

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. 371/11/B/14-RA / 5750

Date of Issue 11/12/19

ORDER NO. 62/2019-CUS (SZ)/ASRA/MUMBAI DATED 10.12.2019 OF THE
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Smt. Divya Pratap Today

Respondent : Pr. Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-CUS-
PAX-APP-258/13-14 dated 04.11.2013 passed by the
Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Smt. Divya Pratap Todai (herein after referred to as the Applicant) against the order in appeal No. No. MUM-CUS-PAX-APP-258/13-14 dated 04.11.2013 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case is that the applicant, arrived from USA on 09.12.2011. She was diverted to the red channel after screening of her baggage. Detailed examination led to the recovery of assorted gold jewelry and 3 (three) gold biscuits and one gold coin totally weighing 899.55 grams totally valued at Rs. 25,80,723/- (Rupees Twenty Five lacs Eighty thousand Seven hundred and Twenty three).

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/MP/ADJN/136/2011-12 dated 16.02.2012 ordered confiscation of the impugned gold under Section 111 (l) and (m) of the Customs Act, 1962, but allowed redemption of the same or re-export on payment of redemption fine of Rs.3,50,000/- (Rupees Three lacs Fifty thousand) and imposed penalty of Rs. 1,00,000/- (Rupees one lac) under Section 112 (a) of the Customs Act. A penalty of Rs. 25,000/- (Rupees Twenty Five Thousand) was also imposed under section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 286/2016 dated 31.03.2016 noted that the Applicant has exercised the option of re-export on payment of fine and penalty and found the quantum and fine to be reasonable and rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that;

5.1 The Adjudication order and the Appellate order is bad in law and may be set aside. The proposition that the applicant had not made declaration on the gate pass is erroneous. The applicant unintentionally, did not fill up the gate pass. She is old and was tired. It is relevant to mention that Sr.no 6 of gate pass pertains to declaration. The space available for declaration is so little that one will presume it to be a token declaration. Beside, jewelry is not mentioned in para 7 as specific item of declaration; The Applicant went to the screening machine and voluntarily got the baggage screened. The screening officer could see the jewelry / bullion clearly and thus diverted the Applicant to Counter no.3 where she declared her jewelry/

gold bullion; There is plethora of evidence to show that the applicant had made declaration at the first opportunity before the proper officer concluding merely on the basis of gate pass would be singling out the applicant and would amount to discrimination; The adjudicating authority has by concluding that the impugned jewelry was not of that type which can be considered for day to day wearing, has traveled well beyond the intention of the govt. to come to this conclusion; The old and used jewelry were in the form of Bangles, chains, necklace, bracelet etc. it can be seen that these jewelry is common jewelry for lady, she was in possession of this gold jewelry since 1959; The adjudicating authority had agreed that the applicant was entitle to the gold in terms of Notification No 31/ 2003 —Cus as amended; . It is thus submitted that the Jewelry is not liable to confiscation under 111 (d) of Customs Act 1962 as the applicant has made correct declaration before the proper officer.; It is presumed that the Customs had ascertained the value at local market ~~rate only~~ to enhance the value, so that the applicant can be arrested and subsequently prosecuted.; The goods were not liable to confiscation and thus no Redemption fine ought to have been imposed.; It is also evident that the penalty is excessively imposed.; The adjudicating authority as well as appellate authority ought to have considered the hardship and humiliation suffered by the applicant; The appellate authority has acted in a cavalier manner in rejecting the appeal. It is humbly submitted that the above details have been submitted only to bring to your kind attention that the applicant had been wronged. She had undergone extreme stress and borne the humiliation at a ripe age of 64.

5.2 The gold bullion and jewelry was allowed for re-shipment on payment of redemption fine whereas there were sufficient grounds to allow it under section 80 of the Customs Act,1962. The redemption fine and penalty is excessive and not legal. Revision Applicants prayed for setting aside the order of penalty and redemption fine and any other suitable relief.

