decision referred above, Government finds that the failure to declare the said Gold

jewellery and comply with the prescribed conditions, has made the impugned gold jewellery 'prohibited' and therefore liable for confiscation.

14. Having observed so, Government finds that once goods are held to be prohibited, Section 125 of the Customs Act, 1965 still provides that the proper officer may exercise his discretion to consider release of goods on payment of a redemption fine in lieu of confiscation. Section 125 of the Customs Act, 1962 is reproduced below: -

“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.”

A plain reading of Section 125 shows that the Adjudicating Authority has the discretion to give an option of redemption when goods are not subjected to total prohibition. The exercise of such 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. Thus, Government finds that in the case of prohibited goods, such as, gold jewellery, the Adjudicating Authority may allow redemption in deserving cases on payment of appropriate fine.

15. Government finds that in the present case the gold jewellery found on the applicant no.1 consisted of a necklace and two ear rings both studded with diamonds. Government finds that the said jewellery cannot be termed as substantial and of a commercial quantity. Further Government finds that the same was recovered from the pant pocket of the applicant no.1 and that the same was not ingeniously concealed. Government also finds that the investigation carried out has not indicated that the applicant no.1 was involved in such activity earlier or that he belong to an organized smuggling syndicate and is a repeat offender. Further, Government finds that the Commissioner (Appeals) had ordered for absolute confiscation of the said jewellery on the plea of the Department wherein it was alleged that the applicant no.1 had resorted to concealment of the offending goods with the malafide intent to evade payment of Customs duty. As stated above, Government finds that there was a intent to evade payment of Customs duty, the allegation of concealment is not correct as the offending goods were found to kept in the pocket of the pant worn by the applicant. Given these facts, Government finds that absolute confiscation and denying redemption of the gold jewellery carried by applicant no.1 would be unjust and unfair.

16. Government finds that the Hon'ble Supreme Court in case of M/s. Raj Grow Impex [Civil Appeal Nos.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 allowing redemption should be used, the relevant portion is 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..”

17. Government further observes that there are a 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 finds support in the following decisions to hold that the present case is a fit case for allowing redemption: -

- 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, had held 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.*”;
- The Hon’ble High Court of Madras, in the judgment in the case of Shaik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) ELT 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine;
- The Hon’ble High Court of Kerala in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T, 399 (Ker.)] had observed “*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...*”;

- 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 decision dated 08.03.2010 upheld the decision of the Hon'ble High Court of Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods;

Given the ratios of the above judicial pronouncements, Government finds that the present case is a fit case for granting the applicant no.1 the option to redeem the impugned gold jewellery. Government finds that applicant no.1 has not made any claim for the seized jewellery and has in turn stated that the same may be released to applicant no.2. However, as discussed above, Government finds that the applicant no.2 have failed to prove that they are the rightful owners of the impugned jewellery and hence the pleas of both the applicants for release of the seized goods to applicant no.2 cannot be entertained. In light of the above findings, Government sets aside the decision of the Commissioner (Appeals) ordering for absolute confiscation and holds that the same be allowed to be released to applicant no.1 on payment of redemption fine. Government finds that redemption fine of Rs.12,00,000/- imposed by the original authority to be commensurate with the nature of the offence and value of the seized jewellery.

18. As regards the penalty imposed on the applicant no.1, Government finds that applicant no.1 actively and consciously did not declare the said impugned jewellery with the intent to evade payment of Customs of duty on the same and have hence rendered himself liable to penalty for committing such offence. Government finds that the penalty of Rs.5,00,000/- imposed on applicant no.1 under Section 112(a) and (b) of the Customs Act, 1962 by the original authority and upheld by the Commissioner (Appeals) to be proper and just.

19. In view of the above, the Government modifies the impugned Order-in-Appeal dated 24.11.2021 with respect to the absolute confiscation of the impugned jewellery and allows applicant no.1 to redeem the same on payment of redemption fine of Rs.12,00,000/-. The penalty of Rs.5,00,000/- imposed on applicant no.1 under Section 112(a) of the Customs Act, 1962 is upheld. Applicable duties are to be charged if

applicant no. 1 redeems the jewellery. As regards the plea of the applicant for release of his mobile phone and passport, he may approach the jurisdictional Customs authorities for release of the same on payment of the personal penalty.

20. The subject Revision Applications are disposed of in the above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.971-/2023-CUS (WZ) /ASRA/Mumbai dated 29.12.2023

To 972

1. Shri Mohammed Nawab Alam,
C/o J.W. 5030, Bharat Diamond Bourse,
Bandra-Kurla Complex, Bandra (E),
Mumbai - 400 051.
2. M/s MMK Enterprises,
C/o, Kunal Varma. 116, Gordhandas Building,
2nd floor, Room No.33, Near Central Cinema, Girgaon,
Mumbai - 400 004

Copy to:

1. The Pr. Commissioner of Customs, CSMI Airport, Mumbai.
2. The Commissioner of Customs (Appeals), Mumbai - III, Awas Corporate Point (5th floor), Makwana Lane, Behind S.M. Centre, Andheri - Kurla Road, Marol, Mumbai - 400059.
3. M/s UBR Legal, Advocates, 806, 8th floor, 'D' Square, Opp. Goklibai school, Dadabhai road, Vile Parle (W), Mumbai - 400 056.
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board.

