

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. 371/250 & 251/B/2020 / 4598

Date of Issue

11.07.2023

ORDER NO. 525-526/2023-CUS (WZ)/ASRA/MUMBAI DATED 06.07.2023 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.

Applicant : Shri Samir Zaveri &
: Smt. Sona Samir Zaveri

Respondent : Pr. Commissioner of Customs (Airport), Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-401 & 402/2020-21 dated 25.09.2020 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.

Remanded by the Hon'ble Bombay High Court for Reconsideration of RA Order No. 220-221/2021-Cus (WZ) /ASRA/Mumbai dated 09-09-2021 vide its Order dated 23rd February 2023 in Writ Petition No. 3849 of 2022.

ORDER

The present proceedings are in compliance of the Bombay High Court Order dated 23rd February 2023 in Writ Petition No. 3849 of 2022 wherein the RA Order No. 220-221/2021-Cus (WZ) /ASRA/Mumbai dated 09-09-2021 issued in respect of subject Revision Application is remanded back for reconsideration.

2.1 Brief facts of the case are that two Revision applications had been filed by Shri Samir Zaveri and Smt. Sona Samir Zaveri (herein after referred to as the Applicants) against the Order in appeal. No. MUM-CUSTOM-PAX-APP-401/2020-21 dated 25.09.2020 and Order in appeal. No. MUM-CUSTOM-PAX-APP-402/2020-21 dated 25.09.2020 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.

2.2 The officers of Customs intercepted the Applicants, who had arrived from Dubai on 26.12.2019 and on examination they were found to be carrying a gold chain each. Each of the gold chain recovered from the Applicants weighed 116 grams valued at Rs.3,93,669/- (Rupees Three Lakhs Ninety three thousand Six hundred and Sixty nine only). The Original Adjudicating Authority (OAA) vide Order-In-Original No. AirCus/T2/49/1475/2019/UNI-D dated 26.12.2019 and AirCus/T2/49/1476/ 2019/UNI-D dated 26.12.2019 ordered absolute confiscation of the impugned gold chains each weighing 116 grams valued at Rs.3,93,669/-and imposed penalty of Rs. 10,000/- under section 112 (a) of the Customs Act, 1962 on each of the Applicants. Aggrieved by the said orders, the applicants filed appeals before the Commissioner (Appeals), the Appellate Authority (AA) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-401/2020-21 dated 25.09.2020 and Order in appeal. No. MUM-CUSTOM-PAX-APP-402/2020-21 dated 25.09.2020 rejected the appeals and upheld the OAA's Order.

3. Aggrieved with the above order the Applicant filed Revision applications with the Revisional Authority who vide RA Order No. No. 220-221/2021-Cus (WZ)/ASRA/Mumbai dated 09-09-2021 set aside the absolute confiscation of the gold and allowed both the chains to be redeemed for re-export on payment of redemption fine of Rs.2,00,000/- each and did not interfere with the penalties imposed on the applicants.

4. The applicant then approached the Customs Authorities for release of the impugned gold, it was found that the gold chains were disposed off, vide Disposal Order dated 16th January, 2021. The Applicants filed Writ Petition, challenging the RA Order no. 220-221/2021-CUS (WZ)/ASRA/MUMBAI dated 09.09.2021, before Hon'ble Bombay High Court on the ground that having allowed the impugned gold chains to be re-exported, and since the impugned gold has been disposed, no redemption fine and penalty was sustainable on the Applicants. The Applicants also challenged the Disposal Orders dated 16.01.2021 under which the gold chains were ordered to be disposed off vide Govt. of India's Mint Lot No. 128 dated 29.1.2021 and Lot No. 144 dated 26.02.2021 on the ground that the disposal of the gold chains was done arbitrarily, is illegal and bad in law as at that relevant time since that Appeal/ Application was pending. The Bombay High Court vide Order dated 23rd February, 2023, held as under:

"5. Apart from the appropriateness or otherwise of disposal of the gold chains while proceedings were pending, the question is whether the orders passed in the Revision Applications can be effectively implemented. The Revisional Authority has proceeded on the basis that gold chains are available for redemption. Appropriate course would now be to permit the Petitioners to approach the Revisional Authority for reconsideration of the orders in light of the fact that the gold chains have been disposed of and cannot be redeemed even if the Petitioners choose to pay the redemption fine."

