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

F.No. 371/303/B/2021-RA/38 Date of Issue 04.01.2024

ORDER NO. 59 /2023-CUS (WZ)/ASRA/MUMBAI DATED 29.12.23 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. Pradnya Nilesh Kadale  
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-1463/2020-21 dated 04.02.2021 [Date of  
issue: 17.02.2021] [F. No. S/49-1081,1109/2019] passed by  
the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This revision application has been filed by Ms. Pradnya Nilesh Kadale (hereinafter referred to as the Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-APP-1463/2020-21 dated 04.02.2021 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that on 25.10.2019, the officers of Customs, Chhatrapati Shivaji Maharaj International Airport, Mumbai, intercepted the Applicant who had arrived by Flight No. EY-206 from Abu Dhabi and had opted for Customs Green Channel. On screening her baggage, 05 gold bangles weighing 249 grams and valued at Rs.8,62,935/- were recovered and seized.

3. The case was adjudicated after waiver of show cause notice and the Original Adjudicating Authority (OAA) i.e., Assistant Commissioner of Customs, 'C' Batch, CSMJ Airport, Mumbai, vide Order-in-Original (OIO) dated 25.10.2019 ordered confiscation of the seized gold bangles weighing 249 grams and valued at Rs.8,62,935/- under Section 113(d),(e) & (h) of the Customs Act, 1962 with an option to redeem it on payment of fine amounting to Rs.1,00,000/- under Section 125 of the Customs Act, 1962. Further a penalty of Rs. 75,000/- was imposed on the applicant under Section 112 of the Customs Act, 1962.

4. Aggrieved by the impugned OIO, the applicant filed an appeal for setting aside the penalty and redemption fine of the impugned gold jewellery, which was rejected by the Appellate Authority (AA), vide impugned OIA.

5. Hence, aggrieved with the aforesaid Order passed by the AA, the Applicant has preferred this revision application *inter alia* on the grounds:

- i. that the impugned OIA has been passed without giving due consideration to the documents on record and facts of the case.

- ii. that the Ld. Adjudicating authority ought to have appreciated that dutiable goods brought in by the Applicant are neither restricted nor prohibited.
- iii. that this is the first time that the Applicant has brought this type of goods and there is no previous case registered against the Applicant.
- iv. that u/s 125 the Redemption fine has to be imposed by Adjudication authority to the extent of difference between CIF and Market value to wipe out Margin of profit.
- v. that the Department had not given any local market value and in the absence of the same the Margin of profit cannot be ascertained & in this case there is no margin of profit left after payment of 36.05% of duty, therefore the heavy fine imposed is totally unjustified.
- vi. that the Adjudicating authority ought to have appreciated before imposing heavy fine that the department has not given any local market value and Sec. 115 of the customs act, 1962 clearly state that conveyance used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market-price of the goods which are sought to be smuggled or the smuggled goods, as the case may be

On these grounds, the applicant has prayed to set aside the impugned OIA and substantially reduce the redemption fine and penalty.

6. Personal hearing in the case was held on 08.09.2023. Mr. N. J. Heera, Advocate appeared for the personal hearing on behalf of the applicant and submitted that the applicant is a NRI staying in US, and came to India after nine months. He further submitted that applicant, being eligible passenger, concessional rate of duty should be charged. He also requested to reduce redemption 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 the submissions. Government notes that the Applicant had opted for the green channel and was intercepted at the exit gate while attempting to clear the 05 gold bangles without declaring the same to Customs. Applicant had admitted that she had made a mistake by not declaring the gold to the Customs. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore the confiscation of the gold was justified.

8. 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".

9. 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 'Applicant' thus, liable for penalty.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. The OAA had therefore using this discretion allowed redemption of seized gold on payment of fine amounting to Rs.1,00,000/-, which has been upheld by the AA. Government concurs with this decision of the lower authorities.

11. As regards penalty of Rs.75,000/- imposed under Section 112 (a) & (b) of the Customs Act, 1962, Government finds that considering the value of seized gold viz. Rs.8,62,935/-, it commensurate with the act of omissions and commissions committed by the applicant.

12. Government notes that the applicant has averred that she was an eligible passenger having returned back to India after a period of 9 months. Government observes that OAA has also recorded this fact in the impugned OIO that the applicant had arrived from New York after 9 months, thereby corroborating this claim of the applicant. As per the notification no. 50/2017 - Cus 30.06.2017, "*eligible passenger*" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad..... Government observes that as per this Notification, an "*eligible passenger*" is allowed to bring upto 1 kg of gold on payment of concessional duty made through convertible foreign currency. Thus, in the instant matter, the 249 grams of gold brought by the applicant was very well within the prescribed limit.

13. For the aforesaid reasons, Government modifies the impugned order passed by the Appellate authority. The applicant being an eligible passenger by virtue of period of her stay abroad, is allowed to clear the impugned 05 gold bangles at concessional rate of duty. The redemption fine of Rs.1,00,000/- under Section 125 and penalty of Rs.75,000/- under section 112 (a) & (b) of the Customs Act, 1962 is sustained.

14. The instant Revision Application is disposed of on the above terms.

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

ORDER NO. 959/2023-CUS (WZ)/ASRA/MUMBAI DATED 29.12.23

To,

1. Ms. Pradnya Nilesh Kadale,  
36/3, South Wing,  
Pratik Nagar, Yerwada,  
Pune - 411 006.
2. The Pr. Commissioner of Customs,  
Terminal-2, Level-II,  
Chhatrapati Shivaji Maharaj International Airport,  
Sahar, Mumbai - 400 099.

Copy to:

1. Adv. N.J.Heera,  
Nulwala Building, Ground Floor,  
41, Mint Road, Opp. G.P.O.,  
Fort, Mumbai - 400 001
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.