

371/335/B/2019-RA  
371/105/B/2020-RA  
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. 371/335/B/2019-RA and 371/105/B/2020-RA :Date of Issue 21.02.2022  
1776

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ORDER NO. 76-77/2022-CUS (WZ)/ASRA/MUMBAI DATED 17.02.2022 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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**F.No. : 371/335/B/2019-RA**

Applicant : Ms. Adla Hassan Ibrahim Abdelnaeim  
Respondent : Commissioner of Customs, Chhatrapati Shivaji  
International Airport, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeals No.  
(i). MUM-CUSTM-PAX-APP-94/19-20 dated 21.05.2019  
[F.No. S/49-78/2018] passed by the Commissioner of  
Customs (Appeals), Mumbai - III.

**F.No. : 371/105/B/2020-RA**

Applicant : Ms. Adla Hassan Ibrahim Abdelnaeim  
Respondent : Commissioner of Customs, Chhatrapati Shivaji  
International Airport, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeals No.  
(ii).MUM-CUSTM-PAX-APP-770/2019-20 dated  
23.12.2019 [F.No. S49-178/2019] passed by the  
Commissioner of Customs (Appeals), Mumbai - III.

ORDER

These two revision applications have been filed by Ms. Adla Hassan Ibrahim Abdelnaeim, (herein referred to as Applicant) against the under mentioned two Orders-in-Appeals both passed by the Commissioner of Customs (Appeals), Mumbai – III.

- (i). MUM-CUSTM-PAX-APP-94/19-20 dated 21.05.2019 [F.No. S/49-78/ 2018] &  
(ii).MUM-CUSTM-PAX-APP-770/2019-20 dated 23.12.2019 [F.No. S49-178/2019].

**(i). Revision Application : F.No. : 371/335/B/2019-RA**

2. Briefly stated the facts of this case is that the Applicant, a Sudanese national, holding passport no. P01165418 arrived from Jeddah at Terminal – 2 of the CSI Airport, Mumbai on 02.03.2018 by Saudi Arabia Flight no. SV 772 / 02.03.2018 and was intercepted by Customs after she had opted for the green channel. Personal search of the applicant resulted in the recovery of 173gms of crushed gold valued at Rs. 4,88,287/-.

3. The Original Adjudicating Authority i.e. Asst. Commr. Of Customs, CSI Airport, Mumbai vide Order-In-Original No. Air/Cus/49/2140/2018 'C' dated 02.03.2018 ordered for absolute confiscation of the impugned gold under Section 111 (d) of the Customs Act, 1962 and a penalty of Rs. 1,00,000/- was imposed on the Applicant under Section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant preferred an appeal before the Commissioner (Appeals), Mumbai - III who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-94/19-20 dated 21.05.2019 [F.No. S/49-78/ 2018] declined to interfere in the order-in-original passed by the original adjudicating authority.

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

- 5.1. that the applicant being a Sudanese national was not aware of the law and also as no interpreter was available, she was unable to explain her situation to the Customs.

5.2 that the lower authorities had failed to appreciate that the crushed gold was old and was her personal jewellery which she had brought to repair and make a new set. Also, the gold was not of commercial quantity.

5.3 that the lower authorities had failed to appreciate that the applicant had possessed foreign currency and was willing to pay the Customs duty.

5.4. that the order of the lower authorities was bad in law and was based on presumptions, surmises and not on facts.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside orders of the lower authorities or allow to re-export the same on nominal redemption fine or pass any other order as deemed fit.

**(ii). Revision Application : F.No. : 371/105/B/2020-RA**

6. Briefly stated facts of this case is that the on 30.12.2017, the applicant, a Sudanese National, holding passport no. P01165418 who had arrived at the CSI Airport from Khartoum, Sudan via Jeddah onboard Saudia Flight No. SV-772/29.12.2017 was intercepted by Customs after she had cleared herself through the green channel. On examination of her handbag, a gold bar of 24 carats purity, weighing 501 grams and valued at Rs. 13,10,350/- was recovered. The applicant admitted that the gold bar did not belong to her and that she had not declared the same to the Customs with an intent to evade Customs duty.

