

REGISTERED
SPEED POSTGOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUEOffice of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.371/171/B/2020-RA / 7086

Date of issue: 28.09.23

ORDER NO. 687 /2023-CUS (WZ)/ASRA/MUMBAI DATED 26.09.2023
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 : Mrs. Khadija Mohammed Ahmed
Respondent : Pr. Commissioner of Customs, CSMI, Mumbai
Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-AXP-APP-1288-18-19 dated 29.03.2019 passed by
the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by Mrs. Khadija Mohammed Ahmed, (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. MUM-CUSTOM-AXP-APP-1288-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 04.04.2018, the officers of AIU, Chhatrapati Shivaji Maharaj International Airport, Mumbai, intercepted the Applicant, holding a Sudanese passport, who had arrived by Air Arabia Flight No. G9-406 from Sharjah, after she had cleared herself through the Customs green channel. The personal search of the Applicant led to the recovery of one gold bar having 24 karat purity weighing 232 grams and valued at Rs.5,77,039/-, which was concealed in her rectum. The case was adjudicated after waiver of show cause notice and the Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs, CSMI Airport, Mumbai, vide Order-in-Original (OIO) No. ADC/AK/Adjn/80/2018-19 dated 31.05.2018 ordered absolute confiscation of the impugned one gold bar having 24 karat purity weighing 232 grams and valued at Rs.5,77,039/- under Section 111(d) of the Customs Act, 1962. A penalty of Rs. 60,000/- was imposed on the Applicant under Section 112(a) & (b) of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- i. That it is pertinent to note that there is no rectum concealment. The goods were found in inner garments and not in the Rectum. There is no medical report or X-Ray Report to prove that it was found in Rectum. So also, it is pertinent that no person can eject without the medical assistance in the case of rectum concealment. Hence without supportive evidence to allege that there is body concealment is without a merit. It is submitted that the value of goods are only Rs.5,77,039/-

it is not a commercial quantity. Appellate Authority has not properly scrutinized the case at hands and without considering the crucial facts have denied justice to the passenger.

- ii. That the Applicant is an owner. The Applicant has submitted the invoice which was not appreciated at the appeal stage; that at the time of adjudication the applicant could not produce the invoice as the same was left at Sudan. The assorted bangles are for personal wear and not for sale.
- iii. That the applicant has travelled two or three times to India but has no antecedents. She had not carried any gold on her previous visits. There is no concealment in the case. The quantity seized is small.
- iv. Even if she is a foreign national, she is a tourist as per Baggage Rules, 2016 as amended in 2017 clause 3 (h). That it is obligatory to allow re-export of goods allowed as free allowance and as Foreign Trade (Exemption from the application of certain rules) Amendment Order 2017. That the offence took place in 2017.
- v. That Gold is not 'prohibited goods' neither a 'restricted goods'. As per Baggage Rules 1993 as amended in 2016, Resident or a foreigner residing in India or a Tourist of Indian/ Foreign origin not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bonafide baggage, that is to say-(a) used Personal effects and Travel Souvenir, and (b) articles other than those mentioned in Annexure 1,(5) Gold or Silver in any form other than ornaments, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger. However As per Notification 26/2016 any article the value of which exceeds the Duty-free allowance admissible to such passenger or member of crew under the Baggage Rules 2016 is chargeable with duty 35% ad valorem and it is also applicable to gold in any form.
- vi. That the notification 50/2017 states that in the public interest, Central Government have exempted certain category from IGST and criteria for concession of Duty it nowhere states that a Passenger is completely

banned from carrying gold. Condition 41 lays down that if a person comes to India after a period of one year on declaration can be exempted from ad valorem duty. It lays down the criteria that on declaration a person can be given concession in Duty and at that stage his eligibility to avail the same is considered. On the other hand, even if passenger is not eligible but has made declaration in that case the gold is redeemed to him at 38%. In the cases where there is no declaration in that case passenger can be charged upto 70%. This Duty, Penalty is levied as per sec 28 wherein the proper officer can charge Duty, Penalty and Fine in the span of one year and subsequently Sec 125 is invoked. It means that Gold or Silver above duty free allowance is chargeable with duty and this renders gold dutiable goods in the ambit of Customs Act, 1962. As per notification 50/2017 is concerned it states not more than 1 kg by eligible Passenger is chargeable at 10% but does not emphasize that tourist of Indian origin or foreign origin are banned from importing gold for personal use. From the above notification it is clear that gold is also a dutiable goods and not prohibited. The quantity possessed by the Applicant is below commercial quantity and was for his personal use. The Prohibited Goods are well defined in Yakub Ibrahim Yusuf vs. CC, Mumbai 2011(263) ELT 685 (Tri Mumbai).

