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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

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F.No. 371/227/B/WZ/2022-RA /4320 : Date of Issue : 28.03.22

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ORDER NO. 281 /2022-CUS (WZ)/ASRA/MUMBAI DATED 26.09.2022  
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. 371/227/B/WZ/2022-RA

Applicant : Ms. Bina Sanjay Chokshi

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
No. MUM-CUSTM-PAX-APP-1896/2021-22 dated 01.03.2022  
through F.No. S/49-504/2021 passed by the Commissioner of  
Customs (Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by Ms. Bina Sanjay Chokshi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1896/2021-22 dated 08.03.2022 through F.No. S/49-504/2021 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant who is a British national was intercepted on 12.03.2021 by Customs Officers at CSMI Airport, Mumbai, having earlier arrived from London onboard Virgin Atlantic Flight no. VS-354 / 11.03.2021. The applicant had opted for the green channel and had not declared the dutiable goods in her possession. Examination of the applicant led to the recovery of 2 crude gold bangles, totally weighing 175 grams and valued at Rs. 7,02,234/-. The applicant had arrived from London after residing there for 31 months i.e. 1 year, 7 months & 9 days.

3. The Original Adjudicating Authority (OAA), viz, Dy. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. Air Cus/T2/49/1949/2021/UNI-C dated 12.03.2021 ordered for the absolute confiscation of the impugned gold jewellery i.e. 2 crude gold bangles weighing 175 grams and valued at Rs. 7,02,234/- under Section 111(d) of the Customs Act, 1962 read with the provisions of Foreign Trade (Development and Regulation) Act, 1992 and a penalty of Rs. 70,000/- under Section 112 of the Customs Act, 1962 was also 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-1896/2021-22 dated 08.03.2022 through F.No. S/49-504/2021 did not find it necessary to interfere in the order passed by the OAA and rejected the appeal.

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

- 5.01. the applicant was an eligible passenger to import gold, hence, absolute confiscation of the gold was not sustainable.
- 5.02. the applicant is an Overseas Citizen of India (OCI) holding British passport. She was eligible to import gold as Not<sup>n</sup>. No. 50/2017 dated 30.06.2017. Applicant was visiting India after a period of 1 year and 7 months.
- 5.03. that gold is not prohibited goods and can be redeemed on payment of fine.
- 5.04. they have placed reliance on the following decisions.
  - (i). Custom, Excise & Service Tax Tribunal in Roshni Mathurdas Kothadia vs Hyderabad - Customs on 17 October, 2019
  - (ii). Madras High Court in T.Elavarasan vs The Commissioner of Customs on 28 February, 2011.
  - (iii). Madras High Court in Rajendran Thangam vs Chief Commr. Of Customs on 16 March, 2011.
  - (iv). Madras High Court in Kannan Karuppusamy vs Chief Commr. Customs on 16 March, 2011.
  - (v). CEGAT - Mumbai in Diambel N.V. Antwerk vs Commr. Of Customs on 8 November, 2007: 2008 (124) ECC 201, 2008 (150) ECR 201 Tri Mumbai.
  - (vi). Madras High Court in Asstt. Director Of Income Tax . vs Apparasu Ravi on 23 Dec, 2010.
- 5.05. that Gold was not prohibited goods and is a restricted item and hence, order of absolute confiscation of the 2 gold bangles is not maintainable
  - (a). In this regard, they have relied upon Calcutta High Court's Order in respect of Commr. Of Customs (Preventive) West Bengal vs. India Sales International [2009-241-ELT-182-Cal] on the issue of prohibited goods.
- 5.06. that there was no dispute that the applicant had not declared the gold and had violated the provisions of Section 77 of the Customs Act, 1962.
  - (a). they have stated that non-coverage of any goods under Baggage Rules such as gold only means that free allowance and exemption from duty is allowed on such goods.

