



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/291/B/WZ/2021-RA /6927 : Date of Issue : 21.09.2023

ORDER NO. 676 /2023-CUS (WZ/SZ)/ASRA/MUMBAI DATED 20.09.2023
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.

(i). F.No. 371/291/B/WZ/2021-RA

Applicant : Ms. Naseem Abdulrehman Albani

Respondent : Pr. Commissioner of Customs, CSMIA, Sahar, Mumbai -
400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
No. MUM-CUSTM-PAX-APP-702/2019-20 dated 24.12.2020
[F.No. S/49-261/2023] passed by the Commissioner of
Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Ms. Naseem Abdulrehman Albani (hereinafter referred to as the Applicant) against the Order-in-Appeal No. No. MUM-CUSTM-PAX-APP-702/2019-20 dated 24.12.2020 [F.No. S/49-261/2023] passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant an Indian National upon arrival from Dubai was intercepted by Customs Officers on 11.01.2020 at CSMI Airport, Mumbai after she had crossed the green channel. A personal search of the applicant led to the recovery of two bangles of crude gold, totally weighing 100 grams, valued at ₹ 3,51,371/-. Applicant had resided abroad for a short period of 3 days and it was observed that she was a frequent traveler.

3. The Original Adjudicating Authority (OAA), viz, Dy. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. Air Cus/T2/49/1517/2020-UNI-A dated 12.01.2020 ordered for the absolute confiscation of the two crude gold bangles, together weighing 100 grams, valued at ₹ 3,51,371/- under Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962 and a penalty of ₹ 40,000/- under Section 112 (a) & (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-702/2019-20 dated 24.12.2020 [F.No. S/49-261/2023] observed that he did not find any reason to interfere in the OIO passed by the OAA and upheld the same.

5. Aggrieved with the above order of the appellate authority, the Applicant has filed this revision application on the following grounds;

- 5.01. that the Appellate Order was erroneous, against facts, law and all probabilities, unsustainable and was liable to be set aside; that the AA had failed to consider the various submissions and evidence; that the gold had been seized prior to the applicant having crossed the green channel;
- 5.02. that applicant did not have any intention to evade duty.
- 5.03. that statement under Section 108 of the Customs Act, 1962 had not been recorded.
- 5.04. that the applicant on the issue of waiver of SCN relied upon the CESTAT order in the case of Navneet Metals vs. Commr. Of Customs (Import), Nhava Sheva [2019-369-ELT-1360-Tri-Mumbai] wherein it is held that even if the waiver of SCN was by consent there was an obligation to render a rationale and comprehensive finding for ordering absolute confiscation.
- 5.05. that the settled law passed by Apex Court and various High Courts and Tribunals had not been complied.
- 5.06. that the penalty imposed was bad in law.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside the OIA, to return the confiscated gold or grant any subsequential reliefs as deemed fit.

6. The applicant has filed an application for condonation of delay and has attributed the delay to the Covid conditions.

7(a). Personal hearing in the matter was scheduled for 09.08.2023. The applicant appeared on the appointed day i.e. 09.08.2023 and submitted that she had brought small quantity of gold jewellery for personal use. She requested to allow redemption of gold bangles on payment of RF and penalty. She also submitted additional written submissions.

7(b). In her written submissions handed over during the personal hearing, the applicant has stated that there was no attempt on her part to conceal the impugned gold jewellery; that she had worn the same; that she was not a carrier; that at every stage she had claimed ownership of the gold; that gold was not prohibited; that in multiple legal forums it has been held that gold

was not prohibited; while praying for release of the gold on payment of reasonable redemption fine as per Section 125 of the Customs Act, 1962, she has relied upon the undermentioned case laws;

- (a). Ashok Kumar Verma – 2019-369-ELT-1677-GOI wherein it was held that gold was not a prohibited item and had allowed the gold to be redeemed;
- (b). Shaikh Jamal Basha vs. UOI, 1997-91-ELT-1277-A.P passed by the Hon'ble High Court, Andhra Pradesh;
- (c). Commissioner of Customs (Preventive), West Bengal vs. India Sales International passed by Hon'ble High Court, Calcutta – 2009-214-ELT-182-Cal;
- (d). T. Elavarasn vs. C.C (Airport), Chennai, 2011-266-ELT-167-Mad passed by Hon'ble High Court, Madras;
- (e). Ranmeet Bhatia – 2018-364-ELT-1144-GOI
- (f). Horizon Ferro Alloys Pvt. Ltd & others vs. UOI, 2016-TIOL-1239-HC-P&H-CUS
- (g). Yaqub Ibrahim Yusuf vs. Commr. of Customs, 2011-263-ELT-685-Tri

8. On the issue of condonation of delay, Government notes that the OIA dated 24.12.2020 was issued on 08.01.2021. The applicant has claimed that the OIA dated 24.12.2020 was received by her sometime in the 2nd week of January, 2021. Government notes that during this period, due to the Covid pandemic, the Apex Court had granted a moratorium for filing appeals etc. This moratorium was from 15.03.2020 to 28.02.2022 [Misc. Appln. No. 21/2022]. The applicant has filed the Revision Application on 28.09.2021. Considering the said moratorium period granted by the Apex Court, it is seen that the applicant had filed the revision application within time.

9. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in her possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that she was carrying dutiable goods and had she not been intercepted would have walked away with the impugned two crude gold bangles without declaring the same to Customs. By her actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay Customs

duty on it. The Government finds that the confiscation of the gold jewellery was therefore justified.

10. 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”.

11. 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 ‘Applicant’ thus, liable for penalty.

12. 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 the 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.

13. The quantity of gold jewellery under import is small and is not of commercial quantity. The applicant has emphasised that the two gold bangles had been worn by her. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

14. The absolute confiscation of the two crude gold bangles, leading to dispossession of the applicant of the gold bangles in the instant case is therefore, harsh and not reasonable. Government therefore, sets aside the impugned order of the appellate authority. The impugned two crude gold bangles, together weighing 100 grams and valued at ₹ 3,51,371/- is allowed to be redeemed on payment of a redemption fine of ₹ 70,000/- (Rupees Seventy Thousand only). The Government finds that the penalty of ₹ 40,000/- (Rupees Forty thousand only) imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed and the same does not merit interference.

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

Shrawan
20/9/23

(SHRAWAN KUMAR)

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

ORDER NO. 676/2023-CUS (WZ)/ASRA/MUMBAI DATED 20.09.2023.

To,

1. Ms. Naseem Abdulrehman Albani, **Address:** 24/26, Kambekar Street, Dongri, Mumbai 400 003.
2. Pr.Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Sahar, Mumbai - 400 099.

Copy to:

1. Shri. Rajendra V. Shahasane, Advocate, S2-1401, Titan, Godrej Prime, Sahakar Nagar, Road No. 3, Shell Colony, Chembur (East), Mumbai - 400 071.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.