- vii. Order of Absolute Confiscation not Sustainable: Gold is not a prohibited item. It is only restricted item as is held in Section 125 does not provides for absolute confiscation of goods which are contraband and since gold is not a contraband item the Applicant is entitled to have the goods released on payment of redemption fine and duty. Section 125 of the Act empowers the adjudicating authority to release the goods to its rightful owner or the person from whose possession the goods has been seized, on payment of redemption fine in lieu of confiscation.
- viii. The Applicants are relying upon following case laws:
- V.P Hameed Vs CC, Bombay reported in 1994(73)ELT 425 (T).
 - Kamlesh Kumar Vs CC reported in 1993 (967) ELT 1000 (GOI).
 - Shaikh Jamal Basha Vs GOI and Others.
 - Mohit Thakor Vs Collector, reported in 1994 ELT 865.

- P. Sinnasmy Versus Commissioner of Customs, Chennai 200792200 ELT 308.
- Vattakal Moosa Vs Collector of Customs Cochin,1994(72)ELT 473.
- T.Elaverasan Vs Commissioner of Customs Reported In 2011 E.L.T 167(Mad)
- Vigneswaransethuram Vs Union of India Oct 2006 Kerala High Court

In the light of the above submissions, the applicant prayed to set aside the impugned OIO & OIA and allow redemption of goods in the interest of justice.

4. Personal hearing in the case was scheduled for 03.08.2023. Ms. Shabana Pathan, Advocate appeared for the personal hearing on the scheduled date on behalf of the applicant. She submitted that the applicant had brought small quantity of gold. She further submitted that concealment should not influence decision to allow redemption. She requested to allow redemption of gold on fine and penalty for re-export. No one appeared for the personal hearing on behalf of the Respondent.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the impugned Order-in-Appeal was passed on 29.03.2019 and issued on 12.04.2019 while the instant Revision Application was filed on 24.07.2020, viz. after more than one year. In this regard, Government observes that the applicant has claimed that the date of communication of impugned OIA to them is 14.01.2020 as the OIA was returned to the office of Commissioner (Appeals) due to some mistake in the 'care of' address and therefore the same was collected on 14.01.2020.

7. Government observes from the impugned OIA that the same was sent at 'care of' address of the advocate of the appellant (viz. the applicant in the instant case). Further, a copy of the OIA was also sent to the advocate of the applicant, Ms. Shabana Pathan. Government observes that Ms. Shabana

Pathan, Advocate is an authorized representative of the applicant and has filed the instant Revision Application and has also attended the personal hearing on behalf of applicant before the undersigned. Government also observes that all the correspondence pertaining to instant Revision Application has been sent to the applicant at the address of Ms. Shabana Pathan and there is no difference in this address and the address at which the impugned OIA was sent by the office of Commissioner (Appeals). The address at which the impugned OIA was sent and the correspondence pertaining to instant RA were sent is - 'Mrs. Khadija Mohammed Ahmed, c/o Ms. Shabana Pathan, Advocate, Ekta Niwas, Room No.9, Gala Nagar, Achole Road, Nalasopara East - 401209'. Hence, Government does not accept the contention of the applicant that the date of communication of impugned OIA to them is 14.01.2020, viz. after more than 9 months from the date of its issuance.

8. Government observes the relevant Section 129 DD *ibid*, where under the instant Revision Application is filed, reads as follows:

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

Thus, Government observes that as per the Statute a maximum period of six months, including condonable period, from the date of communication of an OIA can be allowed for filing an application. In the instant case, as discussed at aforementioned para 6, the date of filing the Revision Application exceeds

the statutory limitation of six months from the date of communication of the OIA.

9. In view of the aforementioned discussion and findings, the Government rejects the instant Revision Application, being filed beyond stipulated period including condonable period specified under Section 129DD of the Customs Act, 1962.

Shrawan
26/9/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 687/2023-CUS (WZ)/ASRA/Mumbai dated 26.9.23

To,

1. Mrs. Khadija Mohammed Ahmed,
c/o. Adv. Shabana Pathan, Ekta Niwas, Room No.9, Gala Nagar, Achole
Road, Nalasopara East - 401 209.
2. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati
Shivaji Maharaj International Airport, Mumbai - 400 099.

Copy to:

1. Ms. Shabana Pathan, Advocate, Ekta Niwas, Room No.9, Gala Nagar,
Achole Road, Nalasopara East - 401 209.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.

