



F. No. 373/285/B/SZ/2020-RA
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.. 28/03/25

Order No. 40-42/25-Cus dated 28-03-2025 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. HYD-CUS-000-APP-039, 040 & 041-20-21 (APP-1) dated 14.09.2020, passed by the Principal Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicants : Shri Mohammed Imran, Hyderabad,
Shri Mohammed Shahbaaz Uddin, Hyderabad,
Shri Mohammed Faisal, Hyderabad.

Respondent : The Principal Commissioner of Customs, Hyderabad.

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ORDER

Three Revision Applications, bearing Nos. 373/285/B/SZ/2020-RA, 373/286/B/SZ/2020-RA and 373/284/B/SZ/2020-RA all dated 30.12.2020, have been filed by Shri Mohammed Imran, Hyderabad, Shri Mohammed Shahbaaz Uddin, Hyderabad and Shri Mohammed Faisal, Hyderabad (hereinafter referred to as the Applicant-1, Applicant-2 and Applicant-3 respectively) against the Order-in-Appeal No. HYD-CUS-000-APP-039, 040 & 041-20-21 (APP-1) dated 14.09.2020, passed by the Principal Commissioner of Customs & Central Tax (Appeals-I), Hyderabad who has dismissed the appeals of the Applicants- 1, 2 & 3 against the Order-in-Original No. 11//2020-Adjn.Cus(ADC) dated 31.01.2020 passed by the Additional Commissioner of Customs, Hyderabad.

2.1 Brief facts of the case are that on 06.03.2019, Applicants-1 and 2, Indian Passport holders, were arrived from Dubai to Hyderabad by Flight No.EK-526 and they were intercepted after passing through the Green Channel by the officers of Customs (Air Intelligence Unit) on the reasonable belief that they were carrying goods in violation of the Customs Act, 1962 at the premises of the Rajiv Gandhi International Airport (RGIA), Hyderabad. After scanning of the baggage of the passengers, as it was suspected that the passengers were carrying certain prohibited goods and on physical checking of the same, the officers opened the two trolley bags carried by them and found that the wheels had two bearings in each wheel and that they were of silver colour and found to be uneven and faded. These were broken open and the officers recovered sixteen bearings totally. Further, the officers opened the four inner metal support frames of the trolley bags (one frame in each trolley bag) and found two silver colour wires in each of the said metal support frames, which were also broken upon and the officers recovered eight silver colour wires from the four metal support frames. The officers suspected the aforesaid sixteen bearings and eight wires to be made of gold or containing gold, the items were assayed by the Government approved valuer. The passengers informed the officers that the said trolley bags were given to them by one Mr. Aqheel in Dubai to be handed over to a person in Hyderabad on their exit from the Airport, the officers allowed the passengers to exit by discreetly following them, apprehended the three persons who came near the passengers and brought them all for further enquiry and investigation. The three persons

introduced themselves as Mohammed Faisal, Shaik Faisal and Aslam Khan. Mohammed Faisal (Applicant-3) informed them that the said trolley bags would be handed over to one Mohammed Azhar Khan at Moghalpura. As the approved valuer had certified the said bearings and wires to be 24 carat 999 purity gold, the said gold totally weighing 2948.180 grams, valued at Rs. 95,57,996/- was recovered/seized from the passengers under a Panchanama dated 06.03.2019 on the reasonable belief that the subject goods were smuggled by concealing the same and not declaring to the Customs with an intention to evade payment of Customs duties payable thereon, the same were liable to confiscation under the provisions of the Customs Act, 1962.

2.2 The Adjudicating Authority held that Applicants-1 & 2 were not eligible to import gold and had not fulfilled the conditions subject to which the gold could have been imported, making the impugned goods prohibited, and hence liable for confiscation. He further held that the ingenious concealment of gold in the wheels and frames of the trolley bags by the applicants showed the intent to smuggle and was an act of outright smuggling into India. He held that the goods liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, the Adjudicating Authority vide impugned O-I-O, ordered absolute confiscation of the subject gold valued at Rs. 95,57,996/- under Section 111(d) of Customs Act, 1962 with no option given to redeem the same and also the material objects used to conceal the said gold viz. trolley bags were confiscated absolutely under Section 118(a) of the Customs Act, 1962. Besides, penalty of Rs. 9,00,000/- each was imposed on the above Applicants-1, 2 and 3 under Section 112(a)(i) and Section of the Customs Act, 1962.

