

REGISTERED  
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

---

F.No. 380/33/B/WZ/2017-RA/811

Date of Issue 23.02.2022

---

ORDER NO. 98/2022-CUS (WZ)/ASRA/MUMBAI DATED 23.02.2022  
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.

---

**F.No. 380/33/B/WZ/2017-RA**

Applicant : Pr. Commissioner of Customs, CSI Airport, Mumbai.

Respondent : Shri. Tauseef Alam Raees Alam Qureshi

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-120/17-18 [S/49-460/2016  
AP] dated 05.05.2017 passed by the Commissioner of  
Customs (Appeals), Mumbai – III.

ORDER

This revision application has been filed by the Pr. Commissioner of Customs, CSI Airport, Mumbai (hereinafter referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-120/17-18 [S/49-460/2016 AP] dated 05.05.2017 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that on the basis of specific intelligence, the Customs had on 07.01.2015 intercepted the respondent who was a holder of Indian Passport bearing no. H9746202 and had arrived at CSI airport from Dubai via Doha by Qatar Airways Flight No. QR-556. A discreet watch had been kept on the respondent by the Customs Officers and it was observed that he had entered the western style toilet opposite conveyor belt no. 14. Thereafter, the Officers examined the toilet and had found a steel dustbin inside which happened to be abnormally heavy and had suspected presence of some heavy metal inside it. On examination of the dustbin, one heavy packet of Davidoff cigarettes wrapped with cello tape covered with tissue paper was found in the dustbin. Thereafter, the Officers had waited for some time to nab the person who would collect the packet from the dustbin. However, as no person turned up to collect the packet from the dustbin, the Customs Officers intercepted the respondent in the arrival hall. Upon interrogation by the Officers, the respondent admitted that the said packet contained 16 gold bars of 10 tolas (116.6gms) each and had been placed by him in the dustbin. A personal search of the respondent led to the recovery of one more gold bar of 10 tolas (116.6gms) from the pocket of the jeans pant worn by him. Thus, 17 gold bars all having foreign markings and totally weighing 1982 gms valued at Rs.49,56,902/- had been seized under the reasonable belief that the same were smuggled into India in a clandestine manner and in contravention of the provisions of Customs Act, 1962. The respondent had admitted that the seized gold did not belong to him and he had agreed to

carry the same for a monetary consideration; that he had acted as a carrier; that he had earlier also brought gold in similar manner; that he knew non-declaration of dutiable goods or gold was an offence under the provisions of the Customs Act, 1962.

3. After, due process of investigations and the law, the original adjudicating authority viz, Additional Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/RR/ADJN/218/2016-17 dated 29.07.2016 [S/14-5-153/2015-16 ADJN (SD/INT/AIU/07/2015 AP'C)], ordered for the absolute confiscation of the 17 nos of FM gold bars, totally weighing 1982 grams and valued at Rs. 49,56,902/- under Section 111 (d), 111 (1) and 111(m) of Customs Act, 1962 and a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) under section 112(a) & (b) of the Customs Act, 1962 was imposed on the respondent.

4. Being aggrieved by the order, the respondent filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals), Mumbai – III, who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-120/17-18 [S/49-460/2016 AP] dated 05.05.2017, allowed the respondent to redeem the impugned gold on payment of redemption fine of Rs. 10,00,000/- (Rupees Ten Lakhs only) and maintained the penalty of Rs. 5,00,000/- imposed on the respondent under Section 112 (a) and (b) of the Customs Act, 1962.

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

- 5.1. that the impugned order passed by the appellate authority was not legal and proper.
- 5.2. that the appellate authority had not considered that the respondent; had not declared; had knowledge; had possessed; had carried; had concealed the gold.

