



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

F.No. 373/223/B/SZ/2018-RA/3104 : Date of Issue : 25.07.2022

ORDER NO. 2(9)/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 09.07.2022
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.

(i). F.No. 373/223/B/SZ/2018-RA

Applicant : Smt. Mohamed Khalid Kairun Nisa

Respondent : Commissioner of Customs, Customs House, Willingdon
Island, Cochin, Kerala - 682 009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No.
No. COC-CUSTOM-000-APP-26/2018-19 dated 28.06.2018 [(DOI
: 13.07.2018)(C27/128/Air/2017 AU CUS)] passed by the
Commissioner of Customs (Appeals), Custom House, Cochin -
682 009.

ORDER

This revision application has been filed by Smt. Mohamed Khalid Kairun Nisa (hereinafter referred to as the Applicant) against the Order-in-Appeal No. COC-CUSTOM-000-APP-26/2018-19 dated 28.06.2018 [(DOI : 13.07.2018) (C27/128/Air/2017 AU CUS)] passed by the Commissioner of Customs (Appeals), Custom House, Cochin – 682 009.

2(a). Brief facts of the case are that the applicant who is a Sri Lankan national was intercepted by Customs Officers at Cochin International Airport, Nedumbassery, having earlier arrived from Colombo onboard Sri Lankan Airlines Flight no. UL165 / 13.09.2017. The applicant was intercepted at the exit gate on suspicion that she possessed undeclared gold ornaments and it led to the recovery of the undermentioned undeclared goods from her person.

Table No. 1.

Sr.No.	Description of goods	Number	Purity	Weight in gms
1.	Gold Bangles	7	22 carats	69.350
2.	Gold Big Bangle	1	22 carats	32.210
3.	Gold chain	2	22 carats	40.700
4.	Gold Bracelets	2	22 carats	37.520
4.	Gold Necklace	1	22 carats	37.050
	Total			212.830

2(b). The total weight of the gold jewellery was 212.830 grams, all of 22 carats purity and valued at Rs. 5,87,038.35 which were seized.

3. The Original Adjudicating Authority (OAA), viz, Addl. Commissioner, Air Customs, Cochin vide Order-In-Original No. O.S. 136 / 2017 dated 13.09.2017 ordered for the confiscation of the impugned gold jewellery weighing 212.830 grams of 22 Carats purity and valued at Rs. 5,87,038.35/- (I.V) under Section 111 of the Customs Act, 1962 read with Sec. 3(3) of F.T(D&R) Act and Baggage Rules. However, applicant was granted an option to redeem the gold jewellery on payment of a redemption fine of Rs. 25,000/-

under Section 125 of the Customs Act, 1962 and a penalty of Rs. 20,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Custom House, Cochin – 9, vide Order-In-Appeal No. COC-CUSTOM-000-APP-26/2018-19 dated 28.06.2018 [(DOI : 13.07.2018) (C27/128/Air/2017 AU CUS)] rejected the appeal and upheld the order passed by OAA.

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

5.01. the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case;

5.02. that the Appellate Authority ought to have allowed the re-export of the impugned gold under Section 80 of the Customs Act, 1962.

5.04. that impugned gold belongs to the applicant and she had worn it and it was her personal belonging; that ownership of the gold was not disputed and there was no ingenious concealment;

5.05. that there was no specific allegation that the applicant had passed through green channel and only contention of department was that the applicant had not declared the gold.

5.06. that baggage rules would apply only if goods are found in the baggage, since the Applicant was wearing the gold, the violation of baggage rules did not arise;

5.07. that the contention of the department of non declaration of the gold as per Section 77 of the Customs Act, 1962 is refuted as not applicable since the gold was worn by the applicant there was no necessity to declare the same since it was her personal belongings.

5.09. that the personal penalty of Rs. 20,000/- imposed on applicant was very high and requested for reduction.

5.10. applicant has relied upon the following case laws;

(i). Vigneswaran Sethuraman vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014.

(ii). that in O-i-O no. 161 to 164 dated 10.03.2012, Sri Lankan nationals viz (i). Mohamed Ansar, (ii). H.M Naushad, (iii). Seiyed Faizan Mohamed, (iv). Mohamed Rafeek and (v). Imtiyas Mohammed, the Commissioner of Customs (Appeals) had released the gold on

payment of redemption fine; that Revision Authority, New Delhi had confirmed these orders dated 31.07.2012.