2.3 Aggrieved by the impugned O-I-O, the Applicants-1, 2 and 3 filed appeals before the Principal Commissioner of Customs & Central Tax (Appeals-I), Hyderabad who has dismissed the appeals of the Applicants. The subject Revision Applications have filed against the said Order-in-Appeal.

3.1 The Revision Applications have been filed by the Applicants-1 and 2 mainly on the grounds that the Appellate Authority did not consider the submissions made before it and

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the involuntary statement was taken as sole ground to impose penalty and rejected the benefit of redemption; that gold is not a prohibited item; that they had retracted their statements and claimed that they were owners of the impugned gold and as such the same can be released to the Applicants. The prayer for the Applicants-1 and 2 is to set aside the whole/part/reduce penalty imposed on the Applicants with consequential relief or to pass such other order or orders as deemed fit.

3.2 The Revision Application has been filed by the Applicant-3 mainly on the grounds that the Appellate Authority did not consider the submissions made before it and the involuntary statement was taken as sole ground to impose penalty. The prayer is to set aside the whole/part/reduce penalty imposed on the Applicant with consequential relief or to pass such other order or orders as deemed fit.

4. Personal hearing in the matter was fixed on 20.11.2024 which was further adjourned to 11.12.2024 as per request of the Applicants. Mohammed Shabaz, Advocate appeared on 11.12.2024 on behalf of all the Applicants-1, 2 and 3 and submitted a common submission for the three RAs. He stated that, of the three Applicants, only two, Imran and Shahbaaz, brought the impugned gold unknowingly. They were not able to secure a good job and were returning to India with goods such as dresses, toiletries, cosmetics for sale in India to repay the cost of tickets and were not aware that their suitcases had ingeniously concealed gold in them. The absolute confiscation of gold along with harsh quantum of penalty has brought hardship to the applicants. As for Faisal, he too had no knowledge that his acquaintances would be bringing non duty-paid gold else he would not have travelled a long distance to receive them. As such, he requested for reduction in penalty. No one appeared from the Respondent's side and also no request for adjournment has been received. Therefore, it is presumed that the Respondent department has nothing to add in the matter and therefore the matter is taken up for decision based on available records.

5. At the outset, it is observed that the impugned Order-in-Appeal dated 14.09.2020 was received by all the Applicants-1, 2 and 3 on 14.09.2020 as admitted by them. The

revision applications have been filed by them 30.12.2020 with a delay of around 18 days beyond the normal period of limitation i.e. after the expiry of three months from the date of receipt of the O-I-A. The Applicants have requested to condone the said delay in view of the relaxation granted due to COVID by the Hon'ble Supreme Court. In view of the COVID pandemic, the Hon'ble Supreme Court, vide Order dated 23.03.2020, in SMW(C) No. 3/2020 and order dated 08.03.2021 had extended the period of limitation prescribed under general law of limitation or under any special laws w.e.f. 15.03.2020, until 28.02.2022. The delay is condoned.

6. The Government has examined the matter. It is a fact on record that the Applicants-1 and 2 were carrying gold bearings and wires ingeniously concealed in two trolley bags. These were concealed inside the wheels and inner metal support frames of the trolley bags. The Applicant-3 was waiting at the Airport to receive these two passengers and take over the trolley bags received from them as per the instructions of his maternal uncle Mr. Aqheel Ahmad to one Mr. Azhar Khan. It also an undisputed fact on record that Applicants-1 and 2 walked through the green channel of the Rajiv Gandhi International Airport (RGIA), Hyderabad and did not declare the impugned gold to Customs; rather they denied possession of it when enquired by Customs. The requirement of declaration of the impugned goods under Section 77 of the Customs Act, 1962 was not fulfilled. Thus, the intent to smuggle them and evade Customs duty is evident. In light of the modus operandi adopted, the retraction after a lapse of 8 months is nothing but an afterthought to escape from penal actions against them. In this regard, the government observes that the Appellate Authority has discussed it in detail in para (9) of the said O-I-A and concurred with the observations of the Adjudicating Authority that *"the retraction is invalid as it has come after lapse of more than 8 months and it was only an afterthought and a ploy to confuse the department in the proceedings. The original authority further observed that the appellant have clearly spelt out the entire modus operandi during the statements deposed under Section 108 of the Customs Act, 1962 and such retraction of statement that too after a period of 8 months, is not acceptable as per law and it has no relevance to the proceedings. He further held that the appellant's statement is unflinching evidence in the impugned case and a statement recorded under Section 108 of the*