5. In view of the above High Court Order, the Advocate of the Applicant vide letter dated 11-04-2023, approached this office for reconsideration and to take appropriate decision. The applicant at the time of personal hearing submitted the following:

5.1 That the applicant vide Advocate's letter dated 27.01.2022 addressed to the Commissioner of Customs CSI Airport requested for information about status of the gold chains; that subsequently vide letter dated 11.02.2022, the applicant requested for granting refund of the amount obtained after disposal of the gold chains; that Information was sought under the RTI by the Applicants regarding the disposal of the gold chains and vide Order number 06(12)/2022 dated 06.05.2022 and Order no. 06(13)/2022 dated 6.05.2022 it was informed that the detained gold chains had been disposed off. The Applicant filed Writ Petition before BHC, against RA Order No 220-221/2021- CUS(WZ)/ASRA/MUMBAI dated 09.09.2021 and the Disposal Orders dated 16.01.2021 under which the gold chains were ordered to be disposed off vide Govt. of India's Mint Lot No. 128 dated 29.1.2021 and Lot No. 144 dated 26.02.2021.

5.2 That the Applicants are praying for reconsideration of the decision to the limited extent (in view of the High Court Order dtd 23.02.2023) in light of the fact that the gold chains have been disposed off and cannot be redeemed now. Further since absolute confiscation of the gold chains was set aside and this order was accepted by department and not challenged and since the gold chains are not available for re-export thus there arises no question of imposition of redemption fine.

5.3 That despite there being request made vide letters dated 10.01.2020 and 1.03.2021 to refrain from disposing the gold chains the Customs Department still illegally disposed off gold chains while the Appeal Application was pending. Thus,

the Applicants are now entitled for the amount of money realized after the disposal of the gold chains and are praying that consequential relief for refund of the sales proceeds of the gold chains which were valued at Rs. 3,93,699/- each under the Detention Receipt dtd. 26.12.2019.

5.4 That the applicant submitted that the gold chains were disposed off vide Govt of India's Mint Lot no. 128 dated 29.01.2021 and Mint Lot No. 144 dated 26.02.2021 and therefore the applicant is entitled for the value of the gold chains realized on these dates. Therefore the Applicants requested that since the gold chains are disposed off and not available for re-export no redemption fine be imposed and that the department be directed to refund the realised amount of the said gold chains to the Applicants.

6. In view of the above, personal hearing in the case was scheduled on 17-05-2023. Ms Kiran Dhoiphode, Advocate of the Applicant and Shri G. A. Kanse, A.C. Customs appeared for the said hearing on behalf of the Applicant and Respondent respectively.

6.1 Ms Kiran Dhoiphode, the Advocate of the Applicant reiterated earlier submissions. She requested that High Court has directed for reconsideration in light of disposal of goods. She further submitted that since goods are no longer available for redemption, no redemption fine should be imposed. She requested one week's time to make further additional submission.

6.2 Shri G. A. Kanse, A.C. appeared for the hearing and submitted that the department has no objection in giving sale proceeds minus fine, penalty and any other realizable dues to the applicants. On being informed about two issues raised by the applicant that:

- i) goods have been disposed by the department even though a written request was made for not disposing the said goods during pendency of proceedings;
- ii) when goods are no longer available for redemption, no redemption fine can be imposed;

The Assistant Commissioner requested ten days' time to make the additional submissions.

7.1 The Applicant submitted the Additional submissions vide their letter dated 25th May 2023, wherein they relied on the following judgements:

- i) Final Order No. 40774/2020 dated 8.06.2020 passed by the Hon'ble CESTAT at Chennai in case of the M/s Ahamed Gani Natchiar Vs Commissioner of Customs, Chennai;
- ii) Judgement of the Hon'ble Delhi High Court in the matter of Zhinet Banu Nazir Dadany V/S Union of India 2019(367) ELT385(Del);
- iii) Hon'ble Tribunal Order in the case of Sapna Sanjeev Kohli Vis Commissioner of Customs, Airport, Mumbai 2008 (230) EL.T. 305 (Tri. - Mumbai)

The Applicant relying on the above judgements, requested to consider imposing a notional fine.