- 5.07. that the case law of Om Prakash Bhatia vs. Commr. Customs, Delhi [2003-155-ELT-423-SC] on prescribed conditions not fulfilled would make the goods prohibited is not applicable to the applicant as this case law pertains to over invoicing of exported readymade garments.
- 5.08. They have also relied on Shaikh Jamal Basha vs. GOI, 1997-91-ELT-277-AP ; UOI vs. Dhanak Ramji [2003-248-ELT-128-Bom]; Sapna Sanjiv Kholi vs. Commr. Customs, Mumbai [2010-253-ELT-A52-SC],
- 5.09. Recent case where if goods are not expressly prohibited, then importer could be entitled to an option to redeem the goods on adjudication Horizon Ferro Alloys Pvt. Ltd vs. UOI passed by Punjab and Haryana High Court on 21.06.2016.
- 5.10. On the issue of option to redeem the goods if the same is not declared, they have relied on Chellani Mukesh reported in 2012-276-ELT-129-GOI.
- 5.11. Some of the other cases that they have relied on are, as under;
- (a). Bhargav B. Patel [2015-TIOL-1951-CESTAT-MUM on issue of discretion under Section 125 of the Customs Act, 1962.
  - (b). Asian Food Industries, 2006-201-ELT-8-SC on issue of meaning of word 'prohibited'.
  - (c). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)], Section 125(1) ibid clearly mandates that it is within the power of the adjudicating authority to offer redemption of goods even in respect of prohibited goods.
  - (d). UOI v/s. Dhanak M Ramji in W.P. No. 1397 with 1022 of 2009 dated 04.08.2009 (2009-248-ELT-127-Bom.). Goods not prohibited but became prohibited due to violation of law, discretion to release on payment of redemption fine, is maintainable. This case was maintained by Apex Court 2010-252-ELT-A102-S.C.
  - (e). Neyveli Lignite Corporation vs. UOI. [2009-242-ELT-487-Mad] on Section 125 of the Customs Act, 1962.
  - (f). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [Final Order No. A/362/2010-WBZ-II/(CSTB) dated 28.10.2010 in Appeal no. C/51/1996-Mum] [2011-263-ELT-685-Tri-Mumbai]. *Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole and makes them liable to absolute confiscation.*
- 5.12. they have stated that the undermentioned cases relied upon by AA denying redemption has been wrongly applied;

- (a). Uttam Chand Sawal Chand Jain vs U.O.I (2013) 42 GST 11 (Bom HC-DB)
  - (b). Ranwolf Charles Luka vs U.O.I (1996) 83 ELT 274 (BOM HC DB)
  - (c). Rafal Fawl, a Syrian National in 1992 (59) ELT 338
  - (d). Hsui Ringg Chang vs CC 1992 (62) ELT 225 (CEGAT)
  - (e). Abdul Razak vs Union of India
  - (f). Commissioner of Customs vs P.Sinnasamy
  - (g). Commissioner of Customs vs Samynathan Murugesan 2009 (247) ELT 21 (Mad)
- 5.13. Applicant has stated that Circular No. 495/5/92-Cus-VI dated 10.05.1993 cannot prevail over the statute. In this regard they have relied on Kalyani Packaging Industry vs. UOI 1404-5-TMI-78 SC and other cases.
- 5.14. that the penalty imposed on the applicant was disproportionate to the value of the gold.
- 5.15. On the issue of reduction of penalty, they have relied upon Commr. Of Customs, Tuticorin vs. Sai Copiers [2008-226-ELT-486-HC-Mad]; Commr. Of Customs (Import) Vs. Shankar Trading Co. [2008-224-ELT-206-HC-Bom] etc.
- 5.16. that the applicant was the owner of the impugned gold.
- 5.17. On the issue of the redemption of gold which has been allowed they have relied on the undermentioned clutch of cases;
- (a). In Hargovind Das K. Joshi Vs Collector of customs 1992 (61) ELT 172(SC) the Hon'ble Apex Court remanded the case to the Collector for exercising the option of redemption under section 125 of Customs Act, 1962.
  - (b). In Universal Traders v. Commissioner 2009 (240) E.L.T. A78 (SC) also the Apex Court allowed redemption of exported goods being not prohibited.
  - (c). In Gauri Enterprises Vs CC, Pune 2002 (145) ELT (705) (Tri Bangalore) the CESTAT held that if similar goods have been released on fine earlier, selective absolute confiscation is not called for as absolute confiscation should be an exception rather than a rule.
  - (d). In CC (Airport), Mumbai Vs Alfred Menezes 2009 (242) ELT 334 (Bom.), the Hon'ble High Court held that Section 125(1) ibid clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even respect of prohibited goods.
  - (e). In Yakub Ibrahim Yusuf 2011 (263) EL. T. 685 (Tri. Mumbai) the Tribunal held that option of redemption has to be given to person

from whose possession impugned goods are recovered, even though he had not claimed its ownership.

- (f). In Shaik Jamal Basha Vs Government of India 1997 (91) ELT 277(AP) the Hon'ble High Court held that Gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorisedly can be redeemed.
- (g). In VP Hameed Vs Collector of Customs Mumbai 1994(73) ELT 425 (Tri) it was held that there is no bar in allowing redemption of gold being an item notified under Section 123 of Customs Act, 1962 or for any other reason.
- (h). In T. Elavarasan Vs Commissioner of Customs (Airport), Chennai 2011 (266) ELT 167 (Mad), the Hon'ble High Court held that Gold is not a prohibited item and option is available to owner of goods or person from whom goods seized to pay -fine in lieu of confiscation.
- (i). In Kadar Mydin v/s Commissioner of Customs (Preventive), West Bengal 2011 (136) ELT 758 it was held that in view of the liberalised gold policy of the Government, absolute confiscation is unwarranted can be allowed.
- (j). In Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai ELT 305 the tribunal observed that the frequent traveller was aware of rules and regulations and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.
- (k). In Vatakkal Moosa v/s Collector ns, Cochin 1994 (72) ELT (G.O.1.); Halithu Ibrahim vs CC [2002 195-CESTAT-MAD., Krishnakumari vs CC, Chennai 2008 (22) T 222 (Tri-Chennai); S.Rajagopal vs CC, Trichy 2007 (219) ELT 43 Tri-Chennai); M. Arumugam Vs CC, Trichirapalli 2007 (220) ELT 3 (Tri-Chennai) also it was held that absolute confiscation is not warranted and redemption of gold should be allowed.
- (l). In the case of Dhanak Ramji while interpreting the scope of Section 125 of the Customs Act, 1962 the Hon'ble Supreme Court approved discretionary power of the adjudicating/appellate authority in ordering release of confiscated goods on payment of redemption fine:
  - 5.18. On the issue of ownership of gold, they have relied on case of Union of India vs Dhanak M. Ramji 2009 (248) E.L.T. (Bom.), ; R Mohandas vs. C.C, Cochin [2016-336-ELT-399-HC Ker], etc
  - 5.19. On the issue of re-export, they have relied on the following case laws;
    - (a). Liaquat Ali Hameed v. CC Chennai - 2003 (156) E.L.T. 863 (T).

