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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. 371/136 & 137/B/WZ/2022-RA/3834** : Date of Issue : 19.09.2022

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ORDER NO. 264-265/2022-CUS (WZ)/ASRA/MUMBAI DATED 15.09.2022  
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.

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(i). F.No. 371/136 & 137/B/WZ/2022-RA

Applicant : (i). Mrs. Leyla Mahmoodi,  
(ii). Mr. Mojtaba Ebrahim Gholami.

Respondent : Principal Commissioner of Customs, CSMI Airport,  
Sahar, Andheri East, Mumbai - 400 099.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal No. MUM-  
CUSTM-PAX-APP-1175 & 1176/2019-20 dated 28.01.2020  
Issued on 05.02.2020 through F.No. S/49-485 & 486/2019  
passed by the Commissioner of Customs (Appeals), Mumbai -  
III, Marol, Mumbai - 400 059.

**ORDER**

These revision applications have been filed by (i). Mrs. Leyla Mahmoodi & (ii). Mr. Mojtaba Ebrahim Gholami. (hereinafter referred to as the Applicants or as A1 and A2, respectively) against the Order-in-Appeal.No. MUM-CUSTOM-PAX-APP-1175 & 1176/2019-20 dated 28.01.2020 issued on 05.02.2020 through F.No. S/49-485 & 486/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059.

2(a). Brief facts of the case are that the applicants who are both Iranian Nationals were intercepted on 14.01.2018 by Customs Officers at CSMI Airport, Mumbai where they had arrived from Muscat by Oman Air Flight No. WY-203/14.01.2018 and they had cleared the green channel and were proceeding towards the exit gate. To query put forth to them whether they were in possession of any contraband, gold, etc either in their baggage or person, the applicants had all replied in the negative. Personal search of the applicants, led to the recovery of assorted jewellery as per the details given below in Table No. 01. The total weight of the gold jewellery recovered from A1 was 576 grams, valued at Rs. 15,41,808/- and the total gold jewellery recovered from A2 was 452 grams, totally valued at Rs. 11,21,558. In other words, the total weight of the gold jewellery recovered from A1 & A2 was 1028 grams, collectively valued at Rs. 26,63,366/-.

**TABLE No 01.**

Applicant	Description	Karats	Qty (pcs)	Net. Wt. (Grams)	Value in Rs.
A1	Crude Gold Spiral Bangle	24	03	576	15,41,808/-
A2	Crude Gold Kada	24	01	320	8,56,560/-
	Gold Kada	18	01	132	2,64,998/*
	Sub Total			452	11,21,558/-
<b>TOTAL</b>				<b>1028</b>	<b>26,63,366/-</b>

2(b). In his statement, A2 informed that A1 was his wife. The applicants admitted to non-declaration, possession, carriage, ownership and recovery of the aforesaid gold jewellery found in their possession.

3. The Original Adjudicating Authority (OAA), viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/419/2018-19 dated 18.01.2019, issued on 18.08.2019, through F.No. S/14-5-114/2018-19/Adjn - SD/INT/AIU/21/2018-AP'D' ordered for the absolute confiscation of the impugned gold jewellery i.e. 3 crude gold bangles and 2 gold kadas, weighing 1028 grams and valued at Rs. 26,63,366/- under Section 111(d), (l) and (m) of the Customs Act, 1962. Personal penalties of Rs. 1,75,000/- and Rs. 1,25,000/- were imposed on A1 and A2 respectively, under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order passed by OAA, the applicants 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-1175 & 1176/2019-20 dated 28.01.2020 issued on 05.02.2020 through F.No. S/49-485 & 486/2019 did not find it necessary to interfere in the absolute confiscation of the goods held by the OAA and upheld the same. However, the penalties of Rs. 1,75,000/- and Rs. 1,25,000/- imposed under Section 112(a) and (b) of the Customs Act, 1962 by the OAA on A1 and A2 resp, was reduced to Rs. 1,25,000/- and Rs. 1,00,000/- resp.

5. Aggrieved with the above order of the appellate authority, the Applicants have filed this revision application on the following grounds alongwith an exhaustive list of case citations;

5.01. that the panchanama was drawn in English, a language not familiar to them. In this regard, they have relied upon the Hon'ble

Bombay High Court's decision in the case of Hasan Imam Inamdar v/s. State of Maharashtra.

