

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 373/238/B/2020-RA & 380/35/B/SZ/2020-RA

Date of Issue 07/12/21

ORDER NO. 310-311 /2021-CUS (SZ)/ASRA/MUMBAI
DATED 06.12.2021 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.

File No. : 373/238/B/2020-RA

Applicant : Shri. Noor Ayisha

Respondent : Pr. Commissioner of Customs, Commissionerate-I, Chennai
Airport, Chennai : 600 016.

File No. : & 380/35/B/SZ/2020-RA

Applicant : Pr. Commissioner of Customs, Commissionerate-I, Chennai
Airport, Chennai : 600 016.

Respondent : Shri. Noor Ayisha

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
CUS.I.No. 155/2020 dated 21.07.2020 [C4/I/49/O/2020-
AIR] passed by the Commissioner (Appeals-I), Chennai.

ORDER

These revision applications have been filed by Shri. Noor Ayisha (hereinafter referred to as Applicant) and Pr. Commissioner of Customs, Commissionerate – I, Chennai Airport (hereinafter referred to as the Applicant – Department) resp. against the Order in Appeal No. CUS.I.No. 155/2020 dated 21.07.2020 [C4/I/49/O/2020-AIR] passed by the Commissioner (Appeals-I), Chennai.

2. Brief facts of the case are that the applicant arrived at Anna International Airport on 22.07.2019 from Singapore onboard Scoot Airlines Flight No. TR578. The applicant was intercepted by Customs Officers at the exit gate on a reasonable suspicion that she might be carrying gold/dutiable goods either in her baggage or on her person. During personal search, the officers recovered 8 nos of gold bangles kept inside a white colour transparent polythene pouch which was kept concealed in the worn undergarments. The recovered gold was of 24 carat purity and totally weighed 390 grams having value Rs.14,09,070/-. As the applicant had attempted to smuggle the gold by concealing; not declaring it to Customs; not being an eligible passenger to bring gold into India; not in possession of any valid document/permit/licence for the legal import of the gold into India, the impugned gold weighing 390 grams was seized under Section 110 of Customs Act, 1962 read with FT(DR) Act, 1992, under a mahazar.

3. After due investigation and process of the law, the adjudicating authority viz, Joint Commissioner of Customs (Adjudication-AIR), Chennai vide Order-In-Original No. 36/2020-21-Commissionerate-1 [F.No. O.S No. 667/2019-AIU] dated 23.05.2020 ordered for the absolute confiscation of the 8 nos of gold bangles, totally weighing 390 grams valued at Rs. 14,09,070/- under Section 111(d) and (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and imposed a penalty of Rs. 1,50,000/- on the applicant under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant filed an appeal before the appellate authority viz Commissioner (Appeals-I), Chennai who vide his Order-In-Appeal No. CUS.I.No. 155/2020 dated 21.07.2020 [C4/I/49/O/2020-AIR] allowed to re-

export the impugned gold on payment of redemption of Rs. 2,50,000/- as per the provisions of Section 125 of the Customs Act, 1962 and observed that the penalty imposed on the applicant was commensurate with the violation committed and did not interfere in the same. The option of redemption of the gold was to be exercised within 120 days of the communication of the order and the period of 120 days was to be calculated from the date of resumption of the flights to Singapore.

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

- 5.1. that the imposition of penalty was contrary to provisions of Customs Act, 1962.
- 5.2. that the department had passed the order of confiscation after a delay of seventeen months from the date of seizure. Even though the right of issue of SCN had been waived, the department should have issued the SCN within 6 months as stipulated under Section 110(1) of the Customs Act, 1962.

The applicant has prayed for dropping the penalty of Rs. 1,50,000/- imposed under Section 112(a) of the Customs Act, 1962 and to set aside the redemption fine and grant liberty to re-export the impugned gold without payment of any fine, pass order to release the gold with redemption fine or any order as deemed fit.

