



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/206/B/WZ/2019/RA / 749

Date of Issue 06.02.2023

ORDER NO. 166/2023-CUS (WZ) /ASRA/MUMBAI DATED 31.01.2023
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 Mumtazben Ishak Shaikh

Respondent : Pr. Commissioner of Customs (Airport), CSI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1223/2018-19 dated 14.03.2019
[DOI: 29.03.2019] [F.No. S/49-58/2017 AP] passed by the
Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Ms Mumtazben Ishak Shaikh (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1223/2018-19 dated 14.03.2019[DOI: 29.03.2019] [F.No. S/49-58/2017 AP] passed by Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that on 06/07.02.2016, the Officers of Customs had intercepted the Applicant holding Indian Passport No.J4539512, at CSMI Airport where she had arrived from Dubai by Jet Airways Flight No. 9W 537 dated 06.02.2016. The Applicant had been intercepted near the exit gate after she had cleared herself through the green channel of Customs. To the query put forth to her in front of the panchas, regarding possession of any dutiable goods, she had replied in the negative. On examination of the baggage of the applicant resulted in recovery of 26 gold bars of 10 tolas each and 18 gold bangles collectively weighing 3229 grams and totally valued at Rs 78,79,628/- and 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.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/RR/ADJN/393/2016-17 dated 04.12.2016 ordered for the confiscation of the 26 gold bars of 10 tolas each and 18 gold bangles collectively weighing 3229 grams and totally valued at Rs 78,79,628/- under Section 111 (d), (1) and (m) of the Customs Act, 1962. However, option to redeem the goods on payment of a fine of Rs. 13,50,000/- was granted to the applicant under Section 125(1) of the Customs Act, 1962 alongwith payment of applicable duty and other charges as per Section 125(2) of the Customs Act, 1962. Further,

a penalty of Rs. 8,00,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai – III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1223/2018-19 dated 14.03.2019[DOI: 29.03.2019] [F.No. S/49-58/2017 AP] did not find it necessary to interfere with the impugned OIO and upheld the OIO.

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

5.01. that the order passed by the appellate authority was bad in law and unjust;

5.02 that the OIA has been passed without due consideration to the documents on record and facts of the case;

5.03 that the goods were neither restricted nor prohibited was not appreciated by the AA;

5.04 that no previous case has been registered against applicant; that RF imposed should be to the extent of the difference between the CIF and Market value of the goods;

5.05 that no margin of profit was left after payment of 36.05% duty; that before imposing the heavy fine the conveyance cost etc has not been factored.

The applicant has prayed that the order passed by the adjudicating authority may be set aside as far as RF is concerned which may be reduced substantially. Applicant has also prayed for reduction in the personal penalty imposed on him or pass any order as deemed fit.

6. Personal hearing in the case was scheduled on 25.11.2022. Shri. N.J Heera, Advocate for the applicant appeared for physical hearing and reiterated the earlier submissions. He requested to reduce the Redemption fine and Penalty.

7. The Government has gone through the facts of the case. The applicant was carrying a large amount of gold bars which had been concealed and not declared to the Customs Authority. Government notes that the OAA while confiscating the goods had allowed the same to be redeemed on payment of a fine and penalty too had been imposed. On the limited issue of reduction in the RF and penalty, the applicant had filed an appeal before the AA who did not find it necessary to interfere in the case.

8. Government notes that the AA has considered the issue of reduction in the RF and personal penalty and has dealt with the same in detail. The same is reproduced below:

“...7 With regard to the contention of the appellant regarding the quantum of redemption fine imposed, I find that in terms of Section 125 of the Customs Act, 1962, the quantum of fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. The Valuation was done by the Government Approved value under Valuation Panchnama. I note that there is no submission by the appellant during the adjudication proceedings with regards to the determined value of the seized gold. The seized goods is valued at Rs. 78,79,628/- and the redemption fine imposed is Rs.13,50,000/-which is 18% of the value, which undoubtedly cannot be stated to have exceeded the market value. Under the circumstances, I find that the adjudicating authority has imposed the redemption fine and penalty as per law taking a considered view”.

The AA thus, found that it was not necessary to interfere with the order passed by the OAA.

9. Government finds that the order passed by the AA on the limited issue of reduction of Redemption Fine and penalty is legal and proper and does not find it necessary to interfere in the same.

10. Accordingly, the Revision Application filed by the applicant is dismissed.

Shrawan
31/1/23
(SHRAWAN KUMAR)

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

ORDER No. \66 /2023-CUS (WZ) /ASRA/ DATED 31.01.2023

To,

1. Ms Mumtazben Ishak Shaikh, Jangalwala Building, Opp Hanuman Temple, Bandar Road, Veraval, Distt Junagarh, Gujarat -363265
2. Pr. Commissioner of Customs, CSI Airport, Terminal - 2, Mumbai : 400 099.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.