

371/290/B/WZ/2021-RA

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. 371/289/B/WZ/2021-RA/3903 : Date of Issue : 05.09.2022

ORDER NO. 219/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 30.08.2022
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. 371/289/B/WZ/2021-RA

Applicant : Ms. Sanstruti Hariasra

Respondent : Pr. Commissioner of Customs, CSMIA, Sahar, Mumbai -
400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
No. MUM-CUSTM-PAX-APP-392/2021-22 dated 15.07.2021
[F.No. S/49-09/2021; DIN : 20210767BB000000FBB3]
passed by the Commissioner of Customs (Appeals), Mumbai -
III.

ORDER

This revision application has been filed by Ms. Sanstruti Hariasra (hereinafter referred to as the Applicant) against the Order-in-Appeal No. No. MUM-CUSTOM-PAX-APP-392/2021-22 dated 15.07.2021 [F.No. S/49-09/2021; DIN : 20210767BB000000FBB3]] passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant an Indian National upon arrival from Dubai at CSMI Airport, Mumbai was intercepted by Customs Officers on 13.11.2021 after she had crossed the green channel. On examination of her baggage and a search of her person, resulted in the recovery of two crude gold bangles, weighing 65 grams and valued at Rs. 2,94,550/-. Applicant had resided abroad for a period of 96 days (i.e. 3 months & 5 days) and had accepted the ownership, possession, knowledge, non-declaration and recovery of the said two crude gold bangles from her.

3. The Original Adjudicating Authority (OAA), viz, Dy. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. Air Cus/49/T2/1806/2020-UNI-B dated 14.11.2020 ordered for the absolute confiscation of the two crude gold bangles, weighing 65 grams, valued at Rs. 2,94,550/- under Sections 111(d), 111(i) & 111(m) of the Customs Act, 1962 and a penalty of Rs. 10,000/- under Section 112 (a) & (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-392/2021-22 dated 15.07.2021 [F.No. S/49-09/2021] upheld the OIO passed by the OAA and rejected the appeal as being devoid of merits.

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

- 5.01. that the Appellate Order was erroneous, against facts, law and all probabilities, unsustainable and was liable to be set aside,
- 5.02. that the seized gold had been gifted to the applicant by her grandparents.
- 5.03. that statement under Section 108 of the Customs Act, 1962 had not been recorded.
- 5.04. that the two gold bangles had been worn by applicant on her wrist.
- 5.05. that the applicant on the issue of waiver of SCN relied upon the CESTAT order in the case of Navneet Metals vs. Commr. Of Customs (Import), Nhava Sheva [2019-369-ELT-1360-Tri-Mumbai] wherein it is held that even if the waiver of SCN was by consent there was an obligation to render a rationale and comprehensive finding for ordering absolute confiscation.
- 5.06. that the settled law passed by Apex Court and various High Courts and Tribunals had not been complied.
- 5.07. that the penalty imposed was bad in law.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside the OIA, to return the confiscated gold or grant any subsequential reliefs as deemed fit.

6. Applicant requested in person for urgent hearing in the matter. Personal hearing through the online video conferencing mode was scheduled for 24.06.2022, 08.07.2022. Shri. Rajendra V. Shahasane, Advocate for the applicant appeared online on 08.07.2022. He submitted that applicant had worn the gold bangles and that the same had been gifted and was not crude gold. He submitted that OIO was passed without mandatory process. He requested to allow re-export or release the goods on nominal fine and penalty. He submitted that no panchanama was recorded, Section 108 statement was not recorded and valuation report was not obtained.

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 two crude gold bangles 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 chains was therefore justified.

9. 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".

10. 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 ‘Applicant’ thus, liable for penalty.

11. 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 the 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.

12. The quantity of gold jewellery under import is small and is not of commercial quantity. The applicant has emphasised that the two gold bangles had been worn by her. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using

discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

13. The absolute confiscation of the two crude gold bangles, leading to dispossession of the applicant of the gold bangles in the instant case is therefore, harsh and not reasonable. Government therefore, sets aside the impugned order of the appellate authority. The impugned two crude gold bangles, weighing 65 grams and valued at Rs. 2,94,550/- is allowed redemption on payment of fine of Rs. 50,000/- (Rupees Fifty Thousand only). The Government finds that the penalty of Rs. 10,000/- (Rupees Ten thousand only) imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed and the same does not merit interference.

14. Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. 249/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 30.08.2022.

To,

1. Ms. Sanstruti Hariasra, **Address No. 1** : 1301, 5 Diamond Garden, Chembur (East), Mumbai – 400071.
Address No. 1 : 33/387, Shell Colony, Chembur, Mumbai – 400 071.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Sahar, Mumbai – 400 099.

Copy to:

1. Shri. Rajendra V. Shahasane, Advocate, S2-1401, Titan, Godrej Prime, Sahakar Nagar, Road No. 3, Shell Colony, Chembur (East), Mumbai – 400 071.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.