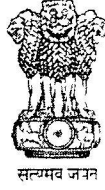


REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/389/B/WZ/2022-RA 1372 : Date of Issue: 19.02.2024

ORDER NO. 162/2024-CUS (WZ)/ASRA/MUMBAI DATED 06.02.2024
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 Hiral Janak Ramani

Respondent : Pr. Commissioner of Customs, Custom House,
Near Akashwani, Navrangpura, Ahmedabad 380 009

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-36-22-23 dated 27-04-2022 issued
through F.No. S/49-176/CUS/AHD/21-22 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This Revision application has been filed by Ms Hiral Janak Ramani (hereinafter referred to as the Applicant) against the Order-in-Appeal No AHD-CUSTOM-000-APP-36-22-23 dated 27-04-2022 issued through F.No S/49-176/CUS/AHD/21-22 passed by the Commissioner of Customs (Appeals), Ahmedabad

2 Brief facts of the case are that the applicant holding an Indian Passport Number R 1291559, had arrived by Indigo Airways Flight no 6E-72 from Dubai to Ahmedabad on 21-12-2019. On the basis of suspicious movements, the AIU officers intercepted the applicant, after clearance through Green channel for detailed checking Detailed examination resulted in the recovery of a one gold ring, two gold bangles and one gold chain. The Government Approved Valuer certified that the gold ring and the bangles were made of 24Kt (999.0 purity) weighing 24.230 grams and 223 150 grams respectively The gold chain weighing 24 230 grams is of 22Kt and 916 purity. The total weight of the recovered gold jewellery is 287.410 grams and the total value is Rs.11,20,999/- (local market value) and Rs.9,68,533/- (Tariff Value) This impugned gold was seized under the provisions of Customs Act, 1962, on the reasonable belief that the said goods were smuggled into India and liable for confiscation. After due process of investigation Show Cause Notice was issued on 28-04-2020.

3 After due process of law, the Original Adjudicating Authority (OAA), viz, Assistant Commissioner, Customs, SVP Airport, Ahmedabad vide OIO No 49/AP/LP-AC/AVPIA/2020-21 dated 15-02-2021 ordered for the absolute confiscation of the impugned gold jewellery weighing 287 410grams and total valued at Rs 11,20,999/- (local market value) and Rs.9,68,533/- (Tariff Value) under Sections 111(d), 111(i) 111(l) & 111(m) of the Customs Act,

1962 and a penalty of Rs. 90,000/- under Section 112 (a) & (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad, who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-36-22-23 dated 27-04-2022 issued through F.No. S/49-176/CUS/AHD/21-22 remanded the matter to the concerned adjudicating authority and pass speaking order afresh after following principles of natural justice.

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

5.01. That the orders of the lower authorities is contrary to law, weight of evidence and violates the principles of natural justice;

5.02. That the applicant did not cross the customs barrier and was not allowed to declare the goods under Section 77 of the Customs Act, 1962.

5.03 That the gold is not a prohibited item and hence the same cannot be absolutely confiscated; the impugned order for absolute confiscation of the goods deserves to be set aside in the interest of justice in view of the following judgements:

a) Hon'ble High Court Order in case of M/s Neyveli Lignite Corporation Ltd Vs UOI (2009(242)ELT 487(Mad))

b) Commissioner of C.Ex. and S.T. Surat-1 Vs. Dharmendra Pansuriya 2018 (363) E.L.T. 555 (Tri-Ahmd.)

c) Alam Vs Comm Of Customs, C.Ex and S.T. (Appeals), Meerut- I 2018 (364) E.L T. 392 (Tri-All.)

d) Ranmeet Bhatia - 2018 (364) E.L.T. 1144 (G.O.I)

- e) Comm Of Customs (Preventive) Lucknow Vs Ibrahim Abdullah Rahiman 2018 (363) E.L.T 534 (Tri-All)
- f) Mohd. Zia Ul Haque 2014 (314) E.L T. 849 (G.O.L.)
- g) Mridul Agrawal Versus Commissioner of Customs, Lucknow 2018 (362) E.L.T. 847 (Tri-All.)
- h) Jatinder Singh 2018 (361) E.L T. 958 (G O.I.)

5.04 That she was intercepted at the Metal scanner itself and was not allowed to go to any channel. She was well within the customs barrier and in arrival hall itself under the circumstances the import itself not completed. that her husband was working in Dubai since last four years and eligible to import gold and her husband had purchased the gold out of his hard earned money for her personal use; That the appellant was lived at Dubai shown in the passport, a rented house lived for the last 48 months. The Lower authority failed to see that ID card and other documents.

