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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. 380/05/B/WZ/2020-RA / 1061 : Date of Issue : 17.02.2023

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ORDER NO. 240 /2023-CUS (WZ)/ASRA/MUMBAI DATED 16.02.2023  
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.

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Applicant : Pr. Commissioner of Customs, CSMI, Mumbai.

Respondent : Ms. Saroj Kantilal Mehta

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-746/2019-20 dated 29.11.2019 [DOI :  
18.12.2019 : F.No. S/49-408/2019] passed by the  
Commissioner of Customs (Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by Pr. Commissioner of Customs, CSMI Airport, Mumbai (herein after referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-746/2019-20 dated 29.11.2019 [DOI : 18.12.2019 : F.No. S/49-408/2019] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that the respondent who had arrived at CSMI Airport, Mumbai on 27.10.2018 from Dubai onboard Air India Express Flight No. IX-248/27.10.2018 was intercepted by Customs Officers near the exit gate in the arrival hall after she had cleared herself through Customs green channel. Her personal search led to the recovery of 4 bangles worn by her on her wrists and a gold chain worn on her neck. The jewellery were assayed and the Government Approved Valuer, certified that these 4 bangles and gold chain were of 999% (24kts) purity, totally weighing 350 grams and valued at Rs. 10,21,996/- (T.V).

2(b). The respondent informed that she was the owner of the gold jewellery which she had brought for her daughters' marriage. In her statement recorded on 26.11.2018, the respondent had submitted the original wedding invitation card of her daughter, two invoices for purchase of the gold jewellery, credit card statement of her son and daughter-in-law. These two invoices showed that AED 23,923/- had been paid by her son and AED 20,000/- had been paid by her daughter-in-law towards the purchase of gold jewellery and AED 7500 had been paid in cash.

3. After due process of the law, the Original Adjudicating Authority, viz Additional Commissioner Of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/450/2018-19 dated 27.02.2019 {through F.No. S/14-5-305/2018-19/Adjn; SD/INT/AIU/473/2018-AP'D}} ordered for the confiscation of the 350 grams of the gold jewellery, valued at Rs. 10,21,996/- under Section 111(d), 111(1) and 111 (m) of the Customs Act, 1962. However, an

option to redeem the same on payment of Rs. 1,65,000/- had been granted to the respondent under Section 125(1) of the Customs Act, 1962 + applicable baggage rate of duty and other charges. A penalty of Rs. 1,15,000/- was imposed on the respondent under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the respondent filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals), Mumbai - III who vide Order-in-Appeal No. MUM-CUSTOMS-PAX-APP-746/2019-20 dated 29.11.2019 [DOI : 18.12.2019 : F.No. S/49-408/2019] upheld the release of gold jewellery on payment of redemption fine. However, the appellate authority reduced the fine further to Rs. 1,25,000/- from the Rs. 1,65,000/- imposed by the OAA and also reduced the penalty amount from Rs. 1,15,000/- imposed by the OAA to Rs. 75,000/-.

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

- 5.01. the gold jewellery had been brought by the respondent and she had attempted to clear the same without declaring to Customs as required under Section 77 of the Customs Act, 1962 which had rendered the gold liable for confiscation and the respondent liable for penalty under Section 112(a) and (b) of the Customs Act, 1962.
- 5.02. that the Hon'ble Madras High Court in the case of Commissioner of Customs Vs. P. Sinnasamy, cited the observation of the Hon'ble Division Bench of the Kerala High Court and held that even though gold is not an enumerated prohibited item and thus, can be imported, but when such import is subject to restrictions, including necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed, release of the smuggled goods cannot be ordered and held that when there is violation of statutory prohibitions, mentioned in Section 11 and 11A of the Customs Act, 1962 or any other law, for the time being in force or restrictions imposed, such restrictions would also encompass the expression, any prohibition.
- 5.03. that the Hon'ble Supreme Court in the case of Om Prakash Bhatia vs. Commr. of Customs, Delhi [2003-6-SCC-161] observed that if the conditions prescribed for import or export of goods were not complied with, it should be considered to be prohibited goods and Section 11 of the Customs Act, empowers the Central Government to prohibit either

'absolutely' or 'subject to conditions' to be fulfilled before or after clearance, as may be specified in the notification. If conditions are not fulfilled, it may amount to prohibited goods.

- 5.04. Reduction of the redemption fine and penalty as ordered by the AA was not tenable.
- 5.05. the applicant has relied upon the case of Commissioner of Customs, Tuticorin V/s Sai Copiers (2008 (226) E.L.T. 486 (Mad)) of High Court, Madras wherein it was held that any order of the lower authority could be interfered with only in circumstances in which it was demonstrated that such an order was purely arbitrary, whimsical and resulting in miscarriage of justice.
- 5.06. the applicant has relied on the Hon'ble Supreme Court case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi [2003 (155) E.L.T. 423 (SC)], that in matter of quasi-judicial discretion, interference by the Appellate Authority would be justified only if the lower authority's decision was illogical or suffers from procedural impropriety

Applicant has prayed to set aside the order passed by the appellate authority and to restore the order passed by the original adjudicating authority or pass any order as deemed fit.