- 5.02. that they sought to cross-examine the panchas, they cited the Orissa High Court's Order in the case of Ram Kishan Agarwala vs. Coll. Of C.Ex, 1981-ELT-217(Ori); Coll. Of C.Ex, Madras vs. Shri. M.Nemi Chand Jain, 1985 ECR-1940-CEGAT, Madras, etc.
- 5.03. that the statements of the applicants recorded in English was not admissible as they can converse only in Persian; that there was no interpreter present; On this issue, the applicants have relied on the Kehar Singh vs. the State (Delhi Administration); Wasi Uddin Ahmed vs. DM, Aligarh; NSR Krishna Prasad vs. ED.
- 5.04. the applicants were tourist and were eligible to carry their used personal effects including personal jewellery for their stay in India.
- 5.05. that they were not involved in any smuggling activity.
- 5.06. that the jewellery under absolute confiscation was not dutiable.
- 5.07. that personal gold jewellery was not a prohibited item but only restricted item.
- 5.08. that binding precedents had not been followed by the OAA, they have relied on E.I Dupont India Pvt. Ltd vs. UOI – 2014-5-TMI-128-GHC; Clari's Life Sciences Ltd. Vs. UOI, 2014-1-TMI-1467-GHC.
- 5.09. they had not been given reasonable opportunity to defend the case which was in violation of the principles of natural justice. They have cited Board's Master Circular dated 19.01.2017 in this regard. They have also cited an exhaustive list of case laws on the subject of principles of natural justice.
- 5.10. that the OIA was not an order on merits and not a speaking order.
- 5.11. that they claimed ownership of the gold items.

Under the above facts and circumstances of the case, the Applicants have prayed that the Revision Authority be pleased to set aside the impugned OIA, set aside the penalties and grant permission to re-export the gold jewellery and drop proceedings.

6. The Respondent vide their letter F.No. AirCus/Review-366/2020-21 dated 19.11.2022 submitted the following,

6.01. that the applicants had admitted to possession, concealment and non-declaration of the seized gold, that they had brought the gold to sell it in India and make profit.

6.02. that as per Section 77 of the Customs Act, 1962, a declaration was required to be made,

6.03. that the offence had been committed in a pre-meditated and clever manner indicating menrea and had they not been intercepted, they would have gotten away with the gold.

6.04. that the respondent has relied on the undermentioned case laws to buttress their case,

(a). Surjeet Singh Chhabra vs. UOI, 1997-89-ELT-646-SC; that statement has to be relied upon.

(b). K.I. Pavunny vs. Asstt. Coll. (HQ), C.Ex, Cochin, 1997-90-ELT-241-SC, that Customs Officers are also Police Officers.

(c). Abdul Razak vs. UOI, 2012-275-ELT-300-(HC-Ker-DB), did not find any merity to release the goods under Section 125 of the Customs Act, 1962,

(d). Hon'ble Madras High Court order in the case of Commr. Of Customs (AIR) vs. P. Sinnasamy that even though gold was not an enumerated prohibited item, is subject to certain conditions / restriction and violation of the same makes it prohibited.

(e). Om Prakash Bhatia vs/ Commr. Of Customs, Delhi, 2003-6-SC-161 where the Apex Court had held that non fulfillment of conditions make the goods prohibited.

(f). the applicants had not produced any invoice to prove the licit acquisition and financing of the seized gold. Section 123 of the Customs Act, 1962 cast a burden on the person from whom the gold has been seized. The applicants had failed to do so.

(g). Baburaya Narayan Nayak vs. Commr. Of Customs, Bangalore, 2018-364-ELT-811-Tri-Bang, where absolute confiscation was upheld,

(h). Board's Circular no. 495/5/92-Cus.VI dated 10.05.1993 which states that in respect of seized gold which had not been declared, the no option to redeem the same should be granted.

Respondent has prayed to reject the application filed by the applicants and to uphold the OIA.

7(a). Personal hearing to the respondent via the online video conferencing mode was scheduled for 23.08.2022. Shri. Prakash Shingrani, Advocate appeared for the personal hearing and submitted that applicants are Iranian nationals, that they had brought jewellery alongwith them; that the quantity of jewellery was small and for personal use and applicants are not habitual offenders. He requested to allow re-export of the gold jewellery.

7(b). No body appeared on behalf of the respondent.

