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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/425/B/2019-RA/7124 : Date of Issue : ~~11.2022~~  
02.12.2022

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ORDER NO. 351/2022-CUS(WZ)/ASRA/MUMBAI DATED 30.11.2022  
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.

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Applicant : Ms. Talreja Rekha Srichand

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.  
MUM-CUSTM-PAX-APP-185-19-20 dated 17.06.2019  
issued on 24.06.2019 under F.No S/49-313/2018/AP by  
Commissioner of Customs (Appeals), Mumbai III.

**ORDER**

This revision application has been filed by Ms. Talreja Rekha Srichand (herein referred to as "applicant") against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-185-19-20 dated 17.06.2019 issued on 24.06.2019 under F.No S/49-313/2018/AP by Commissioner of Customs (Appeals), Mumbai III.

2. Briefly stated the facts of the case are that the applicant was intercepted by Customs Officers at the arrival hall of Chhatrapati Shivaji International Airport, Mumbai after she cleared herself through the Green channel, on 25/26.07.2017 when she had arrived from Bangkok by Thai Airways Flight No TG-351. Personal search of the applicant resulted in the recovery of 05 crude 'kadas' weighing 464 grams and 01 crude gold chain on 140 grams which were worn by the passenger. Of the 05 crude 'kadas', 03 crude 'kadas' were worn above the elbow of the applicant and 02 'kadas' were worn on the wrist and covered with read and black satin ribbon. The 'kadas' were covered under a black coloured cloth jacket worn by the applicant. The crude gold chain was worn by the applicant on her neck and covered under the black coloured cloth jacket worn by the applicant. In addition, 206 grams of rectangular shaped cut piece of gold which was concealed in her rectum was recovered from the applicant. The 05 crude 'kadas' weighing 464 grams and 01 crude gold chain on 140 grams and 206 grams of rectangular shaped cut piece of gold, collectively weighing 810 grams and of 24KT (999% purity) and valued at Rs. 20,91,335/- were seized under the reasonable belief that the same were smuggled into India in contravention of the provisions of the Customs Act, 1962.

3. After, due process of law, the Original Adjudicating Authority (OAA) viz, the Additional Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/133/2018-19 dated 29.06.2018 ordered the absolute confiscation of the gold collectively valued at Rs. 20,91,335/- under

Section 111(d), (l) and (m) of the Customs Act, 1962. Penalty of Rs. 2,00,000/- was imposed on the applicant under Section 112(a)& (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-185-19-20 dated 17.06.2019 issued on 24.06.2019 under F.No S/49-313/2018/AP by rejected the appeal and upheld the OIO.

5. Aggrieved with the above order, the Applicant has filed this revision application on the grounds that the lower authorities ought to have considered that in similar cases option of redemption under Section 125 of the Customs Act, 1962.

Applicant has prayed for setting aside the order of absolute confiscations and reduction in the personal penalty and pass such order as may be deemed fit and proper.

6. The department filed their written submissions dated 15.10.2020 wherein it was submitted

6.1. That the offence was committed in a premeditated and clever manner which clearly indicated mensrea;

6.2. That the applicant in her statement stated that she did not have any receipt and had deliberately no declared the gold in order to evade customs duty and admitted the possession, non-declaration, carriage and recovery of the seized gold;

6.3. That when offending/smuggled goods are seized alongwith inculpatory statement, the statement has to be relied upon, as held in the following cases

(i) Surjeet Singh Chhabra vs. UOI [ 1997(89) E.L.T. 646(SC)

- (ii) K.I. Pavunny vs. Asst. Collector ( HQ), Central Excise, Cochin [1997(90) E.L.T. 241 (SC)]