7. The Original Adjudicating Authority i.e. Addl. Commr. Of Customs, CSI, Mumbai vide Order-in-Original No. ADC/AK/ADJN/401/2018-19 dated 03.01.2019 [S/14-5-102/2018-19/Adjn - SD/INT/AIU/395/2017 AP 'C'] ordered for absolute confiscation of the seized gold weighing 501 grams and valued at Rs. 13,10,350/- under Section 110 (d), (l) and (m) of the Customs Act, 1962 and imposed a penalty of Rs. 1,30,000/- on the applicant under Section 112(a) and (b) of the Customs Act, 1962.

8. Aggrieved by the said order, the applicant preferred an appeal before the Commissioner (Appeals), Mumbai - III who vide Order-In-Appeal No. (ii).MUM-CUSTM-PAX-APP-770/2019-20 dated 23.12.2019 [F.No. S49-178/2019]

declined to interfere in the Order-in-Original passed by the original adjudicating authority.

9. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds;

9.1. that the applicant being a Sudanese national was not aware of the law and also as no interpreter was available, she was unable to explain her situation to the Customs.

9.2. that she was a businesswoman and the gold bar belonged to her having purchased it for the purpose of making jewellery for herself.

9.3. that the lower authorities had failed to appreciate that the applicant had possessed foreign currency and was willing to pay the Customs duty.

9.4. that the order of the lower authorities was bad in law and was based on presumptions, surmises and not on facts.

Considering the circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside orders of the lower authorities or to allow the re-export the same on nominal redemption fine or pass any other order as deemed fit.

10. The Respondent vide their letter no. Aircus/Review-312/2020-21 dated 09.10.2020 pertaining to RA no. 371/105/B/2020-RA has rebutted all the claims of the applicant and has prayed that the OIA dated 23.12.2019 passed by the Commissioner of Customs (Appeals), Mumbai - III be upheld.

11. The applicant pertaining to RA no. 371/105/B/2020-RA has filed for condonation of delay of 84 days which it is stated was caused on account of lockdown imposed in the country.

12. Personal hearings in both the Revision Application i.e. RA no. 371/335/B/2019-RA and 371/105/B/2020-RA) through vide conferencing mode were scheduled online for 03.12.2021 / 09.12.2021. Ms. Kiran Kanal, Advocate appeared for physical hearing on 03.12.2021 for both the said revision applications and in respect of (i). RA no. 371/335/B/2019-RA, she submitted that the jewellery worn by the applicant was her personal jewellery and should have been released. She submitted that jewellery

should be released on reasonable RF and penalty or it may be allowed to be re-exported. (ii). RA no. 371/105/B/2020-RA, she has prayed that the quantity of gold was small and had not been concealed. The same should be released to applicant on reasonable RF and penalty.

13. The Government has noticed that the applicant in both the said revision applications viz RA nos. 371/335/B/2019-RA and 371/105/B/2020-RA is the same person as discernable from the Sudanese passport no. P01165418 of the applicant which is common to both the said RAs. Also, the jurisdiction is the same i.e. CSI Airport, Mumbai. In view of these facts, both the said RAs are being taken up simultaneously for a decision.

14. In RA no. 371/105/B/2020-RA, the Government notes that the applicant has filed for condonation of delay on account of lockdown due to COVID. Government notes that the corresponding OIA had been passed on 23.12.2019 and applicant has claimed that the same was received by her on 06.01.2020. The Government notes that the 3 months period i.e. 90 days for filing a revisionary application would have expired on 05.04.2020 and notes that by this date, the country had been on lockdown. The reason for delay cited by the applicant is plausible and the Government accepts the request for condonation of delay in filing the revision application in r/o RA No. 371/105/B/2020-RA

15. As stated above, on examination of both the RAs, Government notes that the applicant in both the cases is one and the same person as seen from the Sudanese passport No. P01165418 which is common in RA nos. 371/335/B/2019-RA and 371/105/B/2020-RA wherein the same passport no. P01165418 of same nationality i.e. Sudan had been revealed during the investigations. The Government notes that the applicant is a repeat / habitual offender and on both the occasions had attempted to bring in gold without declaring the same with an intention to evade Customs duty.

