



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

---

F.No. 371/427/B/2019-RA/6894 : Date of Issue : 23.11.2022

---

ORDER NO. 340 /2022-CUS (WZ)/ASRA/MUMBAI DATED 23.11.2022  
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.

---

Applicant : Mrs Ajantha Nilandathi Mahramba Vithanage

Respondent : Pr. Commissioner of Customs, CSI 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-181-2018-19 dated 14.06.2019  
[(DOI : 24.06.2019) (S/49-494/2018/AP)] passed by the  
Commissioner of Customs (Appeals), Mumbai-III.

**ORDER**

This Revision Application has been filed by Mrs Ajantha Nilandathi Mahramba Vithanage (hereinafter referred to as the "applicant") against the Order-in-Appeal No.MUM-CUSTM-PAX-APP-181-2018-19 dated 14.06.2019 [(DOI : 24.06.2019) (S/49-494/2018/AP)] passed by the Commissioner of Customs (Appeals), Mumbai-III.

2(a). Brief facts of the case are that the applicant who is a Sri Lankan national was intercepted by Customs Officers at the arrival hall of the Chhatrapati Shivaji International Airport, Sahar, Mumbai, having earlier arrived from Colombo onboard Jet Airways Flight No 9W255 on 10.03.2017. The applicant was intercepted at the arrival hall after she had cleared herself through the green channel, on suspicion that she possessed undeclared gold ornaments and it led to the recovery of the undermentioned undeclared goods concealed in a small pouch in the purse being carried by her.

Table No. 1.

Sr.No.	Description of goods	Number	Purity	Weight in gms
1.	Gold Bangles	5	22 carats	193
	Gold Bracelet	1	22 carats	
	Gold Rings	2	22 carats	
	Gold Chain	1	22 carats	
2.	Gold Pendant	1	24 carats	112
	Cut pieces of gold	2	24 carats	
	Total			305

2(b). The total weight of the gold jewellery and cut pieces of gold was 305 grams, and valued at Rs. 7,99,043/- which were seized.

3. The Original Adjudicating Authority (OAA), viz, Addl. Commissioner of Customs, C.S.I. Airport, Mumbai vide Order-In-Original No. ADC/ AK/ ADJN/ 156/2018-19[S/14-5-58/2017-18/Adjn SD/INT/AIU/63/ 2017 AP'B'] dated 11.07.2018 ordered for the confiscation of the impugned gold jewellery and cut pieces of gold totally weighing 305 grams of 22 and 24 Carats purity and valued at Rs. 7,99,043/- under Section 111 (d), (l) and (m) of the Customs Act,

1962 and a penalty of Rs. 80,000/- under Section 112 (a) and (b) of the Customs Act, 1962 was also imposed.

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. Order-in-Appeal No.MUM-CUSTOM-PAX-APP-181-2018-19 dated 14.06.2019 [(DOI: 24.06.2019) (S/49-494/2018/AP)] rejected the appeal and upheld the order passed by OAA.

5. Aggrieved with the above order of the Appellate Authority, the applicant has filed this Revision Application on the grounds that the applicant was a Sri Lankan national and in similar cases both the lower authorities and also the Revisional Authorities had granted reshipment and prayed that the absolute confiscation be set aside and reshipment be allowed.

6. Personal hearing in the case was scheduled for 10.08.2022 or 24.08.2022. Shri Prakash Shingrani, Advocate appeared for the hearing on behalf of the applicant and submitted that the applicant was a Sri Lankan National and that the gold jewellery brought was small and was for personal use. He requested to allow re-export of the goods.

7. At the outset, the Government notes that the applicant has filed for condonation of delay. The Revision Application was filed on 17.10.2019. The date of issue of the Order of the Appellate Authority is 24.06.2019. Based on the date of issue of the said Order of the Appellate Authority, the applicant was required to file the Revision Application by 23.09.2019 (i.e. taking the first 3 months into consideration) and by 23.12.2019 (i.e. taking into consideration a further extension period of 3 months). The applicant has accepted that there was a delay of 20 days from the date of receipt of the order. Thus it is seen that the Revision Application has been filed within the date, after considering the extended period.

7.1. The applicant in her application for condonation of delay has cited the Covid situation prevalent in the country as the reason for the delay in filing the Revision Application.

7.2. For understanding the relevant legal provisions, the relevant section is reproduced below :

**SECTION 129DD. Revision by Central Government.-**

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.*

.....

.....

.....

*(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :*

*Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.*

.....

7.3. From above, it is clear that the applicant was required to file the Revision Application within 3 months from the communication of the Appellate Order. The delay thereafter, upto 3 months can be condoned. Since, the Revision Application is filed within the condonation period of three months, and the reason also being genuine, Government condones the delay on the part of the applicant in filing the application and proceeds to examine the case on merits.

8. 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 and cut gold 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 jewellery is therefore justified.

9. Government, however notes that the applicant had kept the gold jewellery and the cut gold in a pouch in the purse being carried by her at the time of arrival and the same had not been ingeniously concealed. Government notes that the quantity of gold jewellery under import is small and not of commercial quantity. There is nothing on record that the applicant is a habitual offender and was involved in similar offences 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 Customs Act, 1962 and while imposing quantum of penalty. Government notes that the applicant is a foreign national and has at this revision stage as well as at the preceding stage requested that she be allowed to re-export the gold. Considering the aforesaid facts, Government is inclined to accede to her request.

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 applicant 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 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. 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, 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.

14. Government finds that this is a case of non-declaration of gold jewellery. The absolute confiscation of the gold, leading to dispossession of the applicant of the same in the instant case is therefore harsh and not justified. The applicant has prayed that she be allowed to re-export the gold jewellery.

15. For the aforesaid reasons, Government is inclined to allow the prayer put forth by the applicant for re-export of the impugned gold jewellery and accordingly, modifies the order passed by the AA to the extent of allowing the re-export of the gold jewellery, totally weighing 305 grams, valued at Rs. 7,99,043/-, on payment of redemption fine. The impugned gold jewellery and cut gold are allowed to be redeemed for re-export on payment of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only). The penalty of Rs. 80,000/- (Rupees Eighty Thousand only) imposed under section 112 (a) & (b) of the Customs Act,

1962 is commensurate with the omissions and commissions committed by the applicant

16. The Revision Application is disposed of on the above terms.

  
23/11/22  
( SHRAWAN KUMAR )

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

ORDER NO. <sup>340</sup> /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED <sup>23</sup> .11.2022.

To,

1. Mrs Ajantha Nilandathi Mahramba Vithanage, R/o. 102, Mangala Mawatha, Kadautha, Sri Lanka - 11850.
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5<sup>th</sup> Floor, Avas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Shri Prakash K. Shingrani, Advocate, 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.