6.4. The department further relied on the following case laws/circular:

- (i) Abdul Razak vs. UOI [2012(275) E.L.T. 300 (Ker) DB]
- (ii) Commissioner of Customs (Air ) vs. P Sinnasamy
- (iii) Om Prakash Bhatia vs. Commissioner of Customs, Delhi [(2003) 6 SC 161]
- (iv) Baburaya Narayan Nayak vs. Commissioner of Customs , Bangalore [2018(364) E.L.T. 811 (Tri-Bang)]
- (v) Boards Circular No 495/5/92-Cus.IV dated 10.05.1993

7. Personal hearing in the case was scheduled for 10.08.2022 or 24.08.2022. Shri Prakash Shingrani, Advocate, appeared on 24.08.2022 for the personal hearing on behalf of the applicant. He submitted that the quantity of the gold was small and is not in commercial quantity. He requested to allow release of the goods on reasonable redemption fine and penalty.

7. The Government has gone through the facts of the case. The applicant was intercepted at the arrival gate after she had exited through the Green channel. Personal search of the applicant resulted in the recovery of 05 crude 'kadas' weighing 464 grams and 01 crude gold chain on 140 grams which were worn by her. Of the 05 crude 'kadas', 03 crude 'kadas' were worn above the elbow of the applicant and 02 'kadas' were worn on the wrist and covered with read and black satin ribbon. The 'kadas' were covered under a black coloured cloth jacket worn by the applicant. The crude gold chain was worn by the applicant on her neck and covered under the black coloured cloth jacket worn by the applicant. In addition, 206 grams of rectangular shaped cut piece of gold which was concealed in her rectum was recovered from her. Part of the impugned gold was secreted in her body cavity i.e. rectum. It is clear that the applicant had resorted to concealment to smuggle gold and evade duty. This action manifests that applicant had no intention to pay the Customs duty. The

Applicant had not declared the impugned gold as required under section 77 of the Customs Act, 1962. The type of concealment adopted to evade duty is important here. The applicant had pre-planned and selected an ingenious and risky method that she used to avoid detection and thereby to evade Customs duty. The confiscation of the gold is therefore justified and thus, the applicant had rendered herself liable for penal action.

8. 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”.

9. 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, is liable for penalty.

10. 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.*

11. Government observes that the manner in which the gold was concealed by way of part of the gold i.e 206 grams of rectangular shaped cut piece of gold being concealed inside her own body and the 05 crude ‘kadas’ and 01 crude chain concealed as detailed in para 7 supra reveals the intention of the applicant. It also reveals her criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. The circumstances of the case

especially the ingenious concealment method adopted, probates that the applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while confiscating the gold absolutely.

12. The main issue in the case is the manner in which the impugned gold was being brought into the Country. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and ingenious with a clear attempt to smuggle gold, it is a fit case for absolute confiscation which would also be a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of the offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. If the gold is not detected by the Custom authorities the passenger gets away with smuggling and if not, he has the option of redeeming the gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The order of the Appellate authority upholding the order of the adjudicating authority of absolute confiscation of the 05 crude kadas weighing 464 grams and 01 crude gold chain on 140 grams and 206 grams of rectangular shaped cut piece of gold, collectively weighing 810 grams and of 24KT (999% purity) and valued at Rs. 20,91,335/-, is therefore liable to be upheld.

13. The Government finds that the penalty of Rs. 2,00,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is appropriate and commensurate with the omissions and commissions of the applicant.

14. In view of the above, Government upholds the order Order-in-Appeal No. MUM-CUSTOM-PAX-APP-185-19-20 dated 17.06.2019 issued on 24.06.2019 by Commissioner of Customs (Appeals), Mumbai III and does not find it necessary to interfere with the same.

15. The Revision Application is rejected as being devoid of merit.

*Shrawan*  
30/11/22  
( SHRAWAN KUMAR )

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

ORDER No. 351 /2022-CUS(WZ) /ASRA/ DATED 30.11.2022

To,

1. Ms. Talreja Rekha Srichand, Devishri Apartments, Flat No 501, 5<sup>th</sup> Floor, Block No A-21, R.No. 119, 120 Ulhasnagar, Thane 421 001
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, Avs 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.