

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. 371/43/B/2017(Mum) / 5343

Date of Issue 18.09.2021

ORDER NO 227/2021-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 : Smt. Saadia Yakub Abdullahi

Respondent : Pr. Commissioner of Customs, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-19/17-18 dated 18.04.2017 passed by the Commissioner of Customs (Appeals-I), Mumbai- Zone III.

ORDER

This revision application has been filed by Smt. Saadia Yakub Abdullahi alias Hoden (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-PAX-APP-19/17-18 dated 18.04.2017 passed by the Commissioner of Customs (Appeals-I), Mumbai- Zone III.

2. Briefly stated the facts of the case are that Smt. Shabana Abdul Hameed Shaikh arrived from Nairobi on 21.06.2013. She was intercepted after she cleared herself through the Green Channel. The hand held metal detector gave an alarm when passed over her body, indicating that she was carrying metal on her person. The physical search of the passenger was resulted in the recovery of 2042.196 gms of gold/gold jewelry valued at Rs. 54,41,610/- (Rupees Fifty Four lakhs Forty one Thousand Six hundred and Ten). The gold/ gold jewelry was concealed in her brassiere and undergarments. In her statement Smt. Shabana Abdul Hameed Shaikh, stated that the impugned gold jewellery was to be delivered to the Applicant, Smt. Saadia Yakub Abdullahi.

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/ML/ADJN/42/2014-15 dated 31.07.2014 ordered absolute confiscation of the impugned gold, and imposed penalty of Rs. 5,00,000/- (Rupees Five Lakhs) on the Applicant and Rs. 2,00,000/- (Rupees Two Lakhs) on Smt. Saadia Yakub Abdullahi alias Hoden, under Section 112 (a) & (b) 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. MUM-CUSTOM-PAX-APP-19/17-18 dated 18.04.2017 rejected the Appeal.

5. Aggrieved with the above order the Applicant, has filed this revision application after 92 days interalia on the grounds that;

a) The Appellant submits that Ms Shabana Abdulla Hameed Shaikh in her statement recorded u/s. 108 of the Customs Act, 1962 on 21.06.2013 stated that she resides at Room No. 33, Nasim Chawl, Chimat Pada, Marol Naka, A.K. Road, Andheri (E), Mumbai — 400 059; that she can read, write and understand English, Hindi and Urdu languages and also can understand Marathi; she further stated that she visited Nairobi nine times during the year 2013; that she carried 'Burkas' to Nairobi during the current visit and delivered it to the shop named Mandira at Nairobi for which she got her travel ticket and Rs. 5000/-; that the Burkas were given to her by one Ms. Hoden, a Nigerian National, whom she met through her neighbor Zahida (who has married to a Nigerian); that Ms. Hoden is the owner of Mandira Shop at Nairobi and reside at Mohamed Ali Road, Mumbai: she further stated that on her earlier occasions during her visits to Nairobi, she used to bring loban some times and chocolates some times in her handbag and did not bring any checked in baggage and that she did not bring any gold or gold jewellery earlier while returning from Nairobi.

b) The Appellant submits that the Ld. Appellate Authority has seen all the documents which were annexed with the retraction dated 23.06.2013 and thereafter the Ld. Appellate Authority is not accepting the said documents as true and correct. The Ld. Appellate Authority has made out some allegations on the date of entering the Agreement with the company at Nairobi.

c) The Ld. Appellate Authority has not disputed that the company at Nairobi is in existence. The Appellant has annexed sufficient documentary proof to prove their claim on the seized gold. However, the Ld. Appellate Authority merely on assumptions and presumptions is disregarding the said documents.

d) The Appellant is relying on some of the orders passed by the same Appellate authority, wherein in similar circumstances, gold bars released to the passengers on redemption fine and penalty on this aspect though Appellate authority has seen the said orders, however, the Appellate

authority has singled out this case from the similar cases where the gold has been released.

e) The Appellant submits that the allegations of other passengers has been clubbed with these cases though it has no relevance with the present case.

f) The Appellant submits that the Appellate Authority before confiscation of the gold ought to have seen and referred the judgments and orders, wherein in similar cases gold was released.

g) The Appellate Authority is merely commenting and relying on retraction dated 23.06.2013 heavily and saying and referring the said retraction was received by the Customs Department on 20.08.2013.

h) The Appellant submits that Ms Shabana Abdulla Hameed Shaikh had arrived by flight no KQ 202 on 20.06.2013, the said flight arrival time in India was 21 hrs, therefore the said flight had arrived on time whereas the panchanama dated 21.06.2013 wherein panchanama time has been shown as 03.00 hrs, which has not been explained while issuing the said SCN.