- (b). Order passed by the GOI in the case of Mohd. Ramzan reported in 1995 (75) E.L.T. 207 (GOI) ;
- (c). Revision Order No. 34/08, dt. 24-4-08 in the case of Pradeep Kumar, Bhavarpal reported in 2003 (153) E.L.T. 226 (Tri.-L.B.)
- (d). Revision Order No. 198/2010-CUS, dated 20-5-2010 in F. No. 375/14/B/2010-RA-CUS in the case of MUKADAM RAFIQUE AHMED,

Under the circumstances of the case, the applicant has prayed to the Revision Authority to set aside the absolute confiscation of the 2 crude gold bangles and to order the release of the gold for re-export on payment of fine and penalty.

6(a). Personal hearing through the online video conferencing mode was scheduled for 21.09.2022. Shri. Prakash Shingrani, Advocate for the applicant and Shri. Sanjay Chokshi, relative of the applicant, appeared for personal hearing and they stated that jewellery was personal, worn on person, quantity was small. They further submitted that applicant was a British national and therefore, requested to allow the re-export of the jewellery.

6(b). In the written submission dated 13.09.2022, handed over by Shri. Prakash Shingrani, Advocate for the applicant, he has reiterated that applicant was a British national, having OCI card and had come to India after nearly 1 year, 7 months; that applicant was eligible to bring gold and that the applicant had brought the same for her son's wedding.

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 gold jewellery without declaring the same to Customs. By her actions, it was clear that the applicant had no intention to declare the impugned gold jewellery to Customs and pay Customs duty on it.

The Government finds that the confiscation of the gold jewellery is therefore, justified.

8. The Government notes that the quantum of gold recovered from the applicant is very small, that applicant was a foreign national, that applicant had worn the gold jewellery, that applicant had not concealed the gold jewellery. There is no case made out that the applicant is a repeat offender. At best this case can be termed as a case of non-declaration of gold jewellery rather than smuggling of gold.

9. 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 foreign nationals 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, wherein Revisionary 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.

10. The Government finds that this is a case of non-declaration of the gold jewellery. The facts of the case reveals that the gold jewellery had not been concealed ingeniously and the contention that the same had been worn has not been controverted by the respondent. The gold jewellery has been claimed by the Applicant and there is no dispute regarding ownership. There are no allegations of previous offences registered against the Applicant. Thus, mere non-submission of the declaration cannot be used to deprive the applicant of the gold jewellery, more so because she is a foreign national and had worn the gold ornaments. Considering the afore-stated facts, Government therefore, is inclined to allow the impugned gold jewellery to be re-exported on payment of a redemption fine as specifically prayed for by the applicant. In view of the



same, the Government is inclined to modify the order passed by the appellate authority.

11. The Government finds that the personal penalty of Rs. 70,000/- imposed on the applicant under Section 112 of the Customs Act, 1962 which is nearly 10% of the value of the gold jewellery, is commensurate with the omissions / commissions committed.

12. In view of the above, the Government modifies the order passed by the appellate authority and allows the applicant to redeem the impugned gold jewellery for re-export as prayed for, on payment of a redemption fine of Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand only). The penalty amount of Rs. 70,000/- is upheld.

13. The Revision application is disposed of on the above terms.

*Shrawan*  
26/9/22  
( SHRAWAN KUMAR )

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

ORDER NO. 281 /2022-CUS (WZ)/ASRA/MUMBAI DATED 26.09.2022.

To,

1. Ms. Bina Sanjay Chokshi, 6, George Gardens, Costessey, Norwich, NR8 5HG, United Kingdom.
2. Pr. Commissioner of Customs, Level – II, Terminal – 2, Chhatrapati Shivaji Maharaj Airport, Sahar, Andheri West, Mumbai – 400 099.

Copy to:

1. Ms. Bina Sanjay Chokshi C/o. Shri. Prakash Shingrani, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai – 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.