

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/81/B/WZ/2022-RA

/ 402 . Date of Issue

18.01.2024

ORDER NO. 46/2024-CUS (WZ) /ASRA/MUMBAI DATED 17.01.2024
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.

F.No. 371/81/B/WZ/2022-RA

Applicant : Ms. Ishragha Osman Elshikh Idris

Respondent : Pr. 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-CUSTOM-PAX-APP-548/2020-21 dated 26.11.2020
issued through F.No. S/49-569/2019 passed by the
Commissioner of Customs (Appeals), Mumbai - III

ORDER

This revision application has been filed by Ms. Ishragha Osman Elshikh Idris (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-548/2020-21 dated 26.11.2020 issued through F.No. S/49-569/2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that on 27.03.2019, the applicant, a Sudanese national, was intercepted by Customs Officers at Chhatrapati Shivaji Maharaj International Airport (CSMIA), Mumbai and had opted for the green channel at the Customs arrival Hall. The applicant had arrived from Jeddah onboard Saudi Arabian Airlines Flight No. SV-772 / 27.03.2019. Two gold bangles and one gold chain, totally weighing 61 grams and valued at Rs. 1,58,027/- were recovered from her. In her submission before the Adjudicating Authority, during spot adjudication on request of waiver of show cause notice, the applicant claimed that she was the owner of the gold jewellery and had no intention to sell the same and requested to allow to take the gold back with her.

3. After due process of investigations and the law, the Original Adjudicating Authority (OAA) i.e. the Deputy Commissioner of Customs, CSMIA, Mumbai vide Order-In-Original No. Air Cus/T2/49/58/2019 dated 27.03.2019 ordered for the absolute confiscation of the two gold bangles and one gold chain, totally weighing 61 grams, valued at Rs 1,58,027/- under Section 111 of the Customs Act, 1962. A penalty of Rs. 15,000/- was imposed on the applicant under Section 112 of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority (AA) i.e. Commissioner of Customs (Appeals), Mumbai - III, who vide Order-in-Appeal No MUM-CUSTOM-PAX-APP-548/2020-21 dated 26.11.2020 issued through F.No. S/49-569/2019 held that he did not find any reason to interfere in the impugned OIO dated 27.03.2019 and upheld the same in toto.

5. Aggrieved by this Order passed by the AA, the applicant has filed this revision application on the undermentioned grounds of revision;

- 5.01. that he impugned order passed by the OAA was not correct and justified; was passed without giving an option to redeem the subject goods which was contrary to the provisions of the Customs Act, 1962 and was against the principles of natural justice.
- 5.02. that non-declaration of gold and the manner in which the subject gold was brought was not disputed; the finding of the OAA that the impugned gold was concealed with intention to evade payment of Customs duties was totally false and not correct; that wearing gold jewellery was a common practice and tradition which did not amount to ingenious concealment; that this allegation was not justifiable as gold was not hidden or secreted anywhere in the body; that they have mentioned the case of Rasilaben H. Rathod Vs. Commissioner of Customs, Ahmedabad reported in 2008 (226) E.L.T.641 (Tri-Ahmd) where it was held that carrying gold in the shoes was not a concealment but for safety purpose.
- 5.03. that the OAA had held that import of gold was prohibited and no option of redemption was given by relying on the case of Samynathan Murugesan vs. Commissioner 2010(254) ELT A15 (S.C); the OAA had failed to show the notification under which the subject goods were notified as prohibited goods for the purpose of import.
- 5.04. that Section 125 of the Act, allows the option to redeem the goods on redemption fine; that prohibition relates to goods which cannot be imported by any one, such as arms, ammunition, addictive substance viz. drugs; that 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; that this would not apply to a case where import/export of goods was permitted subject to certain conditions or to a certain category of persons and which were ordered to be confiscated for the reason that the condition had not been complied with; that in such a situation, the release of such goods confiscated would not cause any danger or detriment to public health; that import of gold was permitted in case of certain category of persons, subject to certain conditions notified by the Government; that therefore, it would not fall under the prohibited category as envisaged under the said provisions; that they rely on the order of the Hon'ble High Court of Calcutta's in the case of Commissioner of Customs (Preventive), West Bengal v. India Sales International reported in 2009 (241) E.L.T. 182 (Cal.)
- 5.05. that they also rely on the following case laws;
- (i) In the case of Hargovind Das K.Joshi vs. Collector of Customs 1992 (61) ELT 172 (S.C), the Hon'ble Supreme Court had held that *"We are of the opinion that since the Additional Collector of Customs who passed*

the order for absolute confiscation had the discretion to give the option for redemption, it was but just, fair and proper that he addressed himself to this question. The order passed by the Additional Collector of Customs as confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal therefore requires to be modified only to this limited extent".

(ii) In the case of Yakub Ibrahim Yusuf vs. Commissioner of Customs, Mumbai 2011 (263) ELT 685 (Tri.-Mumbai) the Hon'ble Tribunal held that option of redemption has to be given to person from whose possession impugned goods are recovered.

