

REGISTERED  
SPEED POST



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

F.No. 371/250 & 251/B/2020 / 5285

Date of Issue

(17.09.2021)

ORDER NO. <sup>220-221</sup> /2021-CUS (WZ)/ASRA/MUMBAI DATED 09.09.2021 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 : Shri Samir Zaveri &  
: Smt. Sona Samir Zaveri

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

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-402/2020-21 dated 25.09.2020 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.

ORDER

These revision applications have been filed by Shri Samir Zaveri and Smt. Sonā Samir Zaveri (herein after referred to as the Applicants) against the Order in appeal. No. MUM-CUSTOM-PAX-APP-401/2020-21 dated 25.09.2020 and Order in appeal. No. MUM-CUSTOM-PAX-APP-402/2020-21 dated 25.09.2020 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III. As the Applicants are Husband and wife and as both have travelled together and the facts of the case are similar both the revision applications are being decided together.

2. Briefly stated the facts of the case are that the officers of Customs intercepted the Applicants, who had arrived from Dubai on 26.12.2019 and opted for the green channel. On examination they were found to be carrying a gold chain each. Each of the gold chain recovered from the Applicants weighed 116 grams Rs.3,93,669/- ( Rupees Three Lakhs Ninety three thousand Six hundred and Sixty nine).

3. The Original Adjudicating Authority vide Order-In-Original No. AirCus/T2/49/1475/2019/UNI-D dated 26.12.2019 and AirCus/T2/49/1476/2019/UNI-D dated 26.12.2019 ordered absolute confiscation of the impugned gold chains and imposed penalty of Rs. 1,00,000/- ( Rupees One lakh) under section 112 (a) of the Customs Act, 1962 on each of the Applicants.

4. Aggrieved by the said order, the applicants filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-401/2020-21 dated 25.09.2020 and Order in appeal. No. MUM-CUSTOM-PAX-APP-402/2020-21 dated 25.09.2020 rejected the appeals.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The Ld. Commissioner (Appeals) has erred in holding that the impugned gold was in crude form and was attempted to be cleared without being declared before the Customs which amounts to smuggling when

admittedly the Applicant was wearing the gold chain on his person and the same was not concealed.

5.2 The Ld. Commissioner (Appeals) has erred in holding that the Applicants purpose and intention cannot be other than avoidance of payment of duty and a legal obligation laid down for import of gold into India under the Customs Act and has further erred in relying upon the case of Aiyakannu Vs. CC (AIR), Chennai —1 reported in 2009 (247) ELT 21 (Madras), as the facts in this case were different, as the gold was concealed inside a bag covered with coloured adhesive tape, in the case of Aiyakannu which was not the case in the present matter.

5.3 The Ld. Commissioner (Appeals) though has one hand observed that the foreign nationals are not allowed to bring gold in primary form in any circumstances, except personal jewellery and on the other hand has failed to appreciate that the Applicant bonafidely believed that personal jewellery can be permitted to be brought into India and would be taken back at the time of departing. When he also simultaneously finds that entitlement to import gold applies only to passenger of Indian Origin or a passenger holding a valid Indian passport and thus he erred to use and appreciate that the Applicant was a person of Indian Origin.

5.4 The Ld. Commissioner (Appeals) has grossly erred in holding that there was malafide intention behind the visit of the Applicant to Dubai, just for a day and that he and his wife both were wearing gold chain of equal weight. This observation of the Ld. Commissioner (Appeals) is merely a doubt raised by him without any allegation and/or evidence in support. Further, he has miserably failed to appreciate and consider that the Applicant had produced alongwith the Appeal Memo, the invoice No. 2019/786 of M/s. Passion Jewels, Belgium dtd. 25.10.2019 which evidenced the purchase of gold chain made by the Applicant in Belgium. despite having produced this invoice, the Ld. Commissioner (Appeals) has very conveniently not taken this into the consideration and has merely made a false observation that the Applicant was not able to produce any receipt.

5.5 The Ld. Commissioner (Appeals) in Para 8, has erred in distinguishing the judgments cited for all and re-export as in the case of Uma Balasaraswathi similar allegation was that gold bangle were crudely

made, and in the case of Mohammed Bin Ahmed, he had brought gold bars/Sovereigns of which re-export was permitted. The Ld. Commissioner (Appeals) has grossly erred in relying upon the Hon'ble High Court of Madras in the case of Aiyakannu Vs. CC (AIR), Chennai —I reported in 2009 (247) ELT 21 (Madras). The same has been distinguished by Govt. of India in the case of Mohd. Zia UHague by holding that a passenger neither being habitual offender, nor carrying the said goods for somebody else, nor did he conceal the goods in any indigenous manner should be given option to redeem the goods on redemption fine.