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Customs Act, 1962 before a Customs Officers, even if retracted, is still admissible as evidence." Further, the Hon'ble Supreme Court, in the case of *Surjeet Singh Chhabra vs. U.O.I* {1997 (89) ELT 646 (SC)}, wherein Hon'ble Supreme Court held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of *K.I. Pavunny* {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. In the present case, the Applicants have admitted their involvement in the case of smuggling. The admissions made are corroborated by other material on record, as discussed hereinabove. Therefore, there is no doubt that the statement tendered was voluntary. As such the culpability of the Applicants is established. The Appellate Authority has rightly held the contentions of the Applicants to be an afterthought as the act of smuggling is established beyond doubt.

7. As per Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. The Applicants did not declare the gold items, as stipulated under Section 77 of the Act, *ibid* and instead ingeniously concealed the same with an intent to escape customs. The Applicants had failed to produce any document showing legal import of the said gold items. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicants have failed to discharge the onus placed on them in terms of Section 123, the Government therefore concurs with the decision made by the Appellate Authority and finds no legal infirmity with the confiscation of the impugned gold ordered by the original authority under Section 111 and the imposition of penalty under Section 112 of the Customs Act, 1962 on the Applicants.

8.1 The Applicants have contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicants is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, import/export whereof is allowed subject to certain conditions, are to be treated as

'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* {1971 AIR 293}, the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant herein had not fulfilled the conditions specified in this behalf. In the case of *M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi* {2003(155) ELT423(SC)}, the Hon'ble Supreme Court has held that "*if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods*". Further, in the case of *UOI & Ors vs. M/s Raj Grow Impex LLP & Ors* (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in *Sheikh Mohd. Omer* (supra) and *Om Prakash Bhatia* (supra) to hold that "*any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions.*"

8.2 In the case of *Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai* [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court (i.e the Hon'ble jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

"64. Dictum of the Hon'ble Supreme Court and High Courts makes it 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", in Section 2 (33) of the Customs Act, 1962----."

8.3 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of *Kiran Juneja Vs. Union of India & Ors.* has held that "*A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods"*. Hence, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, ibid.

8.4 In view of the above, the contentions of the Applicants that the offending goods are not 'prohibited goods', cannot be accepted.

9. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the *Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]*, that the option to release 'prohibited goods' on redemption fine is discretionary. *Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)]*, held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive." Further, the *Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that ".....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer"*. Further, the Division Bench of *Hon'ble Madras High Court in the decision reported in 2009(247) E.L.T. 21 (Mad) (Commissioner of Customs Vs. Samynathan Murugesan)* which held that if the manner of Import of Gold is by ingenious concealment and patently fraudulent, then, the adjudicating authority may direct absolute confiscation of the goods instead of exercising his discretion under Section 125 of the Act. Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

10. In view of the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is neither harsh nor excessive. Hence, the government finds no grounds for reduction in penalty.

11. The case laws relied upon by the Applicants, in support of their various contentions, are not applicable in view of the dictum of *Hon'ble Supreme Court and Hon'ble High Courts, as above.*

12. In view of the above, the revision applications are rejected.

Shubhagata Kumar
28/3/2025

(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 40-42 /25-Cus dated 28-03-2025

Copy to:

1. The Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500004
2. The Principal Commissioner of Customs, GST Bhavan, L.B Stadium Road, Hyderabad-500004.
3. Shri Mohammed Shabaz, Advocate, 9-32, Down Street, Near Fish Market, Medchal Town, Medchal-Malkajgiri District, Telangana-501 401.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED

Shailendra Kumar Meena
(Shailendra Kumar Meena)
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