(iii). The Commissioner (Appeals), Cochin, F. NO. C27/243,252 & 255/Air/2013 AU CUS in OS. NO. 370, 349, 364/2013 dated 18.12.2014, Shri. Hamsa Mohideen Mohammed Shajahan Srilanka, Rismila Begam Samsudeen Arip and Hussain Samsudeen Farhan

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside the impugned order and permit to re-export the gold jewellery on payment of nominal fine and penalty and render justice.

6(a). Personal hearing through the online video conferencing mode was scheduled for 23.03.2022 and 30.03.2022. Smt. Kamalamalar Palanikumar, Advocate for the applicant appeared for physical hearing and submitted a written submission requesting for re-export of the jewellery to the Sri Lankan national:

6(b). In the written submission dated 30.03.2022 handed over during the personal hearing, Smt. Kamalamalar Palanikumar reiterated the submissions made in the grounds of appeals and relied upon some more case laws viz,

(i). that CESTAT Bangalore has passed an order in C/21257/2018-S.M. dated 01.01.2019- Final Order No. 20020-20021/2019- Smt. Abitha Tahillainathan & Smt. Kirthucase Mary Thawamani v/s. Commissioner of Customs, Cochin, Kerala, that passed an order to re-export the gold jewellery citing that gold jewellery recovered from person is personal belonging and the same is not covered under the baggage rules.

(ii). JS (RA) Mumbai in Order no. 65/2020-CUS(SZ) ASRA/Mumbai dated 26.05.2020 in F.NO. 380/58/B/15-RA/3693 held that gold recovered from a pouch kept in the pocket of kurta worn by respondent cannot be termed as ingenious concealment.

6(c). She has reiterated her prayer that the Revisionary Authority may be pleased to set aside the impugned order passed by the AA and permit the applicant to re-export the gold jewellery

7. The Government has gone through the facts of the case and notes that the applicant had 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 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 is therefore justified.

8. The Government notes that the quantum of gold recovered from the applicant is very small and that the OAA had granted option to the applicant to redeem the impugned gold jewellery on payment of a redemption fine of Rs. 25,000/-. A penalty of Rs. 20,000/- had been imposed on the applicant under Section 112(a) of the Customs Act, 1962. They had filed an appeal against the OIO and the AA rejected the request of the applicant for re-export of the impugned gold jewellery and upheld the OIO. Government notes that the OIO passed by the OAA is legal and judicious and the AA has rightly upheld the same. That being so, the Government observes that the applicant has filed this revision application and is persistently requesting for release of the gold jewellery for re-export.

9. Considering the quantum of gold jewellery which was small; that applicant was a foreign national, that gold jewellery had been worn; that gold jewellery had not been concealed, Government notes the request of applicant that the ratio of the order passed by the Hon'ble Kerala High Court in WP no. 6281 of 2014 in the case of Vigneswaran Sethuraman vs. U.O.I [2014 (308) ELT 394 (Ker.)] is broadly applicable to this case.

10. In a recent judgement passed by the Hon'ble High Court, Madras on 08.06.2022 in WP no. 20249 of 2021 and WMP No. 21510 of 2021 in r/o. Shri. Chandrasegaram Vijayasundarm + 5 others in a similar matter of Sri. Lankans wearing 1594 gms of gold jewellery (i.e. around 300 gms worn by each person)

upheld the Order no. 165 - 169/2021-Cus (SZ) ASRA, Mumbai dated 14.07.2021 in F.No. 380/59-63/B/SZ/2018-RA/3716, wherein Revisionary Authority had ordered for the confiscation of the gold jewellery but had allowed the same to be released for re-export on payment of appropriate redemption fine and penalty.

10. For the aforesaid reasons, Government is inclined to allow the prayer put forth by the applicant for re-export of the impugned gold jewellery and accordingly, modifies the order passed by the AA to the extent of allowing the re-export of the gold jewellery, totally weighing 212.830 grams on payment of redemption fine imposed by OAA and sustained by the appellate authority. Penalty of Rs. 20,000/- imposed on applicant under Section 112(a) and (b) of the Customs Act, 1962 is commensurate with the omission and commission committed.

11. The Revision application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. 219/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 19.07.2022.

To,

1. Smt. Mohamed Khalid Kairun Nisa, 87/30, Gamupur, Matlakuliya, Colombo - 15, Sri Lanka.
2. Commissioner of Customs, Customs House, Willingdon Island, Cochin, Kerala - 682 009.

Copy to:

1. Smt. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai - 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.