- 5.3. that the applicant had admitted that true declaration of the contents of his baggage as required under Section 77 of the Customs Act, 1962 had not been made.
- 5.4. that the respondent was only a carrier and had carried the gold for a monetary consideration. Submissions of being an owner made later was an afterthought.
- 5.5. that in the present case, the manner of concealment being clever and ingenious, it was a fit case for absolute confiscation of the seized gold which would be a deterrent punishment to passengers mis-using the facility of green channel.
- 5.6. considering the fact that the gold was ingeniously concealed and the respondent failed to declare the same, the appellate authority ought not to have allowed redemption of the impugned gold.
- 5.7. that the reliance placed by the appellate authority on the order of CESTAT, Chennai in the case of A. Rajkumari Vs CC (Chennai) 2015 (321) ELT 540 (Tri Chennai) for drawing the conclusion of release of impugned gold on redemption fine since the same was affirmed by the Apex Court is incorrect as this case was dismissed by the Apex Court on grounds of delay and not on merits. Hence, reliance placed on this case of CESTAT was mis-placed.

The applicant has prayed that the order of the appellate authority be set aside and that the order-in-original passed by the original adjudicating authority be upheld.

6. Personal hearing in the case through the online video conferencing mode was scheduled for 13.10.2021 / 20.10.2021, 17.11.2021 / 24.11.2021, 16.12.2021. Shri. N.J Heera, Advocates for the respondent appeared on 16.12.2021 and contended that in similar cases, department has not filed revision applications. He requested to maintain the Order of the Commissioner (Appeals).

6.1. In their written application submitted on 15.12.2021, they have stated that the order passed by the appellate authority is well-reasoned and the

justification / rationale for permitting the redemption of the impugned goods is well founded and was based on solid grounds and sound principles of law.

6.2. The reasons for granting redemption of gold has been clearly and rightly expressed in the appellate order.

6.3. For the contravention of Section 77 of the Customs Act, 1962, the appellate authority had imposed fine and penalty.

6.4. They have submitted that for similar cases, the GOI had allowed the release of gold on payment of redemption fine and penalty. For 4 similar cases, the same Commissioner had accepted the orders and in these cases appeals were filed by the department.

6.5. The copies of invoices have been furnished.

6.6. the respondent has cited a bunch of case laws to buttress their case.

(i). Birla Corporation Ltd. v/s. Commissioner of C.Ex, [2005 (186) ELT 266 (SC)],

(ii). Commr. Of C. Ex , Nasik vs. Jain Vanguard Polybutlene Ltd [2005 (186) ELT 266(SC)],

(iii). Nirma Ltd vs. Commr. Of C.Ex, Nashik, [2012 (276) ELT 283 (Tri-Ahmd)],

(iv). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC],

(v). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)],

(vi). R. Mohandas v/s. Commissioner of Customs, Cochin in WP(C) Nos: 24074 and 39096 of 2015 (H) decided on 29.02.2016. (*recognizes any person based on ownership or possession etc*).

(vii). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [Final Order No. A/362/2010-WBZ-II/(CSTB) dated 28.10.2010 in Appeal no. C/51/1996-Mum]. *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.*

(viii). UOI v/s. Dhanak M Ramji in W.P. No. 1397 with 1022 of 2009 dated 04.08.2009.

(ix). Etc.

7. The Government has gone through the facts of the case. The respondent had used a very ingenious method to smuggle the gold into the country. The two packets containing the impugned gold bars was cleverly left in the toilet by the respondent. The same was left behind for some accomplice to carry it away. It suggests that the respondent was a part of a syndicate which was involved in smuggling the gold clandestinely into the

country. But for the alertness of the staff of Customs, the gold would have escaped detection. The quantum of gold being large indicates that the same was for commercial use. The respondent in his initial statements to the department had submitted that the gold did not belong to him. The respondent had not declared the gold bars as required under Section 77 of the Customs Act, 1962. The respondent had adopted an ingenious method to smuggle the gold and avoid detection. The confiscation of the gold is therefore justified and the respondent had rendered himself liable for penal action for his act of omission and commission.

8. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that "*if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. .... Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*" It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, "prohibited goods".