6. The respondent through her Advocate viz Sanjay Singal, vide letter F.No. 6/Admn/Saroj Jain/2020-1 dated 05.08.2020 submitted that

- 6.01. that the respondent had produced receipts of purchase, wedding card and she was not a frequent traveler and was not involved in any smuggling syndicate. She admitted to violations of the Customs Act, 1962 and relied on the Tribunal's Order in the case of Yaqub Ibrahim vs. CC [2011-263-ELT-685] wherein gold jewellery had allowed to be redeemed on payment of a fine.
- 6.02. that the applicant had accepted the OIO in which gold jewellery had been allowed to be redeemed.
- 6.03. that imposition of fine and penalty was purely a discretion of the quasi-judicial authorities and unless the same was shown to be arbitrary and unfair, the same should be upheld.
- 6.04. that the gold was still lying with the respondent and they have not released the same. This is harassment by the respondent.

The respondent has prayed that the revision application filed by the applicant be rejected.

6. Personal hearings in the case were scheduled for 06.12.2022, 20.12.2022. No one appeared for the applicant. Shri. Sanjay Singal, Consultant appeared online and submitted that respondent brought small quantity of gold for personal use. He submitted that Commissioner (Appeals) Order is reasonable and fair. He requested to maintain Commissioner (Appeals) Order.

7. The Government has gone through the facts of the case and notes that the respondent had gold in her possession which had not been declared to the Customs. The respondent had not declared the dutiable items in her possession as required under Section 77 of the Customs Act, 1962. The respondent had not declared the gold jewellery in her possession to Customs with an intent to evade payment of Customs duty. With her short duration of stay abroad, she was not eligible to bring gold at concessional rate of duty. Had she not been intercepted, the respondent would have gotten away with the gold. The Government finds that the confiscation of the gold was therefore, justified.

8. 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. Further, in para 47 of the said case the Hon’ble High Court has observed *”Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....”*. Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the Respondent thus liable for penalty.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon’ble Supreme Court in case of *M/s: Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021]* has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

11. Government observes that in this case, the quantum of gold is small and the respondent had worn the same. The gold bangles had not been concealed ingeniously. Government notes that at times, passengers adopt innovative methods to bring valuables and attempt to escape payment of duty. That is why goods are liable to confiscation. The Government notes that while granting an option to redeem the gold on payment of a redemption fine, the OAA at para 15 of his OIO had observed the following,

*“15. It is observed that Ms. Saroj Kantilal Mehta Jain, in her statement recorded under Section 108 of the Customs Act, 1962, has admitted the possession knowledge, non-declaration, concealment and recovery of the seized gold weighing 350 grams and valued at Rs. 10,21,996/-. It is observed that the seized gold was concealed on person as she was wearing it on her wrist and neck, which is not an ingenious method of concealment. It is also observed that the passenger had claimed ownership of the seized gold and stated that she had purchased the seized gold for her daughter’s marriage and the payment was made partly through her son’s credit card and partly through her daughter-in-law’s credit card. It is observed that she produced purchase invoice for proof of purchase of gold during the course of investigation. It is also observed that the passenger is not a frequent traveler and there is no evidence on record to suggest that the passenger was involved in organized smuggling. It is further observed that the passenger, in her written submission has asked for waiver of the Show Cause Notice and has requested to allow redemption of the seized gold on payment of duty, fine and penalty.”*

11(b). Considering the quantum of gold seized, form of gold being jewellery, applicant being a genuine passenger, Government finds the redemption fine

imposed in the OIA passed by the AA to be legal and proper. Government is not inclined to interfere in the order passed by the AA.

12. Government finds that the OAA had used his discretion and allowed for the redemption of the goods. Government notes that the AA while rejecting the respondent's plea to allow the re-export of the gold has reduced the redemption fine from Rs. 1,65,000/- imposed by OAA to Rs. 1,25,000/-. Also, the AA reduced the penalty of Rs. 1,15,000/- imposed by the OAA under Section 112(a) and (b) of the Customs Act, 1962 to Rs. 75,000/-. Government observes that the redemption fine and penalty has been reduced in view of the fact that this was first incident of respondent. Government finds the same as fair and just and the OIA to be legal and proper and does not find it necessary to interfere in the same.

13. Revision Application is disposed of on above terms.

  
( SHRAWAN KUMAR)

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

**ORDER No. 240 /2023-CUS (WZ) /ASRA/MUMBAI DATED 16.02.2023**

To,

1. Pr. Commissioner of Customs, CSMI Airport, Level-2, Terminal-2, Sahar, Andheri East, Mumbai – 400 099.
2. Ms. Saroj Kantilal Mehta Jain, C-503, Sadguru Darshan, Liberty Garden, Malad West, Mumbai – 400 064.

Copy To,

1. Shri. Sanjay Singal, Advocate, Gala No. 2, Sharma Compound, Old Nagardas Road, Andheri East, Mumbai – 400 069.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.