



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/57/B/WZ/2020-RA / 6656

Date of Issue 12.09.2023

ORDER NO. 640 /2023-CUS (WZ) /ASRA/MUMBAI DATED 07.09.2023
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 : Ms Sakineh Shirazi

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

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-619/2019-20 dated 31.10.2019
[F.No. S/49-24/2018] passed by the Commissioner of
Customs (Appeals), Mumbai – III.

ORDER

This Revision application has been filed by Ms Sakineh Shirazi (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-619/2019-20 dated 31.10.2019 [F.No. S/49-24/2018] passed by the Commissioner of Customs (Appeals), Mumbai - III (herein referred to as Respondent).

2. Brief facts of the case are that on 31.08.2016, the Officers of Customs had intercepted Ms Sakineh Shirazi, the Applicant, holding Iranian Passport No. T38119795, at CSI Mumbai Airport, on her arrival from Dubai. The Applicant had been intercepted near the exit gate after she had cleared herself by opting green channel for clearance through Customs. Personal search and detailed examination of her baggage resulted into recovery of assorted pieces of gold jewellery totally weighing 3885 grams and valued at Rs. 84,49,008/- and were kept in five different pouches made of butter paper wrapped with light brown cello tape which were carried by her in a concealed manner on the upper part of the body under her body slip. The same were seized under the reasonable belief that the same had been smuggled to India in a clandestine manner and in contravention of the provisions of the Customs Act, 1962.

3. After due process of investigations and the law, the Original Adjudicating Authority (OAA) i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/AK/ADJN/44/2017-18 dated 10.10.2017 ordered for confiscation of assorted pieces of gold jewellery totally weighing 3885 grams and valued at Rs. 84,49,008/- under Section 111 (d), (1) and (m) of the Customs Act, 1962, but an option to redeem the seized goods for re-export on payment of Rs.16,00,000/- was given to the applicant under Section 125(1) of the Customs act, 1962, and a penalty of Rs. 12,00,000/- was imposed on the Applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the Respondent-department preferred an appeal before the appellate authority (AA) i.e. Commissioner of Customs (Appeal), Mumbai – III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-619/2019-20 dated 31.10.2019 [F. No. S/49-24/2018] set aside the Order-in-Original holding that allowing redemption of gold to the foreign passenger was not justified and the seized gold is accordingly ordered to be confiscated absolutely. The penalty of Rs. 12,00,000/- under Section 112(a) & (b) imposed on the applicant by the Original Adjudicating Authority was however, upheld.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision; The applicants have also filed an application for condonation of delay and they have prayed to condone the delay of about 5 days in filing the application.

5.1 That the Applicant is a Foreign National and does not know to read and write English Language & understands only her mother tongue.

5.2 That the Applicant when arrived at Airport was asked by the officer in plain clothing whether Applicant was carrying any Gold, to which the Applicant answered in affirmative and then the Applicant took out the Gold from her person and handed over to the Custom Officer. The Applicant submits that the officer had taken the charge of Gold and prepared some papers in English Language & obtained her signature on those papers.

5.3 The Statement of the applicant was also recorded by the Customs under Section 108 of the Customs Act, which was typed in English Language which is not known to the Applicant and the customs dept. made out the case of non-declaration

5.4 That the Applicant is the owner of the goods and ready to pay the customs dues and she was not aware that being a Foreign National she was not supposed to import Gold.

5.5 That the Gold brought by the Applicant is neither restricted nor prohibited and can be released for Re-export under section 125 of the Customs Act, 1962.

- 5.6 That the violation if any occurred, was out of ignorance, technical in nature and due to language problem.
- 5.7 That the Appellant Authority has released the similar quantity of goods for re-export on fine and personal penalty and in this case has absolutely confiscated the goods which is totally unjustified. The applicant relied on the following judgements on Judicial discipline:
- a. Hon'ble Supreme Court in the case of Birla Corporation Ltd. Vs Commissioner of Central Excise -2005(186) ELT 266 (S.C.);
 - b. Hon'ble Bombay High Court in case of Commissioner of Central excise, Nasik Vs Jain Vanguard Polybutlene Ltd – 2010(256) ELT 523 (Bom);
 - c. Hon'ble Tribunal in case of M/s Nirma Ltd. Vs Commissioner of Central excise, Nasik – 2012(276) ELT 283 (Tri-Ahmd);
 - d. Hon'ble Tribunal in case of M/s Gauri Enterprises Vs CC Pune – 2002(145) ELT 706 (Tri-Bang).

