

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. 371/34/B/15-RA

3512

Date of Issue

09.07.2021

ORDER NO. 60/2021-CUS (WZ)/ASRA/MUMBAI DATED 07.07.2021 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 : Smt. Jamila Mohmed Safi Shah

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-012-15-16 dated 09.04.2015 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Smt. Jamila Mohmed Safi Shah (herein after referred to as the Applicant) against the Order in appeal No. AHD-CUSTOM-000-APP-012-15-16 dated 09.04.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated the facts of the case is that the applicant arrived at the SVPI Airport on 27.03.2013. On noticing the frequency of short visits the immigration officer informed the Customs officers who frisked the Applicant and it was noticed that the she was wearing a thick belt concealed beneath her burka around her waist. Opening of the zip of the belt resulted in the recovery of gold bars collectively weighing 5000 gms. Valued at Rs. 1,48,50,000/- (Rupees One crore Forty eight lacs Fifty Thousand.)

3. The Original Adjudicating Authority vide Order-In-Original No. 44/JC/SVPIA/O&A/2014 dated 26.08.2014 ordered absolute confiscation of the impugned goods under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- (Rupees Ten Lacs) under Section 112 (a) of the Customs Act. A penalty of Rs. 15,00,000/- (Rupees Fifteen Lacs) was also imposed under Section 114AA of the Customs Act 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-012-15-16 dated 09.04.2015 rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that gold is not a prohibited item and in similar cases redemption option is granted and Commissioner (Appeals) has failed to consider any such order. The Revision Applicant craves to refer and rely upon such orders where absolute confiscation is set aside. The Applicant prayed for setting aside the absolute confiscation of the gold, reduce personal penalty or any such or other reliefs this Hon'ble Court may deem fit and proper.

6. A personal hearing in the case was scheduled in the case on 28.11.2019. Advocate for the Applicant Shri Prakash Shingrani attended the personal hearing, he reiterated his clients ownership of the gold and informed that it was being taken under burqa and sought redemption of the gold. Due to change in the Revisionary authority a personal hearing was again held on 06.04.2021. Advocate for the Applicant Shri

Prakash Shingrani appeared for the hearing. He reiterated the points already made and submitted that gold is not prohibited and it has been released on redemption fine by adjudicating authorities, Appellate authorities, Revision authorities and by High Courts and requested to release the same on nominal redemption fine.

FINDINGS AND ORDER

7. The Government has gone through the facts of the case. The quantity of impugned gold is 5kgs, it is definitely in commercial quantities and cannot be termed as bonafide baggage goods. The Applicant did not declare the gold as required under section 77 of the Customs Act, 1962. The detection of the concealed gold was due to the tip off by the immigration officer, which led to the interception of the Applicant. The Applicant is not an eligible passenger to import gold. The Government observes that the Applicant was identified for a search after it was noticed that she was making frequent short visits. The gold was recovered from a belt worn on the Applicants waist under her burqa. She did not declare the gold and the manner of concealment clearly indicates that there was no such intention. The Applicant has also not explained her reasons for the short visits. The said offence was premeditated and clearly indicates mensrea, and if she was not intercepted and searched before the exit, the Applicant would have taken out the gold without payment of customs duty. This was an outright attempt at smuggling with total disregard for the law and needs to be dealt with severely so as to deter the Applicant from such exploits in the future.

8. The Applicant has contended that gold is not a prohibited item. 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. The Honble Apex Court in the case of Sheikh Mohd. Omer V/s Collector of Customs, Calcutta and others, reported in 1983 (13) ELT 1439 (S.C.) has also held that, " *any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions.*". Therefore this contention of the applicants is also not based on correct appreciation of laws held by the Apex court and High Courts.

10. The afore mentioned acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government holds that in view of the above mentioned case laws, the Original Adjudicating Authority has rightly confiscated the gold absolutely and the Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority and does not require any interference in the matter. The absolute confiscation of the gold by the Appellate authorities order No. AHD-CUSTM-000-APP-012-15-16 dated 09.04.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad, is therefore liable to be upheld as legal and proper.

11. The absolute confiscation of the gold is upheld. In addressing the issue of penalty under section 114AA of the Customs Act, 1962, Government relies on the observations of the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in 1986(23)ELT 337 (Kar), has held that "*Interpretation of taxing statutes – one of the accepted canons of Interpretation of taxing statutes is that the intention of the amendment be gathered from the objects and reasons which is a part of the amending Bill to the Finance Minister's speech*".

12. In view of the above the objective of introduction of Section 114AA in Customs Act as explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha is reproduced below;

" Section 114 provides for penalty for improper exports of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declaration, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the

power to levy penalty up to five times the value of the goods. A new Section 114AA is proposed to be inserted after Section 114A."

Government therefore observes, penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be situation where no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Hence, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act. The penalty of Rs. 15,00,000/- (Rupees Fifteen lacs) imposed under section 114AA of the Customs Act,1962 is set aside. The order of the Appellate Authority is accordingly modified to that extent.

13. Revision application is disposed of accordingly.

Shrawan
7/7/21
(SHRAWAN KUMAR)

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

ORDER No. 160/2020-CUS (WZ) /ASRA/

DATED 07.07.2021

To,

1. Smt. Jamila Mohmed Safi Shah, 70-Shalimar Park, At Tarsadi PO, Kosamba, Zanda Chowk, Taluka Mangrol, Dist - Surat.
2. The Commissioner of Customs, SVPI Airport, Ahmedabad.

Copy to:

1. Prakash Shingrani, Advocate, 12/334 New MIG Colony, Bandra (E)
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2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.