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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

F.No. 371/207/WZ/2019-RA

1595  
: Date of Issue : 03.03.23

ORDER NO. 391 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.02.2023  
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.

(i). F.No. 371/207/B/WZ/2019-RA

Applicant : Mrs. Fatima Fathel Rahiman Ball Rahmatalla.

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 Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-1153/2018-19 dated  
26.02.2019 issued on 28.02.2019 through F.No. S/49-  
396/2017 passed by the Commissioner of Customs  
(Appeals), Mumbai - III, Marol, Mumbai - 400 059.

**ORDER**

This revision application has been filed by Mrs. Fatima Fathel Rahiman Ball Rahmatalla (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1153/2018-19 dated 26.02.2019 issued on 28.02.2019 through F.No. S/49-396/2017 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059.

2. Brief facts of the case are that on 04.03.2017, Customs Officers at the CSMI Airport, Mumbai had intercepted the applicant, who is a Sudanese national and had arrived from Saudi Arabia by Saudi Airlines flight No. SV-772 / 04.03.2017. The applicant had cleared herself through the green channel and was proceeding towards the exit gate. To query, whether she was in possession of any dutiable goods, she had replied in the negative. Personal search of the applicant resulted in the recovery of the undermentioned assorted gold jewellery;

**TABLE No. 1.**

<b>Sl. No.</b>	<b>Description</b>	<b>Quantity in nos</b>	<b>Weight in grams</b>
1.	Gold Necklace	01	61
2.	Gold Bangles	02	30
3.	Gold Necklace	01	36
4.	Gold Bangles	02	34
5.	Gold Kada	05	166
		<b>TOTAL</b>	<b>327</b>

3. The Original Adjudicating Authority (OAA), viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide his Order-In-Original no. ADC/RR/ADJN/60/2017-18 dated 11.05.2017 through F.No. AIRCUS/49/T2/879/2017/"A" Batch, ordered for the absolute confiscation of the impugned assorted gold jewellery, totally weighing 327 grams and valued at Rs. 7,87,151/- under Section 111(d), (l) and (m) of the Customs

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

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-1153/2018-19 dated 26.02.2019 issued on 28.02.2019 through F.No. S/49-396/2017 did not find any reason to interfere in the impugned OIO 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 following grounds of revision, that;

5.01. the applicant being a Sudanese national did not know to read and write in English; she had declared the gold and had handed the gold over to the Customs Officer; statement was retracted; the gold had not been concealed; that she was the owner of the gold and was ready to pay the Customs dues; that being foreign national she was not supposed to import gold; that this was the first time she had brought the gold; that gold was neither restricted nor prohibited; that there was no previous case registered against her; that gold was carried on her person; that violation if any was out of ignorance and technical in nature due to language problem; that once respondent accepts that there is evasion of duty then goods are dutiable and not prohibited; Section 125 of the Customs Act, 1962 is applicable and the goods ought to have been released on payment of fine’;

5.02. that they rely upon the undermentioned case laws;

(a). Collector of Custom vs. Elephanta Oil and Inds. Ltd [2003(152) ELT 02547 Supreme Court]; once imported article is re-exported as directed by the department, there is no question of levying any penalty or redemption fine.

(b). Kusum Bhai DayaBhai vs. Commr. Of Customs 1995 (79) ELT 292 Tri-Mumbai; If goods are allowed re-export on redemption, fine can be on the lower side and need not relate to margin of profit.

(c). A.K Jewellers vs. Commissioner of Customs, Mumbai, 2003 (155) ELT 585 Tri-Larger Bench; Re-export of confiscated goods, first to be redeemed on payment of fine and then to be exported. Combination of both these actions in one order is not contrary to law.