The applicant has prayed that the order passed by the appellate authority may kindly be set aside and the Order in Original may kindly be maintained.

6. Personal hearing in the matter was scheduled for 27-07-2023. Shri N. J. Heera, Advocate of the applicant, appeared for the hearing and submitted that gold is not prohibited goods. He further submitted that gold jewellery was kept in the upper body garments and was not concealed. He requested to allow release of goods on nominal fine and penalty.

7.1 At the outset, the Government notes that the applicant has filed for condonation of delay. The Revision Application was filed on 17.02.2020. The date of communication of the Order of the appellate authority as informed by the applicants is 14.11.2019. Accordingly, the applicants were required to file the applications by 13.02.2020 (i.e. taking the first 3 months into consideration) and by 12.05.2020 (i.e. taking into consideration a further extension period of 3 months). Since, the revision application is filed within the condonation period of three months, Government condones the delay as provided under Section 129DD of the Customs Act and goes into the merits of the case.

7.2 The Government has gone through the facts of the case. The Applicant was intercepted as she was attempting to walk through the green channel after completing immigration formalities. The assorted gold jewellery was discovered only when the Applicant was thoroughly checked. These were ingeniously concealed on the upper part of her body under her body slip. The Applicant had not declared the jewellery as required under section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and it was innovatively and consciously concealed to avoid detection. The confiscation of the gold is therefore justified and thus, the Applicant had rendered herself liable for penal action.

8. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that *"if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods."* It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, "prohibited goods".

9. Further, in para 47 of the said case the Hon'ble High Court has observed *"Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate*

prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....". Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicants thus liable for penalty.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

11. Government observes that the quantum of gold was large i.e. assorted pieces of gold jewellery totally weighing 3885 grams and valued at Rs. 84,49,008/- which shows that it is commercial quantity and it was also cleverly and consciously concealed (were kept in five different pouches made of butter paper

wrapped with light brown cello tape and concealed on the upper part of the body under her body slip) which reveals the intention of the Applicant. It also revealed her criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. The Applicant was a Iranian/foreign national and is ineligible for import of gold. The circumstances of the case especially that it is of commercial quantity and cleverly concealed, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority in his findings at para 6, while absolutely confiscating the assorted gold jewellery. The same is reproduced below:

“ 6.I find that the legal provision related to foreign tourist do not allow bringing gold except bonafide personal jewellery and such cases should be substantiated by credible material to support ownership and bonafide purchase to rule out possibility of smuggling of gold on behalf of others as a carrier, especially for the reason of gold being a notified good under Section 123 of Customs Act, 1962. I find that nothing has been explained by the passenger about licit acquisition of gold jewellery backed by purchase invoice or document substantiating financial background and ownership of the gold. Under the circumstances I accept the contention raised in the appeal filed by the revenue that in the case at hand allowing redemption of gold to the passenger was not justified....”

12. The main issue in the case is the quantum and manner in which the impugned gold was being brought into the Country. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and ingenious, quantity being large and commercial, this being a clear attempt to smuggle gold jewellery, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the redemption of gold allowed by the adjudicating authority is not justified. The redemption of the gold will encourage non-bonafide and unscrupulous elements to resort to concealment and bring gold. Such acts of mis-using the liberalized facilitation process should

be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The order of the Appellate authority setting aside the order of the adjudicating authority, is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate authority and finds that absolute confiscation is proper, legal and judicious and also penalty imposed under Section 112 (a) and (b) of the Customs Act 1962 is appropriate. Government does not find it necessary to interfere in the OIA passed by the AA.

14. Accordingly, the Revision Applications filed by the applicant is dismissed.

Shrawan
7/9/23
(SHRAWAN KUMAR)

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

ORDER No.

640/2023-CUS (WZ) /ASRA/

DATED 07.09.2023

To,

1. Ms Sakineh Shirazi, Tehran Pirozi-Niroo Havai-S, Moaleminejad, P-86V.3, Naser, Dehghan, Tehran, Iran Postal code (ZIP)-19166
2. Pr. Commissioner of Customs, CSI Airport, Terminal - 2, Mumbai : 400 099.
3. Office of the Principal Commissioner of Customs (Airport), Review Cell, Ist Floor, Avas Corporate Point, Andheri-Kurla Road, Marol, Andheri (E), Mumbai : 400 059.

Copy to:

1. Advocate N. J. Heera, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O. Fort, Mumbai-400001
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.