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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office 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.371/172/B/2020-RA

17119

Date of issue: 28.09.23

ORDER NO. 693 /2023-CUS (WZ)/ASRA/MUMBAI DATED 27.9.2023  
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. Ramah Bashir Abdel Gadir Mohammed  
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-1289-18-19 dated 29.03.2019 passed by  
the Commissioner of Customs (Appeals), Mumbai Zone-III.

## ORDER

This Revision Application is filed by Mrs. Ramah Bashir Abdel Gadir Mohammed, (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. MUM-CUSTOM-AXP-APP-1289-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 17.01.2018, the officers of Customs at Chhatrapati Shivaji Maharaj International Airport, Mumbai, intercepted the Applicant, holding a Sudanese passport, who had earlier arrived from Sudan to Mumbai. The personal search of the Applicant led to the recovery of assorted crude gold jewellery weighing 152 grams and valued at Rs.4,06,866/-. The case was adjudicated after waiver of show cause notice and the Original Adjudicating Authority (OAA) i.e. Dy. Commissioner of Customs, C-batch, CSMI Airport, Mumbai, vide Order-in-Original (OIO) dated 17.05.2018 ordered absolute confiscation of the impugned assorted crude gold jewellery weighing 152 grams and valued at Rs.4,06,866/- under Section 111(d) of the Customs Act, 1962. A penalty of Rs. 20,000/- 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 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.
- ii. 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.
- iii. 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.

- iv. 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.
- v. 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 uptill 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 ambits of Customs Act, 1962. As per notification 50/2017 is concerned it states not more than

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*  
27/9/23

(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 693/2023-CUS (WZ)/ASRA/Mumbai dated 27.9.23

To,

1. Mrs. Ramah Bashir Abdel Gadir Mohammed,  
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.

