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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/70/B/2021-RA / 2031 : Date of Issue: 05.04.2023

ORDER NO. 416 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.03.2023
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.

Applicants : Ms Irfana Ayaz Mulani

Respondent : Commissioner of Customs (Appeals), Mumbai Zone-III.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-558/2020-21 dated 26.11.2020 [S/49-
140/2019] [DOI: 09.12.2020] passed by the Commissioner
of Customs (Appeals), Mumbai Zone-III.

ORDER

The Revision Application has been filed by Ms Irfana Ayaz Mulani (herein referred to as the "Applicant") against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-558/2020-21 dated 26.11.2020 [S/49-140/2019] [DOI: 09.12.2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that the applicant viz Ms Irfana Ayaz Mulani holding Indian Passport No. M 3757040 arrived at CSI Airport, Mumbai from Doha by Flight No. IX 0244. The Applicant was intercepted by the Officers of Customs, CSI Airport, Mumbai after she had opted for green channel of Customs. The personal search of the Applicant resulted into the recovery of 2 Gold Kadas weighing 100 grams valued at Rs. 2,93,550/- which she failed to declare. The same were seized by the officers in the reasonable belief that the same was smuggled into India in a clandestine manner in contravention of the provisions of the Customs Act, 1962.

3. The Original Adjudicating Authority (OAA) viz the Deputy Commissioner of Customs, CSI Airport, Mumbai, vide his OIO no. AirCus/T2/49/99/2019 'D' dated 20-01-2019 ordered (i) confiscation of the impugned 2 Gold Kadas weighing 100 grams valued at Rs. 2,93,550/- under Section 111 (d), (l) and (m) of Customs Act, 1962, with an option to pay fine of Rs. 30,000/- and reship the goods out of India and (ii) A penalty of Rs 15,000/- under section 112(a) & (b) of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved, with this 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-CUSTM-PAX-APP-558/2020-21 dated 26.11.2020 [S/49-140/2019] [DOI: 09.12.2020] upheld the order passed by the OAA.

5. Aggrieved by this Order, the applicant has filed this revision application on the grounds as under:

5.1. The Commissioner erred in determining seized goods not to be bonafide baggage of passenger in terms of Notification No.50/2017-Cus dated 30/06/2017 read with Rule 3 & 5 of the Baggage Rules 2016 and treating the same as Import being in violation of para 2.26 of Foreign Trade Policy and making goods liable for confiscation under section 111(d) (1) (m) of Customs Act, 1962 and further erred in determining the same being liable for penalty u/s 112(a) and (b) of the Customs Act, 1962

5.2. The Commissioner also erred in determining that apart from non-declaration of Gold, there was deliberate act of violation by Applicant of baggage Rules & relevant policy provisions as per findings of Adjudicating Authorities

5.3. The Commissioner erred in disposing the appeal ex-parte without affording an opportunity to the Applicant to be heard in person. The Commissioner erred in passing the above order in haste without taking note of the change of address communicated to him much before the date of passing the impugned order and proceeded under the provisions of section 122A of the Customs Act, 1962. The Commissioner ought to have taken note of lock-down in Mumbai from March 2020 and also ought to have gone through the request letter for change of address which was filed on 27/02/2020 much before the date of passing of the order

5.4. The Commissioner ought to have accepted the statement of the Applicant that the said Gold Kadas were worn by her while leaving India and the same were again worn while arriving from Doha and should have treated the items of her personal effects and not liable for duty, fine, penalty and/or confiscation under invoked sections

5.5. The Commissioner ought to have held that the applicant walked through Green Channel without any ulterior motive and/or malafide intentions and ought to have taken note of appellant not being a frequent traveler and/or involved in courier activities

5.6. The Applicant craves leave to rely upon copy of her letter communicating change of address much before passing of the order and further upon bills of purchase in India as and when produced.

5.7. In view of the above the applicant requested to set aside the Order in Appeal and be allowed to take back or reship the goods.

6. Personal hearing in the matter was scheduled for 22.02.2023. Shri Ayaz Mulani, Authorized Representative appeared for the hearing and submitted that the gold kadas were made in India and was worn by the applicant while going to Qatar to meet her daughter. He requested to allow application by unconditional release of goods

7. The Government has gone through the facts of the case, and observes that the applicant has filed this Revision Application on the grounds (i) that they were not given an opportunity for the personal hearing by the Appellate Authority; & (ii) the OIA upholding the OIO may be set aside on the grounds that the gold kadas seized by the Authorities were worn by her while leaving India.

8. On going through the records Government observes that the Applicant had informed about the change in address only after three dates of the Personal hearing Memo was sent in their address and the same were returned by the Postal Authorities. It was the duty of the applicant to inform the change of address immediately and hence their plea of not giving them an opportunity is not acceptable.

9. On going into the merits of the case, Government observes that the applicant had failed to declare the impugned gold kadas carried by her, to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that she was carrying the dutiable goods. By not declaring the gold carried by her, the applicant clearly revealed her intention not to declare the goods and pay Customs duty on it. The Government finds that the confiscation of the impugned goods was therefore justified.

10. The relevant sections of the Customs Act are reproduced below:

Section 2(33)

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

Section 125

“Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in

respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”

A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition.

11. In the instant case the applicant is claiming that the two gold kadas seized by the Authorities were worn by her while leaving to Qatar. If that be so, it could have declared somewhere before the Customs while leaving or produce the same to substantiate their claim that these kadas were actually taken by her out of India while leaving and have been brought back in the genuine personal baggage. The records would show that when the kadas were seized by the Customs Officers from the passenger, she claimed that the same were bought for her son's marriage but failed to declare the same in the Red Channel. Therefore, this argument of the applicant is not acceptable.

12. Government observes as per records when the applicant was intercepted by the officers at the Airport, she was found to be carrying two kadas and had not declared the same to the Officers under Section 77. It is the responsibility of the passenger to make declaration which she failed. She could have claimed that the bangles were actually taken by her out of India by producing evidence of such a declaration made before the Customs authorities while leaving the country which she failed to do so. The Appellate Authority has rightly held that the gold kadas brought in by the applicant, cannot be called as bona fide baggage.

13. The option to allow redemption of seized goods is the discretionary power of the adjudicating / appellate authority depending on the facts of each case and after examining the merits. Government finds that the OAA has used his discretion in releasing the gold considering the facts that the quantity of gold is small and not for commercial consideration. However Government finds that the decision to allow the gold to be re-exported is not correct as the applicant is neither a Foreign National nor a NRI.

14. In view of the above Government modifies the Order passed by the Appellate Authority to the extent that the re-export of the goods is not allowed, but allows the redemption of goods on paying the redemption fine and penalty as imposed by the Adjudicating Authority and upheld by the Appellate Authority ,

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


3/13/23
(SHRAWAN KUMAR)

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

ORDER NO. 416 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.03.2023

To,

1. Ms Irfana Ayaz Mulani, 101, Sairam, 1st floor, 14th Road, Chembur (East), Mumbai-40071.
2. The Pr. Commissioner of Customs, CSI Airport, Sahar, Andheri East, Mumbai-400099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point (5th Floor), Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumaa-400059.
2. Mr Ayaz Ganibhai Mulani, 101, Sairam, 1st floor, 14th Road, Chembur (East), Mumbai-40071.
3. File Copy.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.