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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/220/B/WZ/2022-RA / 009 Date of Issue 01.02.2024

ORDER NO. 118 /2024-CUS (WZ) /ASRA/MUMBAI DATED 31.01.2024
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.

Applicant : Ms Rubina Praveen

Respondent : Pr.Commissioner of Customs, CSMI Airport Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-1433/2021-22 dated 10.01.2022 [S/49-
13/2021] [DOI: 14.01.2022] passed by the Commissioner of
Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision application has been filed by Ms Rubina Parveen (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1433-2021-22 dated 10.01.2022 through F.No. S/49-13/2021 passed by the Commissioner of Customs (Appeals), Mumbai- Zone-III.

2 Brief facts of the case are that on 14-04-2019, during the screening of the baggage at CSMI Airport, Mumbai, the Customs officers on the basis of observation had diverted one lady passenger Ms Rubina Praveen, the applicant holding Indian Passport bearing No. P 2852753 who had arrived from Dubai by Indigo flight No. 6E-64 dated 14-04-2019 to counter no 1-5 for detailed examination. Nothing incriminating was found from the detailed examination of the checked-in and hand baggage of the applicant. To the query put forth to her whether she was carrying any dutiable goods, contraband or gold in person, she had replied in negative. Not being satisfied with her reply the Customs Officers took the personal search of the applicant which resulted in recovery of 06 metal bangles purported to be gold worn on both the hands, concealed under the sleeves of the burkha worn by her and one tola bar purported to be gold concealed in her left leg shoes. Government Approved Valuer vide Valuation Certificate dated 14.04.2019, certified that the 06 crude gold bangles and the gold bar are of purity 999% 24Kt, totally weighing 406 grams and collectively valued at Rs.11,75,802/- as per prevalent Tariff rate. The same were seized by the officers in the reasonable belief that the same was smuggled into India in a clandestine manner in contravention of the provisions of the Customs Act, 1962. On conclusion of the investigation Show Cause Notice was issued on 09-10-2019.

3. The case was adjudicated by the Original Adjudicating Authority (OAA) i.e. the Joint Commissioner of Customs, Airport, Mumbai vide Order-In-Original No. JC/GKG/ADJN/08/2020-21 dated 15-10-2020 ordered for the absolute confiscation of the recovered gold viz 06 crude gold bangles and the gold bar are of purity 999% 24Kt, totally weighing 406 grams and collectively valued at Rs.11,75,802/- under Section 111 (d), (l) and (m) of the Customs Act, 1962. Further, a penalty of Rs. 1,20,000/- was imposed on the applicant under Section 112 (a)(i) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai -III, who vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-1433-2021-22 dated 10.01.2022 through F.No. S/49-13/2021 upheld the order passed by the OAA.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

5.01. that the impugned OIA is bad in law and unjust; has been passed without giving due consideration to the documents on record and facts of the case including the invoice submitted by the applicant;

5.02. that the lower authorities ought to have appreciated that dutiable goods brought in by the Appellant are neither restricted nor prohibited;

5.03. that the applicant had brought this type of goods for first time and there was no previous case registered against him; that the applicant is the owner of the goods and they were not ingeniously concealed;

5.04. that the Show Cause Notice issued by the Respondent clearly revealed that the impugned goods/gold were dutiable goods and not prohibited goods; that the acts and/or omissions on the part of the applicant to evade Customs duty could only be done in respect of dutiable goods and not prohibited goods; that once the department or respondent had accepted that the goods are dutiable, then the option to redeem the goods

as provided under Section 125 of the Customs Act, 1962 should be granted to the applicant.

- 5.05. The applicant has relied upon the undermentioned cases to defend their case;
- (a). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC], Absolute confiscation of goods without considering question of redemption on payment of fine although having discretion to do so under Section 125, matter remanded back.
 - (b). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)], Section 125(1) ibid clearly mandates that it is within the power of the adjudicating authority to offer redemption of goods even in respect of prohibited goods.
 - (c). T. Elvarasan v/s. Commr. Of Customs (Airport), 2011-266-ELT-167-Tri-Madras on the issue of gold chains brought from Singapore and seized on the ground of non-declaration on arrival; passenger living abroad for more than 6 months and entitled to import gold; gold not prohibited item option to redeem the goods; impugned gold ordered to be released provisionally subject to adjudication proceedings.
 - (d). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [Final Order No. A/362/2010-WBZ-II/(CSTB) dated 28.10.2010 in Appeal no. C/51/1996-Mum] [2011-263-ELT-685-Tri-Mumbai]. Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole and makes them liable to absolute confiscation.
 - (e). Mohini Bhatia vs. Commr. Of Customs [1999-106-ELT-485-Tri-Mumbai on prohibited goods and restricted goods. Gold was not included in the part II of restricted item.
 - (f). In Universal Traders vs. Commissioner [2009-240-ELT-A78-SC], the apex court allowed redemption of exported goods being not prohibited.
 - (g). In Gauri Enterprises vs. C.C Pune [2002-145-ELT-706-Tri-Bang], held that if similar goods had been released on fine earlier, selective absolute confiscation was not called for, Absolute Confiscation should be exception rather than a rule.