5.05 That the appellant was intercepted before the declaration and she was not allowed to cross the customs barrier and therefore the goods did not cross the customs barrier. Therefore, the import itself not completed in this case Still in the course of import. Therefore my client has an option under section 80 of the Customs Act to request for Detention and Re export the goods The officers have to apprise the change in the notification and permit the passenger to detain the goods in ware house and allowed her to re export when she goes back. The above aspects were not at all considered by the adjudicating authority They relied on several judgements wherein the gold was allowed to be re-exported

5.06 That Section 125 of the Customs Act does not say that the redemption should not be given if the goods are prohibited. The adjudicating authority can release the goods on redemption fine instead of absolutely confiscating the prohibited goods by using her discretionary powers. Non exercise of the same shows non application of mind. The Gold Is not prohibited item.

5.07 That Hon'ble Tribunal in case of Uma Balasaraswathi Vs Collector of Customs, reported at 1988 (37) ELT 106 (Tribunal), wherein the Hon'ble Tribunal has held as under; "Baggage Gold Jewellery Confiscation passenger's person and not concealed Gold bangles worn on Confiscation not proper under Section 111(1) of the Customs Act, 1962- Section 77 ibid". Applying the ratio of the above decision in the present case, the goods being carried by the applicant in person in the absence of any facts on record about the nature and mode of concealment it cannot be alleged that there was any concealment as such Therefore after confiscation the adjudicating authority can order for re-export on payment of redemption fine. They relied on various CESTAT/GOI Orders

5.08 That the lower authority ought to have ordered for re-export of the Gold either under section 74 or Section 125 of the Customs Act. The lower authority ought to have allowed to redeem the goods and permit her to clear the goods on payment of concessional rate of duty or re-export the goods as per the request of the applicant and as there are lot of Judgments of the Tribunal and Revision authority.

In view of the above, applicant therefore requested to set aside the order of absolute Confiscation and permit the appellant clear the gold by paying concessional rate of duty or re-export the gold on payment of minimum

redemption fine as there is no profit, release the two gold bangles on payment of duty and set aside the penalty or reduce the thereby render justice

6. Personal hearing was scheduled for 04-10-2023. Shri Janak Ramani, Authorised Representative appeared for personal hearing and submitted that the applicant had brought small quantity of jewellery for personal use. He further submitted that the applicant has no past record of any offence and jewellery was not concealed. He requested to allow redemption of jewellery on nominal fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had filed this appeal against the Appellate Authority's Order remanding the matter back to OAA for deciding the case afresh. Government finds that in this case the applicant failed to declare the goods in her possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that she was carrying dutiable goods and had she not been intercepted, she would have walked away with the impugned gold jewellery without declaring the same to Customs. By her actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay Customs duty on it. The Government finds that the confiscation of the gold jewellery by the OAA, 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 small (only 287 410 grams) and is not of commercial quantity. The gold was not concealed. It was in the form of jewellery and was worn by her. The quantum of the same does not suggest the act to be one of organized smuggling by a syndicate. The applicant claimed that the jewellery was for personal use and was purchased by her husband who is working there for the last four years. 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.

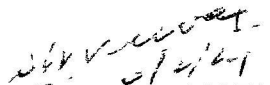
13. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government observes that in this case, the applicant has made request of re-export in their Revision Application. Government is not inclined to allow the impugned gold to be re-exported. In view of the above facts, Government is inclined to set aside the OIA remanding the matter to the OAA and allow the impugned gold jewellery to be redeemed on payment of redemption fine.

14.1 In view of the above Government set asides the impugned order of the appellate authority and allows the applicant to redeem the impugned jewellery weighing 287.410 grams and total valued at Rs.11,20,999/- (local market

value) and Rs 9,68,533/- (Tariff value) on payment of redemption fine of Rs. 2,00,000/- (Rupees Two Lakh only)

14.2 The Government finds that the penalty of Rs. 90,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 for the goods valued at valued Rs.11,20,999/- (local market value) and Rs.9,68,533/- (Tariff value) is appropriate and commensurate with the omission and commission committed and does not find it necessary to interfere in the same

15 Revision Application is disposed of on the above terms


(SHRAWAN KUMAR)

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

ORDER NO. 142/2024-CUS (WZ)/ASRA/MUMBAI DATED 06.02 2024.

To,

- 1 Ms Hiral Jank Ramani, 24/FF, Ghanshyamnagar Society, Near Swaminarayan Temple, Viratnagar, Road, Odhav, Ahmedabad-382415
- 2 Pr. Commissioner of Customs, Custom House, Near Akashwani, Navrangpura, Ahmedabad 380009

Copy to:

3. Shri Janak Ramani, 24/FF, Ghanshyamnagar Society, Near Swaminarayan Temple, Viratnagar, Road, Odhav, Ahmedabad-382415
- 4 Commissioner of Customs (Appeals), Ahmedabad, 7th Floor, Mridul Towers, B/H Times of India, Ashram Road, Ahmedabad 380009
5. Sr. P.S. to AS (RA), Mumbai
- 6 Notice Board.