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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. 371/115/B/WZ/2021-RA / ~~6050~~ 6050 : Date of Issue : 27.10.22

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ORDER NO. 296 /2022-CUS (WZ)/ASRA/MUMBAI DATED 20.10.2022  
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. 371/115/B/WZ/2021-RA

Applicant : Ms. Shamma Abdulla Ahmed

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-651/2020-21 dated 24.12.2020  
issued on 15.01.2021 through F.No. S/49-1097/2020 passed by  
the Commissioner of Customs (Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by Ms. Shamma Abdulla Ahmed (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-651/2020-21 dated 24.12.2020 issued on 15.01.2021 through F.No. S/49-1097/2020 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that the applicant who is a national of U.A.E was intercepted on 07.11.2019 by Customs Officers at CSMI Airport, Mumbai, having earlier arrived from Dubai onboard Air India Flight no. AI-912 / 07.11.2019. The applicant had opted for the green channel and to the query about possession of any dutiable goods, gold, currency or any other contraband in her baggage or person, had replied in the negative. Personal search of the applicant led to the recovery of assorted gold jewellery as detailed below which had been worn around her neck and wrists. The gold jewellery was assayed by a Government Approved Valuer.

Table No. 01.

S.No.	Description	Karats	Weight in grams	Value in Rs.
1.	01 no. Gold Chain with pendant, 02 nos gold rings	22	Gross : 59, Net : 59.	1,87,691/-
2.	20 nos of gold bangles, 04 nos of gold kangans and 03 nos of gold necklaces	21	Gross : 462, Net : 447	13,57,360/-
		Total :	Gross : 521 Net : 506	15,45,051/-

2(b). The applicant is a holder of an OCI card had admitted to ownership, possession, carriage, non-declaration, concealment and recovery of the assorted gold jewellery.

3. The Original Adjudicating Authority (OAA), viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/SKR/ADJN/107/2020-21 dated 11.09.2020 issued on 15.09.2020 through S/14-5-356/2019-Adjn {[SD/INT/AIU/324/2019-AP'C]; DIN : 20200979OB00007E542E} ordered for the absolute confiscation of the impugned assorted gold jewellery weighing 521 grams (gross) and valued at Rs. 15,45,051/- under Section 111(d), (l) and (m) of the Customs Act, 1962 and a penalty of Rs. 1,50,000/- under Section 112(a)(i) 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-651/2020-21 dated 24.12.2020 issued on 15.01.2021 through F.No. S/49-1097/2020 did not find any reason to interfere with the OIO 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. that there was no concealment as the jewellery had been worn by the applicant around her neck, wrists and fingers; the applicant had been burkha clad;
- 5.02. that the baggage rules have no application to her case as nothing incriminating had been found concealed in the baggage of the applicant;
- 5.03. that the applicant had informed that she had come to India to attend the wedding of her niece and had produced the invitation card as well as return tickets evidencing that she was scheduled to return back;
- 5.04. that the said jewellery was old and she had purchased the same at Dubai;

- 5.05. that the statement recorded under Section 108 of the Customs Act, 1962 and cannot be accepted as gospel truth without any corroboration;
- 5.06. Section 77 of the Customs Act, 1962 was not applicable to this case as it pertains to clearance of baggage and nothing had been found in the applicant's baggage; that the OAA had erred in invoking baggage rules as nothing incriminating was found in the baggage;

Under the circumstances of the case, the applicant has prayed to the Revision Authority to set aside the absolute confiscation, to reduce the personal penalty, to allow re-shipment or to grant such relief as deemed fit.

6. Personal hearing through the online video conferencing mode was scheduled for 14.09.2022 and 21.09.2022. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing on 22.09.2022 and submitted that applicant is a UAE national and was wearing gold jewellery. He requested to allow re-export of jewellery on nominal fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had failed to declare the dutiable goods in her possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that she was carrying / wearing 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, that the gold jewellery was of 21 / 22 Kts. 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 applicant had worn the gold jewellery around her neck and wrists. 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. 1,50,000/- imposed on the applicant under Section 112(a)(i) of the Customs Act, 1962

which constitutes to 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. 3,00,000/- (Rupees Three Lakhs only). The penalty amount of Rs. 1,50,000/- is upheld.

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

*Shrawan Kumar*  
20/10/22

( SHRAWAN KUMAR )

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

ORDER NO. 296 /2022-CUS (WZ)/ASRA/MUMBAI DATED 20.10.2022.

To,

1. Ms. Shamma Abdulla Ahmed, Villa No. 76, Street Shahama, P.O Box. 57378, Abu Dhabi, U.A.E.
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri West, Mumbai - 400 099.

Copy to:

1. Ms. Shamma Abdulla Ahmed 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.