9. Further, in para 47 of the said case the Hon'ble High Court has observed "*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or*

*omission, would render such goods liable for confiscation.....*". Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited" and therefore liable for confiscation and the 'respondent' thus, is liable for penalty.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of *M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021]* has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

11. Government observes that the respondent had used a very ingenious method to smuggle the impugned gold i.e. the gold was concealed in two packets, cleverly covered with tissue papers which was left in the toilet in the airport. The method used indicates that there was an accomplice who would

have carried away the gold bars. This indicates that the respondent was part of a syndicate engaged in the smuggling of gold and evading payment of duty. The method adopted reveals that the respondent had connived with an intention to evade payment of duty. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. Government finds that all these have not been properly considered by the Appellate Authority while allowing the impugned gold to be redeemed. The redemption of the gold would be an incentive to smuggle gold with impunity, pay the fine and get away. Government finds that the observations made by the appellate authority that (i). the identity of the persons named by the respondent had not been established during the investigations, (ii). identity of the person who would have removed the gold from the toilet had not been established, (iii). no findings with regard to the invoice made available etc are mis-placed. These points are relevant to the extent of unearthing the syndicate and for investigations, of the past similar attempts by the syndicate. The Government finds that for the instant issue, all these contentions are an afterthought on the part of the respondent to inveigle the investigations and the same had rightly not been considered by the original adjudicating authority. The quantum of gold seized was large and was commercial in nature. Gold was in primary form. Government notes that all these have been considered by the original adjudicating authority and due weightage has been given to the factual position while passing the order.

12. Though the option to allow redemption of the seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and ingenious with a clear attempt to smuggle the 17 gold bars totally weighing 1982 grams, it is a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record and the serious and grave and novel and bold modus operandi, the original adjudicating authority had rightly ordered the absolute confiscation of the impugned gold. But for the intuition and the diligence of the Customs Officers, the gold would have passed undetected.



Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage such concealment as, if the gold is not detected by the Custom authorities, the passenger gets away with smuggling and if not, he has the option of redeeming the gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. For the aforesaid reasons, the Government finds that the order of redemption of the impugned gold passed by the appellate authority is liable to be disallowed and Government is inclined to restore the Order-In-Original dated 29.07.2016 passed by the original adjudicating authority.


13. The advocates of the respondent have submitted several judgement during the personal hearing. All these judgements are old and are not directly relevant to facts of the case. Two judgements mentioned in above paras have dealt in detail on the nature of gold, whether it is to be treated as prohibited goods and under what circumstances discretion is to be exercised under Section 125 of the Customs Act, 1962. Considering that the respondent had adopted an ingenious method to smuggle the gold and avoid detection as already discussed above, Government finds that in line with the referred paras, the original adjudicating authority, considering the ingenious modus operandi adopted by the respondent to smuggle a large quantity of gold and avoid detection, had rightly used its discretion and held that the impugned gold to be confiscated absolutely. Thus, judgements relied by the respondent does not help the cause of the respondent.

14. Government notes that the penalty of Rs. 5,00,000/- imposed under Section 112 (a) and (b) of the Customs Act, 1962 by the original adjudicating authority is commensurate with the omissions and commissions committed by the Respondent and the appellate authority too has upheld the same.

Since, the applicant has not made out any grounds in respect of the penalty imposed under Section 112(a) and (b) of the Customs Act, 1962, the Government does not find it necessary to interfere in the same.

15. In view of the above, the Government sets aside the order passed by the appellate authority and restores the Order-In-Original dated 29.07.2016 passed by the Original Adjudicating Authority.

16. Accordingly, the Revision Application is allowed in the above terms.

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

ORDER No. 98/2022-CUS (WZ) /ASRA/ DATED 21.02.2022

To,

1. Pr. Commissioner of Customs (Airport), Chhatrapati Shivaji International Airport, Terminal - 2, Sahar, Mumbai - 400 099.
2. Shri. Tauseef Alam Raees Alam Qureshi, Room No. 2, Jama Masjid Trust Building, Cheera Bazar, Marine Lines, Mumbai - 400 001.

Copy to:

1. Advani Sachwani & Heera Advocates, Nulwala Building, 41, Mint Road, Opp. GPO, Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.