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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.371/481/B/WZ/2019-RA/2572 : Date of Issue : 14.12.2022

ORDER NO. 367/2022-CUS (WZ)/ASRA/MUMBAI DATED 09.12.2022
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.

(i). F.No.371/481/B/WZ/2019-RA

Applicant : Ms. Taybeh Golbad

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-231/19-20 dated 26.06.2019
issued on 04.07.2019 through F.No. S/49-328/2018 passed by
the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Ms. Taybeh Golbad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-231/19-20 dated 26.06.2019 issued on 04.07.2019 through F.No. S/49-328/2018 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that the applicant who is an Iranian national was intercepted on 22.05.2018 by Customs Officers at CSMI Airport, Mumbai, having earlier arrived from Iran, onboard Iran Air Flight No. IR-810. The applicant had opted for the green channel. Personal search of the applicant resulted in the recovery of a crude gold chain weighing 155 grams and valued at Rs. 4,39,387/-

3. The Original Adjudicating Authority (OAA), viz, Asstt. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. AirCus/T2/49/65/2018'C' dated 22.05.2018 ordered for the absolute confiscation of the impugned crude gold chain weighing 155 grams and valued at Rs. 4,39,387 under Section 111(d) of the Customs Act, 1962 and a penalty of Rs. 45,000/- under Section 112(a) and (b) 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-CUSTM-PAX-APP-231/19-20 dated 26.06.2019 issued on 04.07.2019 through F.No. S/49-328/2018 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 grounds that re-shipment ought to have been allowed.

Applicant has prayed to the Revision Authority to allow the re-shipment of the jewellery or pass any such relief as deemed fit.

6. The respondent vide their written submission bearing F.No. Aircus/Review-316/2021 dated 09.10.2020 has stated that during the personal hearing the applicant had admitted that she had not declared the gold as required under Section 77 of the Customs Act, 1962; that offence had been committed in a pre-meditated manner; that mensrea existed; that applicant was not in possession of any receipt and had admitted that she intended to evade Customs duty; that applicant had not produced any invoice to prove licit acquisition of the gold chain;

6.01. that they rely on the following case laws,

(a). Surjeet Singh Chhabra vs. UOI,[1997-89-ELT-646-SC] on the issue of confession though retracted, is an admission and binds the petitioner,

(b). Apex Court's Order in the case of K.I Pavunny vs. Asstt. Collector (HQ), C.Ex, Cochin [1997-90-ELT-241-SC] on the issue that confessional statement made to Customs officials is admissible evidence,

(c). Abdul Razak vs. UOI [2012-275-ELT-300 (Ker)] on the issue that appellant did not have right to get the confiscated gold.

(d). In P. Sinnasamy v. Commissioner of Customs, it is held that non-fulfilment of conditions tantamount to prohibition.

(e). Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C) it is held that non-fulfilment of conditions tantamount to prohibition.

(d). Board's Circular No. 495/5/92-Cus-VI dated 10.05.1993 on the issue of no option to redeem if the goods had not been declared.

(e). Baburaya Narayan Nayak vs. Commr. of Customs, Bangalore [2018-364-ELT-811-Tri-Bang] upheld absolute confiscation as evidence of licit purchase had not been provided.

Respondent has prayed to the Revision Authority to reject the revision application filed by the applicant.

7. Personal hearing through the online video conferencing mode was scheduled for 10.08.2022, 24.08.2022. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing on 24.08.2022 and submitted that applicant is an Iranian national and came to India with small jewellery. He requested to allow re-export of the goods.

8. 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.

9. 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. 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.

10. 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.

11. The Government finds that this is a case of non-declaration of the gold jewellery. The facts of the case reveals that the gold had been recovered during the personal search of the applicant thereby indicating that the same had been worn by her. A case has not been made out that the applicant is a repeat offender. Thus, mere non-submission of the declaration cannot be used to deprive the applicant of the gold chain, more so because she is a foreign national and that the same was found on her person. Considering the afore-stated facts, Government therefore, is inclined to allow the impugned gold chain 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. 45,000/- imposed on the applicant under Section 112(a) and (b) 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 chain, weighing 155 gms valued at Rs. 4,39,387/- for re-export as prayed for, on payment of a redemption fine of Rs. 80,000/- (Rupees Eighty Thousand only). The penalty amount of Rs. 45,000/- is upheld.

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

Shrawan
3/12/22
(SHRAWAN KUMAR)

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

ORDER NO. 367 /2022-CUS (WZ)/ASRA/MUMBAI DATED 09.12.2022.

To,

1. Ms. Taybeh Golbad, Shabnam Hotel, Colaba, Mumbai – 400 005.
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, T2, Level-2, Sahar, Andheri West, Mumbai – 400 099.

Copy to:

1. Ms. Taybeh Golbad 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.