i) It is submitted that panchanama dated 21.06.2013 is false and fabricated document.

j) As per the panchanama dated 21.06.2013, the Appellant was not allowed to fill the Customs Gate Pass and no declaration form which is prescribed under the Customs Act has been provided to the Appellant. Therefore, to presume that the appellant has not declared the gold cannot be sustainable.

k) The Appellant submits that during drawing the panchanama, however two lady officers and five male officers at the Custom Arrival Hall. It is the case of officers on page no. 2 that officers Smt. Vasantha Sundaram intercepted the appellant and took a personal search in the presence of all other officers mentioned above and from her bra the said gold bars were recovered. If this fact is accepted, then such panchanama is null and void as no personal search has been taken in the presence of male officers.

l) The Appellant submits that the copy of panchanama was not given to the Appellant which is evident from the panchanama page no. 4 as there is no signature of the appellant receiving the copy of panchanama. This

also proves that the panchanama has been drawn by the officers on the computer without calling any panchas.

m) The Appellant submit that the pancha witnesses are their own witnesses. They are being called the customs authorities as and when necessary.

n) The Appellant submits that even the statement dated 21.06.2013 question no. 10 the officers themselves have mentioned that she was in customs arrival hall and never crossed Exit Gate of Customs, therefore, it cannot be treated that the appellant had passed the green channel. The statement dated 21.06.2013 is not referring anything that she has crossed the green channel while the alleged panchanama dated 21.6.2013 alleges that Appellant had crossed the green channel.

o) The officers recorded allegedly two statements on 21.06.2013. One statement has been recorded by the N. Chandrashekar who is neither a Superintendent nor any gazette officer, therefore the said statement is not admissible. The second statement is recorded on 21.06.2013, wherein no time has been referred in the statement. The said statement says that she had taken the officers at a place where Mrs. Sadia Abdulla alias Hoden a Kenyan national was residing. However the officers have not drawn any panchanama at such place which is referred in the statement dated 21.06.2013, therefore, the said statement can also cannot be relied upon. The seizure panahcnama dated 21.6.2013 wherein the appellant had not given any name of Hoden and the said panchanama was over at 08.00 hrs. There is no reference of any statement made by the Appellant that the said gold was to be handed over to Hoden.

p) The Appellant further submits that during the alleged recording of the statement dated 21.06.2013 the appellant has not given any address where Hoden was residing. Then how the officers have been to the said place is not explained in the statement dated 21.06.2013.

q) The Appellant submits that there is no identification panchanama made at the Airport for identifying the Hoden as alleged in the statement.

r) The Appellant further submits that as per the statement dated 21.06.2013 there is a reference of a mobile number 09769553540. As per

the SCN, and allegations the said mobile belongs to Hoden. However, neither said mobile has been seized or taken charge by the officers in the investigations. Neither any mobile printouts has been annexed with the said SCN. Therefore, the entire story of handing over the gold to Hoden by the Appellant would not sustain.

s) The Appellant submits that in the statement dated 20.11.2013, the questions has been asked on the issue of posting the said retraction. However, with the SCN, the cover / envelope which was posted alongwith the retraction has not been annexed as a relied upon document. Therefore to believe the retraction received by the customs late cannot be believed.

t) The Appellant further submits that Sadia Abdulla Yakub was recorded on 21.06.2013 by the officers of Customs as the Airport itself. While recording the statement it has not been explained how this lady reached to the office of Custom for recording the statement. It is pertinent to note that the office of AIU is a secluded area. No one can enter the said area without any legal authorization. The said lady while recording the statement has denied any receiving of any gold jewellery from the Appellant i.e. that has been replied in question no. 3 of the statement Sadia Abdulla Yakub.

u) The Appellant submits that the lady by name Sadia Abdulla Yakub has denied any role in the import of said gold jewellery. She has further stated that she has been dragged in the episode.

v) The Appellant submits that alongwith the SCN, the Customs Department has annexed the copy of retraction dated 23.06.2013. However, on the said retraction, it appears a rubber stamp dated 20.08.2013 as receiving date. However, with this there is no such cover which was received by the department on 20.08.2013.

w) In view of the above mentioned submissions, the Appellant prays that the entire gold which is under seizure be released to the Appellant u/s. 125 of the Customs act. 1962 in judgments relied upon on similar issues.

x) The Appellant prays that the Appeal be heard on merits at an earliest as the goods are under seizure.

y) The Appellant crave leave to add, alter and amend any of the grounds mentioned hereinabove.

z) The Appellant will rely on such judgments or other documentary evidence as may be deemed necessary at the time of hearing. Therefore the appellant humbly prays That the impugned Order of Appeal bearing No. 24.04.2017 passed by the Respondent may kindly be set aside. Considering the above facts and circumstances of the case and the citation brought out, the penalty imposed on the Appellant may kindly be set aside.

