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सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/179/B/2021-RA 1186

Date of Issue 09.01.2024

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ORDER No 16 /2024-CUS (WZ)/ASRA/MUMBAI DATED 8 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

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Applicant . Ms Rajeshree Ramchandra Jadhav

Respondent : Pr Commissioner of Customs, C.S.I Airport, Mumbai

Subject . Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No MUM-CUSTM-PAX-APP-1805/2020-21 dated 15.03 2021 [Date of issue 16 03 2021] [F No S/49-1396/2019] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

**ORDER**

This Revision Application has been filed by Ms Rajeshree Ramchandra Jadhav (herein referred to as 'Applicant') against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1805/2020-21 dated 15 03 2021 [Date of issue. 16 03 2021] [F. No S/49-1396/2019] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III

2 Brief facts of the case are that the Applicant, who had arrived from Dubai on 16 11 2019, was intercepted personal search of the Applicant led to the recovery of 02 bangles and one gold chain in crude form weighing 175 grams valued at Rs 5,94,720/- were seized under the reasonable belief that the same were being smuggled into India and hence liable for confiscation under the provisions of the Customs Act, 1962 The Applicant admitted to ownership, possession, non-declaration, concealment and recovery of the seized gold.

3 After following the due process of law, the Original Adjudicating Authority (OAA) viz Assistant Commissioner of Customs, Chhatrapati Shivaji International (C.S.I) Airport, Mumbai vide Order-In-Original No Aircus/49/T2/1344/2019 'C' dated 16 11 2019 ordered the confiscation of the said 02 bangles and one gold chain in crude form weighing 175 grams valued at Rs 5,94,720/- under Section 111 (d), (l), and (m) of the Customs Act, 1962 The OAA gave the Applicant the option to redeem the said seized gold under Section 125 of the Customs Act, 1962 on payment of redemption fine of Rs 75,000/- in lieu of confiscation in addition to payment of the applicable customs duty Personal penalty of Rs 50,000/- was imposed on the Applicant under Section 112(a) and (b) of the Customs Act, 1962.

4 Aggrieved by this order, the Respondent filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide Order-in-Appeal No MUM-CUSTM-PAX-APP-1805/2020-21 dated 15 03 2021 [Date of issue 16 03 2021] [F No S/49-1396/2019] set aside the Order-in-Original and ordered the absolute confiscation of the impugned gold The personal penalty imposed by the OAA was not interfered with by the AA

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

- 5 01 the lower authority had failed to appreciate that the applicant had stated that the gold jewellery belonged to her
- 5 02 the lower authorities had failed to appreciate that the gold jewellery, weighing 175 grams it did not have any foreign markings
- 5 03 the lower authorities had failed to appreciate that applicant was not a carrier.
- 5 04 the lower authorities had failed to appreciate that she was wearing the gold jewellery them
- 5 05 the Appellate Authority had given the conclusion and findings which were contrary and inconsistent with the findings of Adjudicating Authority
- 5 06 the lower authorities have decided the case on the basis of presumptions and assumptions only and not on the real and true facts put by the Applicant.
- 5 07 the orders of the lower authorities are illegal and bad in law and the same requires to be quashed and set aside

The applicant has prayed to the revisionary authority to quash and set aside the OIA passed by the lower authorities and to allow the gold jewellery weighing 175 grams for redemption on nominal fine and penalty and to grant any other reliefs as deemed fit The Applicant also filed an application for condonation of delay

6 Shri N J Heera Advocate appeared before me and submitted that the applicant brought small quantity of gold jewellery for personal use He further submitted that original authority has correctly allowed redemption of jewellery on reasonable RF and penalty He requested to set aside OIA and restore OIO as the same is legal and proper

7 The Government has gone through the facts of the case and observes that the Applicant had brought said 02 bangles and one gold chain in crude form weighing 175 grams valued at Rs 5,94,720/-and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act 1962. The Applicant had not disclosed that she was carrying dutiable goods However, on being

*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

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.

11 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.*”

12 1 Government further observes that there are 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 Shaik 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

e) Judgement dated 17 02 2022 passed by the Hon'ble High Court, Rajasthan (Jaipur Bench) in D B Civil Writ Petition no 12001 / 2020, in the case of Manoj Kumar Sharma vs. UOI and others

12 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

13 In view of the foregoing paras, the Government finds that as the Applicant had not declared said 02 bangles and one gold chain in crude form weighing 175 grams valued at Rs 5,94,720/- at the time of arrival, the confiscation of the same was justified. However, though the quantum of gold under import is not substantial and is not of commercial quantity. The Applicant claimed to be for personal use and nothing contrary has been proved. There are no allegations that the Applicant is a habitual offender and was involved in similar offence earlier or there is nothing on record to prove that the Applicant was part of an organized smuggling syndicate.

14 The Government finds that the quantum of gold involved in this case is not substantial and the Applicant has claimed ownership of the impugned gold jewellery after explaining the purpose of getting the gold into the country. There are no allegations that the Applicant is a habitual offender and was involved in similar offence earlier or there is nothing on record to prove that the Applicant was part of an organized smuggling syndicate. This case is at best a case of mis-declaration rather than smuggling. Government finds that the discretion to allow the redemption of the impugned gold jewellery under Section 125 of the Customs Act 1962 by the Original Adjudicating Authority is judicious and fair and the order absolute confiscation by the Appellate Authority is excessive and is therefore liable to be modified and the impugned gold jewellery is liable to be allowed redemption on suitable redemption fine.

15 Applicant has also pleaded for setting aside the penalty imposed on her. The market value of the impugned said 02 bangles and one gold chain in crude form weighing 175 grams valued at Rs 5,94,720/-. From the facts of the case as discussed above, Government finds that the penalty of Rs 50,000/- imposed on the Applicant

under Section 112(a) and (b) of the Customs Act, 1962 is commensurate to the omissions and commissions of the Applicant

16 In view of the above, the Government modifies the impugned order of the Appellate authority in respect of the absolute confiscation of the impugned gold jewellery and allows the same to be redeemed on payment of redemption fine and applicable duty. The said 02 bangles and one gold chain in crude form weighing 175 grams valued at Rs 5,94,720/- is allowed redemption on payment of a fine of Rs 1,10,000/- (Rupees One Lakh Ten Thousand only). The penalty of Rs 50,000/- imposed under Section 112(a) and (b) of the Customs Act, 1962 by the Original Adjudicating Authority and upheld by the Appellate Authority is sustained.

17 The Revision Application is disposed of on the above terms.

  
( SHRAWAN KUMAR )

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

ORDER No. 16/2024-CUS (WZ)/ASRA/MUMBAI DATED 8.01 2024

To

- 1 Ms Rajeshree Ramchandra Jadhav, 2B, 303, Vikas CHS, Laxmi Nagar, Ghatkopar East, Mumbai 400075
- 2 The Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099

Copy to

- 1 The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
- 2 Shri N J Heera, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp GPO, Fort, Mumbai 400001
- 3 Sr P S to AS (RA), Mumbai
- 4 File Copy
- 5 Notice board

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