8. The applicants have filed an application for condonation of delay and have attributed the delay to the pandemic situation and their inability to approach the Consulate at the relevant time. Government notes that the OIA was passed on 28.01.2020 and had been issued on 05.02.2020. The applicants have filed the revision applications on 21.07.2020. Government finds that the revision application is filed within the extension period of 3 months available to the applicant over and above the statutory limit period of 3 months, i.e. 3 months + 3 months. Moreover, the Apex Court during the pandemic period had extended the date for filing appeals etc. Therefore, Government condones the delay and proceeds to decide the case on merits.

9. The Government has gone through the facts of the case and notes that the applicants had failed to declare the goods in their possession as required under Section 77 of the Customs Act, 1962. The applicants had not disclosed that they were carrying dutiable goods and had they not been intercepted they would have walked away with the impugned gold jewellery without declaring the same to Customs. By their actions, it was clear that the applicants 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 was therefore, justified.

10. 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”.*

11. 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 applicants thus, liable for penalty.

12. 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.*

13. The Government notes that the quantity of the gold jewellery is not large and that the applicants had worn the same. The gold jewellery had not been concealed in an ingenious manner. There are no allegations that the Applicants are habitual offenders and were involved in similar offences earlier. The quantity and facts of the case indicate that it is a case of non-declaration of gold jewellery and not smuggling. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty. Government notes that the applicants are foreign nationals and have prayed that they be allowed to re-export the gold jewellery.

14. Taken individually, the quantum of gold jewellery is small; that applicants are foreign nationals, that gold jewellery was worn and had been found on their person; that gold jewellery had not been concealed, Considering the facts of the case as above, Government notes that for this case 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.



15. 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, in which Revisionary Authority had ordered for restoration of OIO wherein adjudicating 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.

16. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold jewellery at the time of arrival, the confiscation of the same was justified. However, considering the quantum, the same not being concealed and found on their person, the absolute confiscation of the same was harsh and not justified. In view of the aforesaid facts and considering that the applicants are foreign nationals, option to re-export the impugned gold jewellery on payment of redemption fine should have been allowed. Considering the above facts, Government is inclined to allow the impugned gold jewellery to be re-exported on payment of a redemption fine.

17. Government finds that the penalty of Rs. 1,75,000/- and Rs. 1,25,000/- imposed on A1 and A2 respectively, under Section 112(a) and (b) of the Customs Act, 1962 by the OAA has been reduced by the AA to Rs. 1,25,000/- and Rs. 1,00,000/- respectively. Government finds that the reduced penalty on A1 & A2 respectively is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

18. In view of the above, the Government modifies the impugned order of the Appellate Authority to the extent of the absolute confiscation of the impugned gold jewellery detailed at Table No. 1 above, collectively weighing 1028 grams

and valued at Rs. 26,63,366/-. The impugned gold jewellery mentioned at Table No. 1 above, having total net weight of 1028 grams, and market value of Rs. 26,63,366/- is allowed to be re-exported on payment of a redemption fine of Rs. 5,25,000/- (Rupees Five Lakhs Twenty Five Thousand only). The reduced penalty imposed on A1 and A2 of Rs. 1,25,000/- and Rs. 1,00,000/- respectively is proper and judicious and the Government upholds the same.

19. The OIA passed by the AA is modified in the above terms only to the extent of modifying the absolute confiscation and granting an option to the applicants to re-export the gold jewellery on payment of a redemption fine. The penalties imposed by AA are sustained.

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

*Shrawan Kumar*  
15/09/22  
(SHRAWAN KUMAR)

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

ORDER NO. 264-265/2022-CUS (WZ)/ASRA/MUMBAI DATED 15.09.2022.

To,

1. Mrs. Leyla Mahmoodi, **Address 1.** Mashhad Mottahari 28, Hossienzadeh 5, Pelak - 86, Iran. **Address 2.** C/o. Ahmad Kheirmandi, Attache, Iranian Consulate, Swapnalok, 1<sup>st</sup> Floor, 47, Napeansea Road, Mumbai - 400 026.
2. Mr. Mojtaba Ebrahim Gholami, **Address 1.** Mashhad Mottahari 28, Hossienzadeh 5, Pelak - 86, Iran. **Address 2.** C/o. Ahmad Kheirmandi, Attache, Iranian Consulate, Swapnalok, 1<sup>st</sup> Floor, 47, Napeansea Road, Mumbai - 400 026.
3. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri East, Mumbai - 400 099.

Copy to:

1. Shri. Prakash Shingrani, Advocate, 12/334, New MIG Colony, Bandra East, Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.