7.2 The Respondent-Department vide letter F.No. AirCus/49/T2/1475/2019 UNI 'D' dated 26-06-2023, submitted the following:

- i) In respect to the query that when there was a request from both the passengers not to dispose of the confiscated goods then why the goods have been disposed of by the Department, it was submitted that as per the available records, request from the passengers not to dispose of the goods was dated 01.03.2021,

whereas the order to dispense of the goods was accorded by the competent authority on 8th October, 2020.

ii) In respect to the query that when the goods are not available for redemption, then what is the rationale behind imposition of redemption fine, the Respondent submitted that the Hon'ble Revisionary Authority in his order has allowed for re-export of impugned gold against payment of redemption fine. But in these cases, since the Gold has already been disposed off, the value of the Gold in cash shall be redeemed after deducting necessary dues including RF and PP. The relevant case-laws, where such redemption had earlier been allowed, are as under:

a. 2009 (235) ELT 402 (Bom.) dated 03.12.2008 In the matter of Shabir Ahmed Abdul Rehman Vs. Union of India.

b. CESTAT Appeal No. C/518/96-Mum dated 28.10.2020 In the matter of Yakub Ibrahim Yusuf Vs. The Commissioner of Customs, Mumbai:

8. The Government has gone through the facts of the case. Government finds in the instant case, vide the earlier Order No 220-221/2021-Cust (WZ)/ASRA/Mumbai dated 9-09-2021, the applicants were allowed to re-export the impugned two gold chains on payment of redemption fine of Rs.2,00,000/- and penalty of Rs. 10,000/- each. Since the impugned gold had been disposed by the department and was not available for re-export, the applicant filed a Writ Petition in Bombay High Court. The Hon'ble High Court has directed to take appropriate decision in view of the fact that the gold chains have been disposed of and cannot be redeemed even if they chose to pay redemption fine.

9. Government finds that the limited issue to be decided in this case is regarding the redemption fine being imposed when the gold chains have been disposed by the department. On going through the submissions made by the Applicant, Government observes the following

- i) the Applicant had initially prayed that as the gold is not available for re-export, hence redemption fine cannot be imposed. However in their later submissions they have requested to consider imposing a nominal fine.
- ii) the department has no objection in giving sale proceeds of the impugned gold minus fine, penalty and any other realizable dues to the applicants.

10.1 In the instant case, Government finds that vide the earlier Order, impugned gold was allowed to be re-exported only on payment of Redemption fine, hence the applicant is eligible for the sale proceeds of the impugned gold only, after deducting the redemption fine, penalty and any other dues related to the impugned gold.

10.2 Government finds that in a similar case, Bombay High Court in case of SHABIR AHMED ABDUL REHMAN Versus UNION OF INDIA, 2009 (235) E.L.T. 402 (Bom.) held as under:

*“.....11. The question then to be considered is, whether the petitioner is entitled to the sale proceeds after deducting duty, fine and penalty imposed upon the petitioner? Since the petitioner is **seeking redemption of the confiscated gold, he cannot escape payment of fine and penalty.....”***

10.3 In view of the above government holds that the applicant is eligible for the sale proceeds of the impugned gold after deducting the appropriate dues. Government directs i) the applicants to approach the Customs authorities for claiming their refund and ii) the Customs Authorities to deduct the redemption fine and penalty from the sale proceeds and to return the balance amount to the applicants.

11. The Applicant in their later submissions have requested to consider imposing a nominal fine. Government finds that the redemption fine of Rs. 2,00,000/- imposed on each of the applicant for the two gold chains each weighing 116 grams and valued at Rs.3,93,669/-is extremely high and is required to be revised. Considering overall facts of the case, Government reduces the same to Rs. 70,000/- (Rs. Seventy Thousand only), each. The penalties imposed are appropriate.

12. The Revision applications are disposed of accordingly.

Shrawan
6/7/23
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

525-

ORDER No 526/2023-CUS (WZ) /ASRA/MUMBAI

DATED 06.07.2023

To

1. Shri. Samir Zaveri, Flat No. 302, Lodha Vellissimo, Mahalaxmi – 400 011.
2. Ms Sona Samir Zaveri, Flat No. 302, Lodha Vellissimo, Mahalaxmi – 400 011.
3. The Pr. Commissioner of Customs, CSMI(Airport), Terminal – 2, Level – II, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

4. Shri. V. M. Dhoiphode & Co., 44, 45 Sucheta Niwas, SBS Marg, Fort, Ballard Estate, Mumbai- 400 001.
5. Sr. P.S. to AS (RA), Mumbai.
6. Spare Copy.
7. Notice Board.

