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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai - 400 005

F.No. 371/198/B/2022-RA/2894

Date of issue: 06.11.23

ORDER NO. 811/2023-CUS (WZ)/ASRA/MUMBAI DATED 06.11.2023  
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 : Ms. Aida Gafar Abdelrahim Mohamed  
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-PAX-APP-1944/2021-22 dated 21.03.2022 [Date of  
issue: 23.03.2022] [F. No. S/49-1105/2021-22] passed by  
the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by Ms. Aida Gafar Abdelrahim Mohamed (herein referred to as the 'Applicant') against the Order-in-Appeal (OIA) No. Order-in-Appeal No. MUM-CUSTM-PAX-APP-1944/2021-22 dated 21.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 10.11.2018, the officers of AIU, Chhatrapati Shivaji Maharaj International Airport, Mumbai, intercepted the Applicant, who had arrived by Ethiopian Airlines Flight No. ET-640 from Addis Ababa, after she had cleared herself through the Customs Green Channel. A personal search of the Applicant resulted in recovery of assorted gold jewellery and 03 melted pieces totally weighing 459 grams and valued at Rs.11,82,054/-. After due investigation, a Show Cause cum Demand Notice dated 18.02.2019 was issued to the applicant
3. The case was adjudicated and the Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs, CSMI Airport, Mumbai vide Order-in-Original (OIO) No. ADC/SKR/ADJN/95/2019-20 dated 12.03.2020 ordered absolute confiscation of the seized assorted gold jewellery and 03 melted pieces totally weighing 459 grams and valued at Rs.11,82,054/- under Section 111 (d), (l) & (m) of the Customs Act, 1962. A penalty of Rs.1,20,000/- was imposed on the Applicant under Section 112(a)(i) of the Customs Act, 1962.
4. Aggrieved, the Applicant filed an appeal before the Appellate Authority (AA) who vide impugned OIA upheld the order of the OAA and rejected the appeal.
5. Hence, the Applicant has filed the instant revision application on the following grounds:
  - i. that the said Assorted Gold Jewellery and 3 Melted Metal Pieces of Gold were her personal Gold which she had purchased the same in SUDAN for her regular wear and was regularly wearing the same and the 3 Melted Metal Pieces of Gold were made from her broken Jewellery and

the invoice were also with her, which she shown the officer, but the said fact was not considered. The Appellant submits that, the said documents namely her Purchase Invoice, Bank Statement were produced by her on 26.11.2018 at the time of recording her second statement, the said fact is mentioned in Para-17.1 of the Show Cause Notice.

- ii. that both the authorities have failed to appreciate that the goods under seizure which was Gold Jewellery were worn by her and the Gold pieces which were in her purse and thus not being ingeniously concealed.
- iii. that both the authorities failed to appreciate that, the said Gold under the seizure were for her personal use and were not meant for sale in India. Furthermore, being a foreigner, she did not have the knowledge that even personal Gold worn or a few broken pieces of Gold brought need to be declared.
- iv. that under Section 125 of the Customs Act, whenever confiscation of any Goods is authorized by the Act, the officer adjudicating it may in the case of any goods, the importation or exportation whereof is in force prohibited under this Act or under any other law for the time being and shall be in case of any other goods, due to the owner of the goods or their such owner is not known, the person from whose possession or custody the goods have been seized can be released on payment of redemption fine.
- v. that the Applicant was also holding foreign currency to pay if she was asked to pay duty on it and was ready and willing to pay the same, which is also not against the policy of Act.
- vi. that Applicant was not acting as carrier for anybody and was a businesswoman holding Business Visa.
- vii. that the Appellate Authority as well as Adjudicating Authority have passed the orders which are contrary in nature with earlier decisions taken by them wherein such quantity of said Gold used to be released on payment of reshipment fine and personal penalty i.e. the said Gold were allowed to be re-exported.

6. Personal hearing in the case was held on 29.08.2023. Ms. Shivangi Kherajani, Advocate appeared for the personal hearing on behalf of the applicant and submitted that the applicant is a foreign national who had brought small quantity of gold. She further submitted that applicant was unaware about the policy She also submitted that gold is not a prohibited item. She requested to allow redemption of goods on nominal fine and penalty. No one appeared for the personal hearing on behalf of the Respondent.

