

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. 371/45/B/2017(Mum) / 1300

Date of Issue 14.07.2021

ORDER NO. 40/2021-CUS (WZ)/ASRA/MUMBAI DATED 11.02.2021 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.

Applicant : Smt. Parveen Abdul Kuddus Shaikh

Respondent : Commissioner of Customs, Pune

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. PUN-EXCUS-001-APP-550 & 551/16-17 dated 30.03.2017 passed by the Commissioner of Customs (Appeals-I), Pune.



ORDER

This revision application has been filed by Smt. Parveen Abdul Kuddus Shaikh (herein after referred to as the Applicant) against the Order in appeal No. PUN-EXCUS-001-APP-550 & 551/16-17 dated 30.03.2017 passed by the Commissioner of Customs (Appeals-I), Pune.

2. Briefly stated the facts of the case are that the Applicant, Smt. Parveen Abdul Kuddus Shaikh arrived from Dubai 04.08.2015. When the Applicant passed through the metal detector it gave an alarm and she was asked by the officer on duty whether she had anything to declare to which she replied in negative and produced a NIL Customs Declaration. The physical search of the passenger was resulted in the recovery of 803.07 gms of gold jewellery concealed in the pocket of her inner wear, valued at Rs. 15,21,015/- (Rupees Fifteen lacs Twenty one Thousand and fifteen). Investigations in the case revealed that one, Shri Athar Hussain Deshmukh was also actively involved facilitating and masterminding the smuggling operation.

3. The Original Adjudicating Authority vide Order-In-Original No. PUN-CUSTOM-000-ADC-26/16-17 dated 11.01.2017 ordered absolute confiscation of the impugned gold, and imposed penalty of Rs. 2,50,000/- (Rupees Two Lacs Fifty thousand) on the Applicant and Rs. 2,50,000/- (Rupees Two Lacs Fifty thousand) on Shri Athar Hussain Deshmukh under Section 112 (a) & (b) of the Customs Act, 1962. A penalty of Rs. 50,000/- (Rupees Fifty thousand) under section 114AA of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. PUN-EXCUS-001-APP-550 & 551/16-17 dated 30.03.2017. The Appellate Authority set aside absolute confiscation and allowed the gold to be redeemed on payment of a redemption fine of Rs. 3,80,000/-. The penalty of Rs. 2,50,000/- (Rupees Two Lacs Fifty thousand) imposed under Section 112 (a) & (b) of the Customs Act, 1962 and penalty of Rs. 50,000/- (Rupees Fifty thousand) under section 114AA on the Applicant was upheld. The penalty of Rs. 2,50,000/- (Rupees Two Lacs Fifty thousand) imposed on Shri Athar Hussain Deshmukh was set aside, as except the



statement on record and call records, conclusive evidence against Shri Deshmukh was absent.

5. Aggrieved with the above order the Applicant, has filed this revision application seeking a condonation of delay application of two months, interalia on the grounds that;

5.1 The impugned order passed by the Respondent is bad in law and unjust.

5.2 The Applicant submits that the impugned order has been passed without giving due consideration to the documents on record and facts of the case.

5.3 The Statement of our client was recorded by the Customs u/s 108 of the Customs Act and she accepted the possession and carriage of gold, which was recovered from her.

5.4 The Applicant submits that the import of Gold jewellery is neither restricted nor prohibited and can be imported freely be following the procedures.

5.5 This is the first time that the Applicant has brought this type of goods and there is no previous case registered against her.

5.6 The Ld. Commissioner of customs (Appeals) though has ordered the release of gold but has imposed heavy fine to the tune of 25% of the value of goods and Personal Penalty to the tune of 20% of the value of goods; which is on very higher side; as there is duty element of 36.05% also involved which combined together comes to 81% of the value of goods.

5.7 The Section 125 of the Customs Act, 1962 is totally clear on Redemption Fine which is to be imposed to wipe out the margin of profit, but here in this case. no LMV of the goods is given to ascertain the margin of profit. Moreover, no profit is left after duty element of 36.05%.

5.8 The Applicant, prays for redemption fine and personal penalty imposed may kindly be set aside or reduced substantially, or any other order as may be deemed fit & proper by your honour.

7. Personal hearings in the case was scheduled in the case on 10.12.2020, 17.12.2020, 24.12.2020. In view of the change in Revisionary authority, another opportunity of personal hearing was extended on 28.01.2021, Nobody attended the hearing on behalf of the department. The Advocate for the Applicant attended the



personal hearing online on 28.01.2021. He re-iterated the submissions already made in the revision application and submitted that the redemption fine and penalty is prohibitive. He prayed for a nominal fine and penalty and dropping of the penalty imposed under section 114 AA as no false document was submitted.