- (h). In Shaik Jamal Basha v. Government of India 1997 (91) ELT 277 (A.P.) the Hon'ble High Court held that gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorized can be redeemed.
- (i). In VP Hameed v. Collector of Customs, Mumbai - 1994 (73) ELT 425 (Tri.) it was held that there is no bar in allowing redemption of gold being an item notified under Section 123 of Customs Act, 1962 or for any other reason.
- (j). In P. Sinnasamy v. Commissioner of Customs, Chennai 2007 (220) ELT 308 (Tri-Chennai), the Hon'ble Court allowed redemption of absolutely confiscated gold observing that option to redeem the gold to be given as there is no bar against such option by reason of goods being an item notified under Section 123 of Customs Act, 1962 or for any other reason.
- (k). In Union of India Vs Dhanak M. Ramji - 2009 (248) ELT 127 (Bom.) affirmed vide 2010 (252) ELT A102 (S C) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.
- (l). In Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal - 2001 (136) ELT 758 it was held that in view of the liberalised gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed.
- (m). In Sapna Sanjeev Kohli v. Commissioner of Customs, Airport, Mumbai - 2008 (230) ELT. 305 the Tribunal observed that the frequent traveller was aware of rules and regulations and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (n). In Vatakkal Moosa v. Collector of Customs, Cochin 1994 (72) ELT. 473 (G.O.I.); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (o). Halithu Ibrahim v. CC [2002-TIOL 195-CESTAT-MAD. = 2002 (148) ELT 412 (Tribunal); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (p). Krishnakumari v. CC, Chennai - 2008 (229) ELT 222 (Tri-Chennai) ; it was held that absolute confiscation is not warranted and redemption of gold should be allowed.

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

Under the circumstances, the applicant has prayed that in view of the aforesaid case laws, the gold be released on payment of nominal redemption fine along with applicable duty as per Section 125 of the Customs Act, 1962; that the personal penalty may be reduced; or pass any other order as deemed fit and proper.

6. Personal hearing in the case was scheduled on 21-11-2023. Shri N. J. Heera appeared for the hearing and submitted that the applicant brought small quantity of gold for personal use. He further submitted that applicant has no past history of any offence. He requested to allow redemption on nominal fine and penalty

7.1 Government observes that the applicant has filed an appeal for condonation of delay in filing the impugned revision application. Applicant has submitted that the OIA was received by him on 21.01.2022 and the revision application was filed on 25-04-2022 that there was delay of one week in filing the application due to the disruption caused by COVID. Government observes

that the applicant was required to file the revision application within 3 months i.e. by. 20.04.2022 and had filed the same on 25-04-2022. Considering, the further extension of 3 months which can be condoned the applicant had to file the appeal before 20-07-2022. The applicant has filed on 25-04-2022 and Government therefore condones the delay in filing the application and goes into the merits of the case.

7.2 The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. Thereafter, on interception she had been asked whether she was carrying any dutiable items to which she had replied in the negative. The impugned gold was detected only after the personal examination of the applicant. The applicant clearly had failed to declare the goods to the Customs as required under Section 77 of the Customs Act, 1962. Had she not been intercepted, the applicant would have gotten away with the gold concealed in the sleeves of her burkha and shoes. The Government finds that the confiscation of the impugned gold was therefore justified.

8.1 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.”

8.2 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 is liable for confiscation under Section 111(d) of the Customs Act.

9.1 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” in terms of Section 2(33) and hence it is liable for confiscation under Section 111(d) of the Customs Act, 1962.

9.2 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.

9.3 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.

10. 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. Thus, Adjudicating authority can allow redemption under Section 125 of any goods which are prohibited either under the Customs Act or any other law on payment of fine.

11.1 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 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 Shik 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.

11.2 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.

12. In the instant case, the quantum of gold involved is not of commercial quantity. The quantum of the same does not suggest the act to be one of organized smuggling by a syndicate. The applicant claimed that the same was for personal use and has bought the same from her savings. The gold was also not ingeniously concealed, it was worn by her. Further, there were no allegations that the Applicant is a habitual offender and was involved in similar offences

earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

13. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government observes that the applicant has made request to release the Gold under Notification No. 50/2017 at concessional rate of duty. Government finds that the applicant has submitted that she's a NRI, staying and working in Dubai. The copy of the permit submitted by the applicant shows the validity of the licence only till June 2020. Further the applicant had tried to clear the impugned gold without making a declaration as required under section 77 of the Customs Act, 1962 and as per the provision of Notification no. 50/2017-Customs dated 30.06.2017. Hence the request for concessional rate of duty is not allowed. However Government is inclined to allow the impugned gold bangles and tola bar to be redeemed on payment of redemption fine.

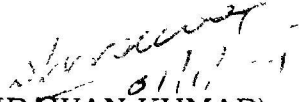
14.1 In view of the above Government sets aside the impugned order of the appellate authority and allows the applicant to redeem the impugned gold i.e 06 crude gold bangles and the gold bar of purity 999% 24Kt, totally weighing 406 grams and collectively valued at Rs.11,75,802/-, on payment of redemption fine of Rs. 2,25,000/- (Rupees Two Lakh Twenty-five Thousand only).

14.2 The Government finds that the penalty of Rs. 1,20,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 for the goods valued at Rs. 11,75,802/- being appropriate and commensurate with the

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omissions and commissions of the Applicant, Government does not feel it necessary to interfere with the imposition of the same and is sustained

15. Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. 118 /2024-CUS (WZ)/ASRA/MUMBAI DATED 31 .01.2024

To,

1. Ms Rubina Praveen, 31, Nandavan Colony, Manik Bagh Road, Indore, Madhya Pradesh-452001.
2. Ms Rubina Praveen, C/o Advocate N. J. Heera, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O. Fort, Mumbai-400001
3. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
4. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S. M. Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Advocate N. J. Heera, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O. Fort, Mumbai-400001
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.