



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/77/B/WZ/2021-RA/6159 Date of Issue : 14.08.2023

ORDER NO. 583 /2023-CUS (WZ)/ASRA/MUMBAI DATED 11 .08.2023
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 : M/s. Jamila Irfan Sadriwala.

Respondent : Pr. Commissioner of Customs, Chhatrapati Shivaji
Maharaj International Airport (CSMI), Mumbai - 400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1430/2019-20 dated 28.01.2021
issued on 10.02.2021 through F.No. S/49-905/2019
passed by the Commissioner of Customs (Appeals),
Mumbai - III.

ORDER

This revision application has been filed by M/s. Jamila Irfan Sadriwala (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1430/2019-20 dated 28.01.2021 issued on 10.02.2021 through F.No. S/49-905/2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant arrived from abroad at the CSMI Airport, Mumbai on 26.07.2019 by Indigo flight no. 6E-1834 / 26.07.2019. Applicant cleared herself through the green channel whereupon she was intercepted by the Customs Officers. Personal search of the applicant led to the recovery of assorted jewellery i.e. 4 nos of gold bangles together weighing 117 grams, one no. gold ring weighing 26 grams, one gold bar weighing 2.5 grams, all totally weighing 145.5 grams and valued at ₹ 4,59,075/-.

3. Spot adjudication was held by the Original Adjudicating Authority (OAA) viz, Deputy Commissioner of Customs, CSMI Airport, Mumbai who vide her Order-in-Original (OIO) no. Air Cus/T2/49/975/2019-C dated 26.07.2019 had ordered for the absolute confiscation of the assorted jewellery i.e. 4 nos of gold bangles together weighing 117 grams, one no. gold ring weighing 26 grams, one gold bar weighing 2.5 grams, all totally weighing 145.5 grams and valued at ₹ 4,59,075/- under Section 111 of Customs Act, 1962 and imposed penalty of ₹ 50,000/- under Section 112 of the Customs Act, 1962. In the OIO it was mentioned that the applicant was (i). returning to India after one and a half years to attend to some family function, (ii) wearing the bangles and (iii). that she was unable to give any satisfactory reply regarding purchase of the assorted gold jewellery.

4. Aggrieved with this order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III with a request to set aside the order-in-original passed by the lower adjudicating authority and to allow re-shipment of the gold jewellery under Section 125 and Section 80 of the Customs Act, 1962. The appellate authority vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-1430/2019-20 dated 28.01.2021 issued on 10.02.2021 through F.No. S/49-905/2019, rejected the appeal.

5. Aggrieved with the above order of the appellate authority the Applicant has filed this revision application and has given a very exhaustive grounds of revision with a prayer to set aside the OIA passed by the AA and to release the gold under absolute confiscation on payment of reasonable fine and penalty and to drop the proceedings.

6(a). At the outset, Government observes that in the OIO dated 26.07.2019, it is mentioned that the applicant who is an Indian national was returning to India after a period of 1 ½ years. Moreover, it is observed that applicant was carrying / wearing jewellery and the same is mentioned in the OIO. The quantity of the gold ornaments is small. Prima facie, this clearly facie indicates that the applicant was eligible to import 1 kg of gold under notification no. 50/2017-Cus dated 30.06.2017 at concessional rate of duty. The other requirement being that payment of duty is required to be made in foreign currency and that the applicant makes a declaration about possession of gold.

6(b). In view of the above observation, Government does not find it necessary here to mention and reproduce the exhaustive grounds of revision submitted by the applicant. However, in the interest of natural justice, personal hearing was scheduled on 25.07.2023. Shri. Prakash K.

Shingrani, Advocate appeared on behalf of the applicant and submitted that as per the OIO, applicant came to India after one and a half years and brought small quantity of jewellery. He requested to allow the redemption of jewellery on nominal fine and penalty with concessional eligible rate of duty.