(iii) The Hon'ble High Court of Andhra Pradesh in the case of Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277 (A.P)] has held that option to pay fine in lieu of confiscation has to be given to importer of gold as the same is otherwise entitled to be imported on payment of duty.

5.06. that the gold jewellery was for her daily use; that she was wearing the same; that she was not aware of the declaration procedure as per the Indian Customs Act 1962; she had requested for a lenient view and to allow to take the gold with her; that she was ready to pay the applicable Tax amount or Re-export of the Gold; that there were catena of decisions in similar cases where the Hon'ble Tribunals and Courts have considered and given an option of redemption in terms of Section 125 of the Act.

5.07. that Section 112 of the Act did not provide for a mandatory penalty and the discretion to impose penalty or not to impose penalty depends upon each case, that in the case of Commissioner of Customs (Imports), Mumbai vs. R A.Spinning Mills (P) Ltd 2004 (171) ELT 54 (Tri-Mumbai), it was held that Section 112 of the Customs Act does not provide for a mandatory penalty and the discretion to impose penalty or not to impose penalty depends upon each case.

5.08. the OAA had failed to permit the redemption of the gold or re-export of the subject goods; that the reason given was that she had failed to truly declare the contents in the Customs Declaration Form; that she had admitted that she was not educated enough to understand the nuances of Customs laws and procedures to realize the seriousness of the mistake.

Under the circumstances, the applicant has prayed to the Revision Authority to set aside the impugned order passed by the AA and she may be permitted to re-export or release her gold on imposition of nominal fine and penalty or pass such order or other orders as deemed fit in the interest of justice.

6. Personal hearing in the case was scheduled for 10.08.2023, 24.08.2023. None turned up on behalf of the Applicant / Respondent for the personal hearing. Sufficient opportunities have been given to the applicant / respondent. Therefore, the case is being taken up for a decision, ex-parte, on the basis of evidence available on the records.

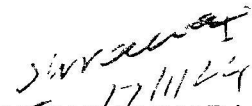
7. It is noticed that the applicant in her revision application has furnished a covering letter stating that an amount of Rs. 1000/- as Revision Application fee in terms of Section 129DD of the Customs Act, 1962 has been paid vide DD no. 093828 / 27.12.2021. However, no such TR-6 challan endorsement evidencing payment / deposit of the said fee amount of Rs. 1000/- was found enclosed. This was submitted on 22.02.2022.

8. Government notes that since the applicant while filing this revision application had not supplied the copy of the TR-6 challan evidencing that she had paid the fees of Rs. 1000/- as claimed, in compliance to the provisions of Section 129DD(3) of the Customs Act, 1962, the office of the revision authority had issued a letter of even no. dated 10.03.2022, calling upon the applicant through her Advocate on record i.e. Shri. M. Ramesh Babu, Advocate, Rangareddy Dist., Telangana - 501218, to furnish documentary evidence that the fees of Rs. 200/- / Rs. 1000/- was paid by her / him in terms of Section 129DD of the Customs Act, 1962 i.e. this said communication was copied to the said Advocate of the applicant, as her address was outside India and her email address etc was not available in the submitted documents.

9. The Government has examined the matter and at the outset itself, it is observed that the revision application dated 22.02.2022 was not accompanied by a fee of Rs. 200 / Rs. 1000 - which was required to be paid alongwith the revision application in terms of Section 129DD(3) of the Customs Act, 1962. As per this Section, a fee of Rs. 200 / Rs. 1000 - is mandatorily to be paid while filing the revision application in those cases where the amount of duty and

interest demanded, fine or penalty imposed by an Officer of Customs exceeds Rs. 1,00,000/-. Since, in this case the amount of Customs duty taken alongwith Interest and penalty is undisputedly above Rs. 1,00,000/-, a fee of Rs. 200 / Rs. 1000 - was required to be paid before the revision application was filed. But as no fees have been paid, therefore, this revision application filed by the applicant cannot be considered to have been filed properly. The payment of the fees of Rs. 200 / Rs. 1000 - has been mandated in the statute itself, and no such power to condone this fee has been vested with the revision authority. In the said situation, the instant revision application filed by the applicant cannot be considered and is accordingly, rejected, as the same is non-maintainable.

10. Accordingly, for the above given reason, the revision application is rejected as non-maintainable.


(SHRAWAN KUMAR)

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

ORDER No. 46/2024-CUS (WZ) /ASRA/ **DATED** 17.01.2024

To,

1. Ms. Ishragha Osman Elshikh Idris, R/o. Khartum, (Since, address is outside India, Service of this Order to her Advocate on record mentioned below and the noticeboard).
2. Pr. Commissioner of Customs, Nagpur, 81, GST Bhavan, Telangkhedi Road, Nagpur - 440 001.

Copy to.

1. Shri. M Ramesh Babu, Advocate, Opp. RGIA Police Station Ground, Kothwalguda Road, Post Shamshabad, Village & Mandal Ranga Reddy Dist., Telangana - 501 218.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.