6. Personal hearings in the case was scheduled on 05.12.2019 and 12.12.2019. Nobody attended the said hearings. In view of the change in Revisionary authority, another opportunity of personal hearing was extended on 19.03.2021. The Advocate for the Applicant attended the personal hearing and re-iterated the submissions already made in the revision application. He requested for 10 days' time to submit additional submissions, additional documents have been submitted later. Nobody attended the hearing on behalf of the department.

7. The Government has gone through the facts of the case. The Revision Application has been filed within the condonable limits, as it is within condonable limits and there being reasonable ground, Government condones the delay and proceeds to decide the case on merits.

8. The facts of the case are that Smt. Shabana Abdul Hameed Shaikh was intercepted after the officers detected the presence of metal using a hand held metal scanner. The personal examination of the Applicant resulted in the recovery of assorted gold/gold jewellery weighing 2042.196 gms valued at Rs. 54,41,610/- concealed in her brassiere wear, and undergarments. In her statement recorded on 21.06.2013 she stated that she visited Nairobi nine times during the year 2013; that she carried 'Burkas' to Nairobi during the current visit and delivered it to the shop named Mandira at Nairobi for which she got her travel ticket and Rs. 5000/-; that the Burkas were given to her by one Ms. Hoden, a Nigerian National, that Ms. Hoden is the owner of Mandira Shop at Nairobi and reside at Mohamed Ali Road, Mumbai; she further stated that on her earlier occasions during her visits to Nairobi, she used to bring loban some times and chocolates some times in her handbag and did not bring any checked in

baggage and that she did not bring any gold or gold jewellery earlier while returning from Nairobi.

9. Government observes that the facts of the case reveal that the Smt. Shabana Abdul Hameed Shaikh is not the owner of the gold. In her initial statements she has stated that the impugned gold was given to her by some persons in Kenya with whom she got acquainted during her earlier visits, to be delivered to Smt. Saadia Yakub Abdullahi alias Hoden, the Applicant, the person who had sent the Applicant to Kenya. These facts indicate that the Smt. Shabana Abdul Hameed Shaikh has acted as a carrier. The Applicant in her revision application has dwelt on the retraction of the statement by the Applicant dated 23.06.2013, and have pointed out inconsistencies in the panchanama, which are inconsequential to the matter at hand Original adjudicating authority and the Appellate authority have both pointed out inconsistencies, questioning the genuineness of the agreement and the credibility of the Applicants submissions for bringing the gold. The Revision Application has not addressed these aspects suitably.

10. Government also notes that Smt. Shabana Abdul Hameed Shaikh has categorically stated that she used to carry garments for the Applicant to Nairobi. The Air travel expenses for the said journeys were covered by the Applicant. She has categorically stated that the gold under seizure was to be delivered to the Applicant after clearance. The only connection that Smt. Shabana Abdul Hameed Shaikh has with Kenya is through the Applicant. These facts and the applicants earlier involvement in abetting gold smuggling does not leave any doubt regarding the Applicants involvement in the impugned case. The Applicant has pleaded for setting aside the penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty thousand) imposed vide the order of the original adjudicating authority, and upheld by the Appellate authority. Government observes that the Revision Application has not brought out any facts to disprove that the Applicant is not connected to the impugned gold. Government keeping in mind the facts of the case on record, is therefore not inclined to interfere in the Appellate order on this aspect. The impugned order of the Appellate Authority is liable to be upheld and the Revision Application liable to be dismissed.

11. Revision Application is accordingly dismissed.

Shrawan
9/9/21

(SHRAWAN KUMAR)

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

ORDER No 227/2021-CUS (WZ) /ASRA/

DATED 09.09.2021

To,

1. Smt. Saadiya Yakub Abdullahi alias Ms Hoden, Shop No. 26,27 &28 Easiligh, Mander Shopping Centre, 4th Street, Gololey, Po Box No. 4027, NB 1, Nairobi Kenya.
2. Smt. Saadiya Yakub Abdullahi alias Ms Hoden, Room No. 1, 2nd Floor, Building No. 47, Andra Building, Damer Galli, Near Mustafa Masjid, Mohammed Ali Road, Mumbai - 400 009.

Copy to:

3. The Pr. Commissioner of Customs, CSI Airport, Mumbai.
4. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard File. ,
7. Spare Copy.