16. In RA no. 371/335/B/2019-RA, the Government has gone through the facts of the case. The applicant had brought crushed gold and had not declared the same to the Customs. The applicant had not declared the impugned gold and

had walked through the green channel with an express intention to evade payment of Customs duty. A declaration was required under section 77 of the Customs Act, 1962 which had not been done by the applicant and therefore, the confiscation of the impugned gold was justified.

17. In RA no. 371/105/B/2020-RA, Government has gone through the facts of the case. The applicant had brought the gold bar and had not declared the same to the Customs. She was bringing in the gold and had walked through the green channel without declaring the same to the Customs. Applicant was aware that a declaration of the dutiable items was necessary, but of her own volition, consciously, chose to walk through the green channel when she was intercepted. A declaration was required under section 77 of the Customs Act, 1962 which had not been done by the applicant and therefore, the confiscation of the impugned gold in this case was justified.

18. Government finds that there is no dispute that the seized impugned gold in both the cases had not been declared by the Applicant to the Customs at the point of departure. Further, in both the cases, the applicant had admitted the possession, carriage, concealment, non-declaration and recovery of the impugned gold from her baggage. Government notes that initially, the applicant had stated that the gold did not belong to her and later she had claimed that the gold belonged to her which clearly is an afterthought and may have been stated on the basis of advice received.

19. In both the said RAs, which pertain to the confiscation of impugned gold, the Government observes the following;

19(a). 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”.

19(b). 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.

19(c). 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.*

19(d). Government notes that the impugned gold had not been declared to the Customs and applicant admittedly, had harboured an intention to evade the Customs duty in both the cases. The impugned gold in case no. F.No. 371/335/B/2019-RA was small and not of commercial quantity and the impugned gold in case No. F.No. 371/105/B/2020-RA was quite substantial and in primary form, clearly meant for commercial use. From both these cases, it is clear that the applicant was a repeat offender and had consciously attempted to smuggle the gold 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, as stated above, the applicant is a habitual offender. The applicant being a habitual offender, both the cases are a fit for absolute confiscation as a deterrent to such offenders. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. If the gold is not detected by the Custom authorities, the passenger gets away with smuggling and if not, he has the option of redeeming the 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 absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity. Therefore, the order passed by the appellate authority is liable to be upheld.

20. For the aforesaid reasons, the Government notes that the absolute confiscation of the impugned gold ordered by the appellate authority in both



the cases is proper and judicious. Hence, the Government is not inclined to allow to redeem the impugned gold on redemption fine as the applicant is a habitual offender, a carrier indulging in smuggling of gold for monetary consideration. The Government for the aforesaid reasons finds that absolute confiscation of the impugned gold was justified.

21. The Government finds that the penalty of Rs. 1,00,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 in RA no. 371/335/B/2019 -RA and Rs. 1,30,000/- in RA no. 371/105/B/2020 -RA is commensurate with the omissions and commissions committed. Government is not inclined to interfere in the same.

22. Being a conscious repeat / habitual offender, the actions of the applicant in both the revision applications does not deserve any leniency. Government in the interest of justice, finds that upholding the aforesaid two orders of the appellate authority would act as a deterrent to such carriers / habitual offenders and in the given circumstances, the Government is inclined to reject the revision applications no. 371/335/B/2019-RA and 371/105/B/2020-RA filed by the applicant.

23. For the aforesaid reasons, both the Revision Applications i.e. F. Nos. 371/335/B/2019-RA & 371/105/B/2020-RA are dismissed.

  
( SHRAWAN KUMAR )

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

ORDER No. 76-77/2022-CUS (SZ) /ASRA/ DATED 17.02.2022

To,

1. Ms. Adla Hassan Ibrahim Abdelnacim, d/o. Hassan Ibrahim, Omdurman, Asahura, Street No. 22, Khartoum, Sudan.
2. Commissioner of Customs, Chhatrapati Shivaji International Airport, Sahar, Andheri, Mumbai - 400 099.

Copy to:

1. Mrs. Kiran Kanal, Advocate, Satyam 2/5, R.C Marg, Opp. Vijaya Bank, Chembur, Mumbai - 400 071.

2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.