(d). Patel vs. Commr. Of Customs; 2003-153-ELT-226-Tr. ; that when the importer makes a request for re-export, it has been a general practice in Custom House to consider such a request having regard to the bona-fides of such a request. By re-exporting the goods, the importer can avoid payment of duty but not the fine in lieu of confiscation,

(e). M.V Marketing and Supplies vs. Commr. of Customs (Import), Chennai; 2004-178-ELT-1034-(Tri-Chennai); this case has covered 31 cases of similar nature mostly held by GOI; like; (i). RA Order no. 38/200/ in the case of Mrs. Majeeda Mohammed Yonus on declaration under Section 77 of the Customs Act, 1962; (ii). RA Order no. 178/2008 in the case of Mr. Ravinder Sadharam Dulari on the issue of re-shipment of goods which had been allowed; (iii). RA Order no. 33/2008 in the case of Deepak Hiralal Parekh where re-shipment had been allowed even though the goods had not been declared as required under Section 77 of the Customs Act, 1962; (iv) etc.

Considering the above facts, the applicant has prayed to the revisionary authority to release the gold for re-export on nominal fine; to reduce the fine or grant any other reliefs as deemed fit.

6. Applicant's Advocate has filed an application for condonation of delay alleging that there is a delay of about 15 days in filing the revision application and she has prayed that the delay may be condoned.

7. Personal hearing through the online video conferencing mode was scheduled for 23.09.2022. Smt. Shivangi Kherajani, Advocate for the applicant appeared for personal hearing on 23.09.2022 and submitted that applicant came with small quantity of gold, it was for personal use and it

was not concealed. She requested to allow re-export of gold on nominal fine and penalty.

8. On the issue of condonation of delay, Government notes that the revision application has been filed on 17.06.2019. The OIA which is dated 26.02.2019 was issued on 28.02.2019. Applicant has claimed that the OIA was received on 01.03.2019. This has not been refuted by the respondent. Accordingly, the applicant was required to file the revision application within 3 months i.e. by 30.05.2019. Government notes that an extension period of 3 months was available to the applicant which would have expired on 28.08.2019. Government notes that the revision application was filed on 17.06.2019 which is well within the extension / condonable period i.e. 3 months + 3 months. Therefore, prayer for condonation of delay is accepted and Government condones the delay.

9. 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, she would have walked away with the impugned assorted gold jewellery, totally weighing 327 grams, 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 duty on it. The Government finds that the confiscation of the gold 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 ‘applicant’ 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 gold was small. The applicant has claimed ownership of the gold and expressed her desire to take it back. There are no allegations 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 who is a foreign national has prayed that the absolute confiscation be set aside and she be allowed to re-export the gold.

14. 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 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.

15. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold at the time of arrival, the confiscation of the same was justified. However, considering the quantity of gold jewellery, the same not being concealed in an ingenious manner, applicant being a foreign national, the absolute confiscation of the same was harsh and not justified. In view of the aforesaid facts and considering that the applicant is a foreign national, option to re-export the impugned gold on payment of redemption fine should have been allowed. Considering the above facts, Government is inclined to modify the absolute confiscation upheld by the AA and allow the impugned gold object to be re-exported on payment of a redemption fine.

16. Government finds that the penalty of Rs. 80,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.



17. In view of the above, the Government modifies the order passed by the appellate authority and allows the applicant to redeem the impugned assorted gold jewellery, totally weighing 327 grams and valued at Rs. 7,87,151/- for re-export on payment of a redemption fine of Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand only). The penalty of Rs. 80,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 by the OAA and upheld by the AA is sustained.

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

*Shrawan*  
*28/2/23*  
(SHRAWAN KUMAR)

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

**ORDER NO. 391 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.02.2023.**

To,

1. Mrs. Fatima Fathel Rahiman Ball Rahmatalla, [Sudanese National; Address : not available in the records ; Service through her Advocate on record and through Notice Board].
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri East, Mumbai - 400 099.

Copy to:

3. A.M Sachwani / V.M Advani / N.J Heera / R.R Shah, Advocates, Nulwala Bldg, Ground Floor, 41 Mint Road, Opp. G.P.O, Fort, Mumbai - 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Notice Board.