6. A personal hearing in the case was held on 06.11.2018, Ms. Sweta Todai attended the said hearing for Mrs Divya Todai. Wherein she reiterated that the gold was personal jewelry, old and used. The Applicant herself offered the bags for screening and therefore there was no mensrea. She even offered to leave the jewelry and was not allowed to speak to senior officers. The value of the gold was enhanced for prosecution. That the applicants is a yoga teacher and her background is not that of a carrier. The Applicant prayed for waiver in fine and penalty. Nobody from the department attended the said hearing.

7. The facts of the case reveal that the Applicant had brought gold jewelry, gold biscuits and a gold coin. She had opted for the green channel and on screening, her

baggage was detected containing gold and was accordingly diverted for detailed examination leading to the recovery of the impugned gold. The Applicant also accepts that no declaration was made as required under section 77 of the Customs Act, 1962. The facts also show that the passenger mentioned the number of bags on her gate pass. Even if the Applicant was an eligible passenger to import gold or opt for re-export of the gold a formal declaration was necessary. The Government therefore concludes there was no voluntary disclosure of the gold and that if the screening of the baggage had not taken place the impugned gold would not have been detected, however the Applicant has not displayed any misdemeanor as she knew her baggage would be screened.

8. However, the gold was recovered from her checked in baggage and it cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There is no past history of such misdemeanors. The Applicant is a citizen USA of Indian origin therefore may not be fully aware of Indian Customs laws. Further, a part of the jewelry was old and used and the valuation as on date would be inflated. The facts of the case also suggest that there was no conscious attempt to evade duty. The Hon'ble Supreme Court in the case of Sapana Sanjeev Kohli V/s Commissioner of Customs, Mumbai, reported in 2010 (253) ELT A52 (SC) has upheld the order of the Hon'ble Bombay High Court reported in 2009(240)ELT 207(Bom) & CESTAT order reported in 2008(230)ELT 305 (Tri.Mumbai) wherein it has been held that gold jewelry is not prohibited, therefore mandatory redemption was required to be given by the Commissioner(para 22) and accordingly redeeming of the jewelry on payment of fine was allowed even though the passenger was ineligible for bringing gold. In another case HARGOVIND DAS K. JOSHI V/s COLLECTOR OF CUSTOMS reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Reliance is also placed on the decision of the Honble HIGH Court of Andhra Pradesh reported in Shaikh JamalBasha Vs. GOI [1997 (91)ELT 277 (A.P.)]wherein it has been held that option to pay the fine in lieu of the confiscation of the goods is to be given to the importer. The High Court of Calcutta in the case of Commissioner of Customs Vs Uma Shankar Verma [2000 (120) ELT 322 (Cal) has decided that when goods are not prohibited then Customs authorities have no option but to allow the assessee to pay the fine in lieu of confiscation.

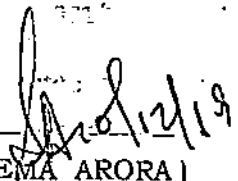
9. In view of the above facts, and the fact that the Applicant is a foreign national the Government is of the opinion that the Adjudicating Authority as well as the Appellate authority has rightly allowed the gold for re-export on redemption fine and penalty. Government further observes that Para 23 of the order in original records the jewelry was old and the passenger was eligible to import gold. The passenger has submitted purchase

invoices and has satisfactorily explained the possession of the gold thus establishing her bonafides. Accordingly, the impugned Order in Appeal is therefore liable to be modified.

10. Accordingly, the Order of the Commissioner(Appeals) is modified as below. Re-export of the impugned gold is allowed. The redemption fine is reduced to Rs. 1,50,000/- (Rupees One lac Fifty thousand). The penalty imposed under section 112(a) is also reduced to Rs. 50,000/- (Rupees Fifty thousand). Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 25,000/- (Rupees Twenty Five thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

11. Revision application is allowed on above terms.

12. So, ordered.


 (SEEMA ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 62/2019-CUS (SZ) /ASRA/

DATED 0.12.2019

To,

Smt. Divya Pratap Todai
 B/51, Shriram Apartment, Jawaharlal Nehru Road, Mulund (W), Mumbai 400 080.