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

- 6.1. that the impugned order-in-appeal passed by the appellate authority was neither legal nor proper in as much as the passenger had contravened the Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992.
- 6.2. that the applicant being aware that she was ineligible to carry gold attempted to evade duty by concealment and non-declaration as required under Section 77 of the Customs Act, 1962; that the applicant had stayed abroad only for 118 days which was short by 62 days of the prescribed period of 180 days.
- 6.3. that the applicant was a carrier attempting to smuggle gold for monetary consideration.
- 6.4. to buttress their case applicant-department has relied upon a nos of judgements.
 - (a). Case of S. Faisal Khan Vs., joint Commissioner of Customs (Airport), Chennai 2010 (259) ELT 541 (Mad) upheld the absolute confiscation of goods carried on behalf of someone else for a monetary consideration.

(b). Hon'ble High Court of Bombay, in case of UOL Vs. Mohammed Aijai Ahmed (WP No. 1901/2003) reported as 229 (244) ELT (Bom), has set aside the order of CESTAT ordering to allow redemption of gold and upheld the absolute confiscation of gold ordered by Commissioner of Customs. In this case the gold did not belongs to

6.5. that the re-export of goods was covered under Section 80 of Customs Act, 1962 for which the article should be dutiable, non-prohibited and a true declaration made. In this case, the applicant had not filed any declaration hence, the re-export order was illegal.

Applicant - Department has prayed that the Order-In-Appeal passed by the appellate authority may be set aside and pass such order as deemed fit.

7. Miscellaneous application received on 11.12.2020 was filed by the applicant for out of turn hearing on the grounds that she intends to join her husband at Singapore and also due to financial hardship. Hearing was conducted on 18.02.2021 and the applicant appeared and reiterated the earlier submissions and requested to allow release or re-export the gold.

8. Since, applicant - department too had filed a revision application, personal hearings in the case through the online video conferencing mode was scheduled for 05.03.2021, 12.03.2021, 08.04.2021 / 15.04.2021, 22.10.2021, 29.10.2021 03.11.2021 / 10.11.2021. Sufficient opportunity having been given to the applicant-department to put forth their case, the case is being taken up for decision based on available record.

9. Government notes that the applicant had been intercepted at the exit gate while going out of baggage hall after passing through Customs clearance and had not declared any dutiable goods in her possession. Thereafter, she was subjected to a detailed examination which resulted in the detection of the impugned gold. As the said aforesaid goods had not been declared to the Customs; was kept concealed; not being an eligible passenger to bring gold into India; not in possession of any valid document/permit/licence for the legal import of the gold into India, for these reasons, the Government notes that the confiscation of the impugned gold was justified.

10. Government observes that 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.), 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.

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. 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.

13. The quantum of gold under import is small and is not of commercial quantity. The impugned 8 gold bangles had been concealed in the undergarments and Government observes that sometimes passengers resort to such methods to keep their valuables / precious possessions safe. 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 deciding quantum of penalty to be imposed.

14. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold jewellery in the instant case is therefore harsh and not reasonable. The appellate authority has allowed for the re-export of the impugned gold on payment of redemption fine of Rs. 2,50,000/-. Considering that the quantity of the impugned gold jewellery is small, applicant not being a habitual offender, the Government is inclined to allow the release of the gold jewellery on payment of the said redemption fine. Government finds that the redemption fine of Rs. 2,50,000/- decided by the appellate authority is appropriate and does not find it necessary to interfere in the same.

15. The Government notes that the penalty of Rs. 1,50,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by the applicant.

16. On the issue raised by the applicant that the show cause notice was issued after 17 months from the date of seizure, Government notes that the applicant once having exercised an option to waive the SCN cannot at a later date raise the issue of delay. In any case, once goods have been confiscated by the competent authority, seizure and its implications cease to have any effect.

17. The revision application filed by the applicant-department and the revision application filed by the applicant are decided on the above terms.

Shrawan
6/12/21

(SHRAWAN KUMAR)

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

ORDER No. 310-31/2021-CUS (SZ) /ASRA/

DATED 06.12.2021

To,

1. Shri. Noor Ayisha, W/o. Badhiyu Hasan, 24B, Hakka Sahib Street, Parangipettai, Cuddalore : 608502.
2. Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport, New Custom House, Meenambakkam, Chennai : 600 016..

Copy to:

1. Shri. R. Arunachalam, Consultant, AB Consultancy Services, Flat No. 3, Kavya Home, First Floor, Kala Flats, 84/78, Dr. Ranga Road, Mylapore, Chennai - 600 004.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.