7. Government has gone through the facts of the case and observes that the Applicant had brought assorted gold jewellery and 03 melted pieces but had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The Applicant had not disclosed that she was carrying dutiable goods. However, after clearing herself through the green channel of Customs and on being intercepted, assorted gold jewellery and 03 melted pieces totally weighing 459 grams and valued at Rs.11,82,054/- were recovered from the Applicant and revealed her intention of not to declare the said gold and thereby evade payment of Customs Duty. The confiscation of the gold was therefore justified and thus the Applicant had rendered herself liable for penal action.

8. Government observes that the applicant had travelled to India twice during November 2018 for a very short duration of stay and had admitted to having brought gold on her previous visit also, making her a repeat offender. The facts of the case indicate that though it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations, the fact that the applicant was involved in a similar previous offence indicates that the applicant knew about the procedure and processes of declaration to be made at the time of arrival and it is clear that the applicant did not have any intention of declaring the gold in her possession and was inclined to evade payment of Customs duty. Further, Government notes that the applicant has nowhere refuted this charge made against her.

9. The applicant has contended that *'documents namely her Purchase Invoice, Bank Statement were produced by her on 26.11.2018 at the time of recording her second statement, the said fact is mentioned in Para-17.1 of the Show Cause Notice.'* However, Government observes that in this regard, the OAA did not found any invoice and bank statement on record as claimed by the advocate of the applicant at the time of hearing [para 21.2 of the impugned OIO].

10. Under these circumstances, the seriousness of the misdemeanour/ past offences is required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty.

11. Section 125 of the Customs Act, 1962 leaves option to grant the benefit or not so far as goods whose import is prohibited but no such option is available in respect of goods which can be imported but because of the method of importation adopted become liable for confiscation. The Apex court in the case of Hargovind Dash Vs Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi-judicial authority must exercise discretionary powers in a judicious manner and not in arbitrary manner. As per the provisions of section 125 of the Customs Act, 1962, in case of goods which are prohibited the option of redemption is left to the discretionary power of the authority who is functioning as a quasi-judicial authority and in cases of other goods option to allow redemption is mandatory. In this case, considering that the applicant was involved in similar offence in the past, the Government finds that the lower authorities were right and justified in holding absolute confiscation of the impugned gold.

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 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.*


However, in this case as the applicant was involved in similar offence in the past, hence the lower authorities did not allow release of the gold on payment of redemption fine and the Government does not find any infirmity with the decision taken.

13. The absolute confiscation of the impugned goods leading to dispossession of the applicant of the gold in the instant case appears reasonable in view of the fact that the applicant had a previous similar offence and still had not declared the impugned gold upon arrival displays mens rea on the part of the applicant and as a deterrent, the lower authorities have ordered for absolute confiscation of the seized gold. The Government finds no infirmity in the order passed by the lower authorities.

14. On the issue of penalty under Section 112(a) & (b) of the Customs Act, the Government finds that the quantum of the penalty is commensurate with the omission and commissions committed by the applicant.

15. On the issue of re-export, the fact that absolute confiscation has been ordered, this plea of the applicant has become infructuous as goods absolutely confiscated cannot be allowed to be redeemed.

16. In view of the above findings, the Government finds no reason to annul or modify the impugned OIA and rejects the instant Revision Application.

  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER NO. 811/2023-CUS (WZ)/ASRA/MUMBAI DATED 06.11.23

To,

1. Ms. Aida Gafar Abdelrahim Mohamed,  
c/o. Adv. Mrs. Kiran Kanal,  
Satyam, 2/5, R.C.Marg,  
Opp. Vijaya Bank, Chembur,  
Mumbai - 400 071.
2. The Pr. Commissioner of Customs,  
Terminal-2, Level-II,  
Chhatrapati Shivaji Maharaj International Airport,  
Sahar, Mumbai - 400 099.

Copy to:

1. Adv. Mrs. Kiran Kanal,  
Satyam, 2/5, R.C.Marg,  
Opp. Vijaya Bank, Chembur,  
Mumbai - 400 071.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file

