

REGISTERED  
SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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**F.No. 371/117/B/WZ/2021-RA** / 7147 : Date of Issue : 05.09.2023

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ORDER NO. 701 /2023-CUS (WZ) /ASRA/MUMBAI DATED 28.09.2023  
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.

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**Applicant** : Ms Malek Safavana Mohammad

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

**Subject** : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal No. MUM-  
CUSTM PAX-APP-1469/2020-21 dated 04.02.2021 issued  
on 17.02.2021 through [F.No. S/49-1202/2019] passed by  
the Commissioner of Customs (Appeals), Mumbai - III.

**ORDER**

This Revision application has been filed by Ms Malek Safavana Mohammad (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1469/2020-21 dated 04.02.2021 issued on 17.02.2021 through F.No. S/49-1202/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2 Brief facts of the case are that on 18.10.2019, the Officers of Customs Airport, CSMI Mumbai, had intercepted Ms Malek Safavana Mohammad, the Applicant having Indian Passport No. T 7810787, who had arrived from Jeddah by Flight No. 6E-1832, while she was attempting to clear herself through the green channel of Customs. The personal search of the applicant resulted in the recovery of 01 crude gold Kada weighing 61 grams valued at Rs. 2,10,815/- without filing Customs declaration. The same were seized by the officers in the reasonable belief that the same was smuggled into India in a clandestine manner 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 Deputy Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. Aircus/T2/49/1250/2019 'D' dated 18-10-2019 ordered for the confiscation of the 01 crude gold Kada weighing 61 grams valued at Rs. 2,10,815/- under Section 111 (d), (1) and (m) of the Customs Act, 1962. However, the applicant was given an option to redeem the goods on payment of a fine of Rs. 42,000/- under Section 125(l) of the Customs Act, 1962, if any. Further, a penalty of Rs. 21,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the 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-1469/2020-21 dated 04.02.2021 issued on 17.02.2021 through [F.No. S/49-1202/2019] allowed the appeal filed by the Department and ordered for the absolute confiscation of the impugned gold. The Penal action under Section 112(a) and (b) imposed by the OAA was upheld.

5. Aggrieved with the above order, the Applicants have made an exhaustive submission of case laws and have submitted copies including their submissions made before the lower authorities etc. They have filed these revision applications on the following main points:

- 5.01. That Gold is not prohibited item and the gold kada imported by them was not liable for absolute confiscation;
- 5.02. That the decisions of Tribunals, High Court etc relied upon by the petitioner were rejected by the Adjudicating authority without proper application of mind; that factual situation of the case of the applicant fits in with the decisions on which reliance was placed; that the order of the Appellate Authority is not sustainable on account of bias violations of principles of natural justice and fair play;
- 5.03. That the decisions relied upon by the Commissioner of Customs (Appeals) are not applicable in their case;
- 5.04. That Circular No. 495/5/92-Cus IV dated 10-05-93 cannot be relied upon for not allowing redemption and that Circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision;

- 5.05. That Discretionary power of Quasi-Judicial Authority cannot be lightly interfered;
- 5.06. That allegation made in the appeal that the gold kada was in crude form and not meant for personal use is not sustainable;
- 5.07. The applicant gave reference to number of judgements of various courts wherein goods imported/smuggled into India by way of concealment were allowed to be redeemed by the owner/importer of the goods;
- 5.08. That the Commissioner Appeal's Order is not a speaking order and hence not sustainable;
- 5.09. That the applicant claimed ownership of the gold kada and redemption of the gold as ordered by the OAA;
- 5.10. The applicant concluded by submitting that it was a single and solitary incident of an alleged act of smuggling and can never be justifiable ground for absolute confiscation of the goods; that the act of the applicant cannot be termed as crime or manifesting of an organized smuggling activity; that he committed the mistake only with an intention to save little money and for making a small profit and that he was not a habitual offender. The applicant submitted that she is from a respectable family and a law abiding citizen and has never come under any adverse remarks

Under the above circumstances of the case, the applicants prayed for redemption of the gold on payment of fine and penalty as ordered by the Original Authority and to drop further proceedings against her.



6. Personal hearing in the case was scheduled on 02.08.2023. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing and submitted that the applicant brought small quantity of jewellery for personal use. He requested to restore Order in Original as the same is reasonable and fair.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. The impugned gold had been detected on her person. The applicant clearly had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Had she not been intercepted, the applicant would have gotten away with the gold ornaments. Therefore, the confiscation of the gold was justified.

8.1. The relevant sections of the Customs Act are reproduced below:

**“Section 2(33)**

*prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with*

**Section 125**

*Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:*

*Provided further that, without prejudice to the provisions of the*



11. 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.”*

12. In the instant case, it is noted that quantity of gold is small and was not for commercial purpose, it was not a case that she was a habitual offender, she admitted to the possession of gold and the gold was not concealed, it was found on person. In these circumstances, absolute confiscation of gold leading to dispossession of applicants is harsh and excessive.

13. Government notes that the applicant, at the first instance, had crossed the green channel and had not declared the dutiable goods in their possession. However, the gold was not ingeniously concealed and the ownership of the gold is not claimed by anyone else. Government notes that the OAA granted redemption

to clear the gold on payment of a redemption fine of Rs. 42,000/- is proper and legal. Hence, Government is inclined to restore the same.

14. Government finds that the penalty of Rs. 21,000/- imposed on the applicant for the goods valued at Rs.2,10,815/- under Section 112(a) and (b) of the Customs Act, 1962, commensurate with the omissions and commissions committed.

15. For the aforesaid reasons, Government sets aside the absolute confiscation held in the OIA and restores in to-to, the OIO passed by the Adjudicating Authority.

16. Accordingly, the OIO passed by the OAA is restored and the Revision Application is allowed.

  
( SHRAWAN KUMAR )

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

ORDER No. 701 /2023-CUS (WZ) /ASRA/ DATED 28.09.2023

To,

1. Ms Malek Safavana Mohammad, Samir Apartment, Indira Nagar, Kadi, Mehsana, Gujarat-382715.
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avast Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Prakash K. Shingarani (Advocate), 12/334, Vivek, New MIG Colony, Bandra East, Mumbai-400051
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board