Copy to:

1. The Pr. Commissioner of Customs, C. S. International Airport, Mumbai.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

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. 373/215/B/16-RA/5692

Date of Issue 11.12.19

ORDER NO. 60/2019-CUS (SZ)/ASRA/MUMBAI DATED 10.12.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Pedada Raminaidu

Respondent : Pr. Commissioner of Customs, Hyderabad.


Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. HYD-CUS-000-APP-148-17-18 dated 26.03.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

ORDER

This revision application has been filed by Shri Pedada Raminaidu (herein referred to as Applicant) against the order No. HYD-CUS-000-APP-148-17-18 dated 26.03.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

2. The officers of DRI acting on intelligence, intercepted two persons by name Shri K.Bhaskar Reddy and Shri Pedada Raminaidu, the appellant in this case who were employees in the security wing of GMR Hyderabad International Airport Ltd on 25.05.2015 in the car parking area of the airport arrival while they were handing over imported gold in packages to Shri Mohammed Mazhar Ali. On the basis of further investigation made, it was found that the said gold totally weighing eight kgs valued at Rs. 2,20,00,000/- (Rupees Two crores Twenty lacs) alongwith Rs. 3,50,000/- (Three lacs Fifty thousand) had been brought by an international passenger Shri Mohammed Zubair Shabbir Gaima who arrived from Dubai in the flight EK 524 which landed on 25.05.2015 post-midnight and that the gold had been smuggled out of the airport area in connivance with the appellant and Shri K.Bhaskar Reddy. Investigation had found that the appellant along with Shri K.Bhaskar Reddy had collected gold from the passenger Shri Mohammed Zubair Shabbir Gaima in the toilet area of the arrival area before immigration offices and that the said gold was being handed over to the Shri Mohammed Mazhar All in the car parking area.

3. After due process of the law vide Order-In-Original No. 05/2017-Adjn.Cus(ADC) dated 31.01.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold and currency under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- (Rupees Ten lacs) under Section 112 (a) and (b) of the Customs Act,1962 on each of the accused including the Applicant.



4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. HYD-CUS-000-APP-148-17-18 dated 26.03.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

5. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

5.1 The appellate authority's conclusion that the appellant has played considerably a major role to attract equivalent penalty at par with other co noticees, is not tenable because the appellant has not smuggled the gold from Dubai to India but only helped in clearing the confiscated gold; The appellate authority, has not even taken into consideration that the appellant is not the owner of the confiscated gold nor a subsequent beneficiary; Applicant received only a meagre amount as a remuneration towards the limited activity of taking gold from the immigration area to handover at the car parking zone, which activity is mainly undoubtedly a minor role when compared to the activity of bringing gold all the way from Dubai to India, with an intent to smuggle without payment of the customs duties; The appellate authority vide para 7 of his order referred to Para 52.1 of the Order in Original holding that the original authority has incidentally referred to previous instances of gold smuggling but not considered the said offences while determining the quantum of penalty; However, vide Para 52.3 of the Order in Original , the original authority specifically mentioned that "In the instant case as per the Show cause notice admittedly role played by him is that on many occasions he received the smuggled gold from international passengers in side the customs area by misutilizing his official position and removed the same to outside the Air Port by circumventing the customs to handover to Mazhar Ali which is crux of the offence and led to evasion of customs duty, hence the noticee's contention that he played a limited role is not substantiated." From this observation of the original authority, the finding of the appellate authority that the past activities were not taken into account, is not based on the actual findings of the original authority; In view of the fact that the original authority has imposed the of penalty on the appellant certainly