7. Government has gone through the facts of the case. The Government notes that the Applicant had opted for the green channel and was intercepted thereafter, while attempting to clear the assorted gold jewellery i.e. 4 nos of gold bangles together weighing 117 grams, one no. gold ring weighing 26 grams, one gold bar weighing 2.5 grams, all totally weighing 145.5 grams and valued at ₹ 4,59,075/- without declaring the same to Customs. Applicant had admitted that she had not declared the gold to evade Customs duty. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore the confiscation of the gold was justified.

8. Government notes that applicant was returning to India from abroad after 1 ½ years and this fact has been recorded in the OIO as such. Now, the applicant has stated that by virtue of her continuous stay of 1 ½ years, she was eligible to bring upto 1 kg gold at concessional duty. Also, on the issue of concealment, though in the OIA it is mentioned that the assorted jewellery was ingeniously concealed, the place or the method adopted for the concealment has not been specified or disclosed. Moreover, Government notes that there is no mention of the method adopted by the applicant for the concealment. In fact, in the OIO it is mentioned that the applicant was wearing the 4 bangles.

9. The Government finds that neither original authority nor the appellate authority has given any findings on the applicant's submission of being eligible passenger, though the same has been recorded in the OIO. It is evident that by virtue of her continuous stay abroad of 1 ½ years, she was an eligible

passenger for concessional duty. Government observes that gold brought by such eligible persons is not prohibited provided that payment of the concessional duty is made through foreign currency. Contention, if any, that currency was not sufficient to meet requirement of duty payment, will not alter the eligibility based on period of stay abroad, as currency can be arranged subsequently to pay applicable duty for claiming of goods.

10. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold at the time of arrival, the confiscation of the gold was justified. Government observes that the lower authorities had not allowed redemption of the impugned gold. Considering that the applicant was eligible to bring gold as discussed above, Government finds that absolute confiscation of the gold is harsh and unwarranted and option to redeem the same on payment of redemption fine should have been allowed.

11. Government is inclined to accept the averments made by the applicant that by virtue of her continuous stay abroad, she was an eligible passenger for at concessional rate of duty to be paid in foreign currency and that the import of gold for such person had not been prohibited. Having held that the confiscation was justified and that the applicant was eligible to bring gold at concessional rate of duty, Government allows the impugned gold to be redeemed on payment of appropriate redemption fine.

12. Government finds that the penalty of ₹ 50,000/- imposed on the applicant under Section 112 of the Customs Act, 1962 is harsh and excessive as she was eligible to bring gold and the same was not concealed and therefore, is inclined to reduce the same.

13. In view of the above, the Government sets aside the impugned order of the Appellate Authority in respect of the impugned assorted gold jewellery. The assorted gold jewellery i.e. 4 nos of gold bangles together weighing 117 grams,

one no. gold ring weighing 26 grams, one gold bit weighing 2.5 grams, all totally weighing 145.5 grams and valued at ₹ 4,59,075/- are allowed redemption on payment of redemption fine of ₹ 75,000/- (Rupees Seventy Five Thousand only). The impugned gold is allowed to be cleared at concessional rate of duty as per the conditions therein. The penalty of ₹ 50,000/- imposed under Section 112 of the Customs Act, 1962 is reduced to ₹ 40,000/- (Rupees Forth Thousand only).

14. Revision Application is disposed of on the above terms.

Shrawan
21/8/23
(SHRAWAN KUMAR)

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

ORDER No. 583/2023-CUS (WZ) /ASRA/Mumbai **DATED 11.08.2023**

To,

1. M/s. Jamila Irfan Sadriwala, House No. 562, Jeevan Colony, Jain Colony, TIB Place, Ratnagiri - 415 612.
2. Pr. ommissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Level - II, Terminal - 2, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

1. Shri. Prakash K. Shingrani, Advocate, 12/334, Vivek Bldg, New MIG Colony, Bandra (East), Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Noticeboard.