8. The Government has gone through the facts of the case. The Revision Application has been filed within the condonable limits of 90 days, as it is within condonable limits, Government condones the delay and proceeds to decide the case on merits.

9. The facts of the case state that the Applicant was intercepted after the officers detected the presence of metal at the metal scan counter. When questioned the Applicant stated that she had nothing to declare and produced a NIL Customs Declaration. The personal examination of the Applicant resulted in the recovery of assorted gold jewelry weighing 803.07 gms of gold jewelry concealed in the pocket of her inner wear, valued at Rs. 15,21,015/- (Rupees Fifteen lacs Twenty one Thousand and fifteen). As the Applicants did not declare the gold as required under section 77 of the Customs Act, 1962. The confiscation of the gold jewelry is justified and the Applicant has rendered herself liable for penal action.

9. The original adjudicating authority in its order dated 11.01.2017 ordered absolute confiscation of the impugned gold as the Applicant is not an eligible passenger to import gold jewelry. The gold was elaborately concealed so as to avoid detection by the Customs authorities and smuggle the gold into India without the payment of customs duties. Investigations conducted in the case and the statements recorded at the time of the seizure clearly reveal that the Applicant has acted as a carrier, for monetary consideration and the owner of the gold is therefore not the Applicant. The Applicant in her statements recorded at the time of the seizure had also stated that she had similarly brought gold earlier and is therefore a habitual offender.

10. The Appellate authority has however, using the discretion accorded under section 125 of the Customs Act, 1962, allowed the gold to be redeemed on payment of redemption fine and penalty. In arriving at this conclusion the Appellate authority has in his order stated that " *the option for redemption is not denied in all such cases though the goods are found to be prohibited in nature. If we compare the present case with other cases of mis-declaration, in both type of*

cases the intention and result are duty evasion and the present case cannot be equated with case where national or social security is under threat. I find that absolute confiscation is warranted in the cases of the goods which cannot be imported by any one, such as arms, ammunition, addictive substances viz. drugs. The intention behind the provisions of Section 125 is clear that import of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole....." ".....Admittedly, import of gold is permitted in case of certain category of persons, subject to certain conditions in terms of Notification No. 12/2012 Cus dated 17.03.2012 therefore, it would not fall under the prohibited category as envisaged under the said provisions. The above view is also supported by Hon'ble High Court of Calcutta's decision in the case of Commr. of Customs (Preventive), West Bengal v. India Sales International reported in 2009 (241) E.L.T. 182 (Cal.)."

11. In para 18. The order of the Appellate authority avers, *"In terms of clause (h) of Rule 3 of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 import of gold is allowed in any form as part of baggage by the passenger of Indian Origin if the passenger satisfies the condition of 06 months stay abroad, quantity does not exceed 5 Kilograms and duty is paid in convertible foreign currency. It is relevant to mention here that in terms of Customs Baggage Declaration Regulations, 2013 every passenger has to make a declaration in prescribed Form I. In the said prescribed format,.....gold is not appearing in the declaration. Prior to the liberalization of import Exim policy, gold was not allowed to be imported however in the post liberalization era gold is allowed to be imported under certain conditions."* Be that as it may the Government would not like to contest the conclusions of the Appellate authority especially in the absence of any application to the contrary, before this authority, by the Respondent Department.

12. The Applicant has pleaded for reduction of redemption fine and penalty. The Government, keeping in mind the facts of the case, observes, that the Appellate authority has already allowed the gold to be released on redemption fine and penalty. The submissions of the Applicant in the revision application also do not justify a reduction in redemption fine and penalty. The Government therefore is not inclined to interfere in the Appellate order on this aspect. The redemption fine under section 125 of the Customs Act, 1962 and penalty imposed under section 112(a) and (b) of the Customs Act, 1962 is appropriate. Government however observes that once penalty has been imposed under section 112(a) and (b) there is



no necessity of imposing penalty under section 114AA, the penalty of Rs. 50,000/- (Rupees Fifty thousand) imposed under section 114AA of the Customs Act, 1962 is set aside.

13. The impugned Order is modified as detailed above. Revision Application is partly allowed.


(SHRAWAN KUMAR)

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

ORDER No. 40/2021-CUS (WZ) /ASRA/

DATED 11-02-2021

To,

1. Smt. Parveen Abdul Kuddus Shaikh, Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.

Copy to:

2. The Commissioner of Customs, CSI Airport, Mumbai.
3. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. Spare Copy.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
गुवई इकाई, मुंबई
Mumbai Unit, Mumbai