based on the alleged past activities of the gold smuggling, which department has failed to establish with cogent evidence; it is a settled law that mere statements without corroborative evidence cannot be treated as conclusive evidence. Therefore, imposing penalty without supporting evidence of past activities is not proper; The ruling of the Hon'ble Tribunal, Mumbai in the case of Suresh Gangaram Hole Vs Commissioner of Customs (Airport) Mumbai has held that penalty has to be imposed proportionate to the role played; The appellate authority has not however considered the ratio held in the above mentioned ruling and the findings; The appellant also submits that following the seizure and subsequent arrest, he lost his job in the Air Port and presently having no employment and facing financial hardships and finding it very difficult to make both ends meet.

5.2 Taking in to consideration the plight of the appellant, it is requested to take a sympathetic view and reduce the huge penalty of Rs. 10 lakhs.

6. A personal hearings in the case were scheduled on 17.10.2019 which was attended by the Applicant. The Applicant pleaded that he was an assistant to Shri Bhaskar Reddy, and does not have a job and is unable to pay the penalty. He admitted that it was a mistake that he regrets and prayed for reduction of penalty. The Respondents did not appear for the hearing.

7. The Government has gone through the facts of the case, The Applicant does not dispute the fact that he was involved the smuggling of the gold. His only prayer is that he was a minor accomplice and received only a meagre amount as a remuneration towards the limited activity of taking gold from the immigration area to handover at the car parking zone, and that this was minor role when compared to the activity of bringing gold all the way from Dubai to India, with an intent to smuggle without payment of the customs duties. He was not the owner of the gold and the penalty imposed has to be proportionate to the role played.

8. In addressing the issue the Government observes that the Applicant along with Shri Bhaskar Reddy has actively connived with the International passenger and misused their access to enter the restricted area of the Airport like international arrival area to assist in the removal of the gold out of the airport clandestinely avoiding the payment of customs duties without the knowledge of the Customs authorities. The Order in Original states Shri Bhaskar Reddy and Shri Ramanaidu had been assigned official duties in an entirely different area of the airport but used their access to the restricted areas even during their off duty hours. Investigations conducted by the officers of DRI on the SIM cards of the Applicant also reveal that the Applicant and Shri Bhaskar Reddy were in regular contact with Shri Mohammed Zubair Shabbir Gaima, the person who brought the gold from Dubai, prior to his flight landing in Hyderabad, and as planned, they had made themselves available near the toilet area at the International arrival area and collected the gold from the International passenger Shri Mohammed Zubair Shabbir Gaima. The Applicant and Shri Bhaskar Reddy were intercepted by the DRI officers, after they removed the gold out of the Airport and were in the process of handing it over to Shri Mohammed Mazhar Ali in the parking Area of the Airport. The evidences collected through CCTV cameras, calls made through SIM card, the panchanamas recorded and other evidences clearly implicate the Applicant in the smuggling operation. The facts of the case reveal that the smuggling operation would not have been possible without the active involvement of the Applicant. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant is therefore liable to penal action under section 112 of the Customs Act, 1962. The facts of the case reveal that the smuggling operation would not have been possible without the active involvement of the Applicant. The role played by the Applicant is evident on record and no less important as compared to the other accused as pleaded by him. His plea of receiving meagre payment for his role does not in any way lessen his involvement. Further, the facts of the case also reveal that the Applicant was also involved in similar offences earlier.

9. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government holds that the Appellate Authority has rightly upheld the order of the Original

Adjudicating Authority. The quantum of penalty is also appropriate and proportional to the role played. The impugned Revision Application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.


(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 60/2019-CUS (WZ) /ASRA/

DATED 01.12.2019

To,

Shri Pedada Raminaidu,
S/o Shri Adinarayana, Resident of Kesavaraopeta village, SM Puram, P.O.
Etcherla Mandal, Srikakulam District, Andhra Pradesh.

Copy to:

1. The Pr. Commissioner of Customs, Rajiv Gandhi International Airport, Shamshabad, Hyderabad.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.