5.6 The Ld. Commissioner (Appeals) failed to appreciate that Foreign Trade (Exemption from Application of Rules in certain cases) Order 1993. The relevant rules reads as under; Rule 3 Exemption from Application of Rule (1) nothing contained any rule shall apply to import of any goods ..... by the person as passenger baggage to the extent admissible under the Baggage Rules for the time being in force It is provided that in the case of imports by a tourist, articles of high value whose reexport is obligatory under Baggage Rules, 2016 shall be re-exported on his leaving India, failing which such goods shall be deemed to be goods the import of which has been prohibited under the Customs Act, 1962. Thus, when the Applicant has requested to allow re-export of jewellery when the tourist i.e. Applicant left India, the Respondent ought to have allowed to re-import on Applicants leave to India, as the Foreign Trade order specifically provides that the goods are deemed to be prohibited only when the goods are not re-exported, whereas, the Applicant himself was requesting the Respondent to allow re-export.

5.7 The Applicant submits that as per the Notification No. 50/2017-Cus. dtd.30.6.2017, Sr. No. 356 reads as under : (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls— 10% condition 41. As per condition 41, there is a requirement to pay any duty in convertible foreign currency and the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of gold per eligible passenger; and gold carrying out by the eligible person at the time of his arrival at India. Explanation to Condition 41 defines eligible passenger" meaning a passenger of Indian origin or a

passenger holding a valid passport, issued under the Passports Act, 1967 who is coming to India after a period of six months. Thus, the Applicant being an Indian Origin is covered under the first category as eligible passenger of Indian Origin and could have imported gold in any form and paid duty, even if it is considered that the gold is in crude form. Thus, the Applicant states that the gold chain allegedly in crude form is not prohibited and could have been imported, though the Applicant never wanted to import but wanted to take back at the time of departing. Thus, the Ld. Commissioner (Appeals) has erred in ordering not to re-export without fine or with fine.

5.8 The Applicant craves leave of this Hon'ble Tribunal to add, delete, amend or modify any of the above grounds if necessary before his Appeal is finally decided.

6. In view of the above, personal hearing in the case was held on 18.08.2021. Shri Kiran Dhoiphode, Advocate and Shri Samir Zaveri attended the said hearing online and submitted that the Applicants are Belgian nationals and were wearing the gold chains on their person. They contested the absolute confiscation was unwarranted and requested to allow re-export of the gold.

7. The Government has gone through the facts of the case, the Applicant is a foreign national, however every tourist has to comply with the laws prevailing in the country visited. The Applicants were intercepted as they opted for the Green Channel. A search of thier person resulted in the recovery of gold chains worn by them. It is a fact that the gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962, hence the confiscation of the gold jewelry is justified.

8. However absolute confiscation in such a case would be an order in excess. The quantity of the gold is small, the gold chains were worn by the Applicants and therefore the gold chains were not ingeniously concealed. There is no dispute on the ownership and neither is it a case of intentional smuggling. Government notes that the original adjudicating authority has not allowed the re-export of the gold chains inspite of the fact that it was noted in the order that they were EU

nationals and the fact that the Applicants had pleaded for taking back the gold chains back to Belgium. Being a foreign citizen the release of the personal gold on redemption fine without allowing re-export would not allow him to take back the gold and is therefore not justified. Government is therefore inclined to accept the Applicants plea for re-export.

9. In the case of Vigneshwaran Sethuraman Vs UOI. reported in 2014 (308) ELT 394 (Ker) the Hon'ble High Court has observed that *".....When gold ornament (a chain) was worn by petitioner and not carried in baggage, it was not required to be declared as body of a passenger cannot, be said to be baggage – Going by the stipulations in Sections 77, 80 and 81 of the Act, I am persuaded to take the view that the provisions therein can have no application in the instant case, where the petitioner, a tourist coming from Sri Lanka had on his person a gold chain which he was wearing and not kept concealed. .... there being no prohibition to the effect that a foreign tourist arriving in India cannot wear gold ornament on its person or wear gold ornaments of 24 carat purity..... Even the Baggage Rules, 1998 do not prohibit a foreign tourist entering India from wearing a gold chain or other gold jewellery"*. In view of the above, the absolute confiscation of the gold chains by the Appellate authority therefore, is liable to be set aside and the gold chains are liable to be allowed for redemption on suitable fine.

10. The absolute confiscation of the gold is set aside. The impugned gold chains are both allowed to be redeemed for re-export on payment of redemption fine of Rs. Rs. 2,00,000/- ( Rupees Two Lakhs only) each. The penalties imposed are appropriate.

11. The revision applications are disposed of accordingly.

  
9/9/21  
( SHRAWAN KUMAR )

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

ORDER No. <sup>220-221</sup> /2021-CUS (WZ) /ASRA/MUMBAI

DATED 09.09.2021

To

1. Shri. Samir Zaveri, Flat No. 302, Lodha Vellissimo, Mahalaxmi - 400 011.
2. The Pr. Commissioner of Customs (Airport), CSI Airport, Mumbai.

Copy to:

3. Shri. V. M. Dhoiphode & Co., 44, 45 Sucheta Niwas, SBS Marg, Fprt, Ballard Estate, Mumbai- 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.