

REGISTERED  
SPEED POST



F.No. 375/17/B/19-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14. HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 22/01/19

Order No. 05/19-Cus dated 21-8-2019 of the Government of India passed by Smt. Mallika Arya, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed. under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/D-I/Airport/ 576/ 2018 dated 30.11.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport. New Delhi-110037

Applicant : Ms. Karima Kuzbakova, Uzbekistan's Passport No. AA4101534 dated 29.01.2014

Respondent : Commissioner of Customs, New Delhi

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**ORDER**

A Revision Application No.375/17/B/19-R.A dated 12.03.2019 has been filed by Ms. Karima Kuzbakova (Uzbekistan's Passport No. AA4101534 dated 29.01.2014), (hereinafter referred to as the applicant) against the Order-In-Appeal No. CC(A)Cus/D-I/Airport/ 576/ 2018 dated 30.11.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037. Commissioner Appeals has upheld the order of the Assistant Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 64/ 2018-19 dated 18.05.2018 to disallow re-export of the subject gold and ordered for absolute confiscation of the watch cover (crude) found to be made of gold having purity 24 karat weighing 125 grams valued at Rs. 3,58,594/- and imposition of penalty of Rs. 50,000/- on the applicant.

2. The brief facts of the case are that Ms. Karima Kuzbakova on arrival from Uzbekistan was intercepted at the green channel of IGI Airport on 08.05.2018. After personal and baggage examination "One hollow dial case and one back cover of wrist watch of yellow metal appearing to be gold weighing 124 grams" were detained. Ms. Karima Kuzbakova in her statement recorded under Section 108 of the Customs Act, 1962 admitted that the recovered goods were of gold and that the impugned goods belonged to her as she had purchased them in Uzbekistan. Customs absolutely confiscated the gold item.
3. The revision application has been filed on the grounds that she may be permitted to re-export the gold item and the same may be released unconditionally.
4. Personal hearing was fixed on 19.08.2019 in this case. Smt Sangita Bhayana, Advocate, appeared on behalf of the applicant. She reiterated the grounds mentioned in the Revision Application. However, no one appeared from the Respondent's side.
5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, there appears to be no doubt that the gold item was brought by the applicant with an intention to evade customs duty. Therefore, gold item is liable for confiscation undisputedly. However Government disagrees with the order of the Commissioner (Appeals) upholding the order of the Assistant Commissioner of Customs to the extent that the gold item has been confiscated absolutely as gold does not fall in the category of prohibited goods. The Apex court in the case of Sapna Sanjiv Kohli,

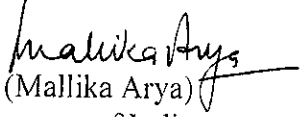
2010(253)ELT A52(SC), has upheld the judgment of Bombay High Court and CESTAT, Mumbai. In this case the Tribunal's order of release of gold jewellery on payment of redemption fine and penalty was upheld by the Bombay High Court and has been subsequently upheld by the Supreme Court.

In the instant case, the applicant had requested the Commissioner (Appeals) to allow the re-export of impugned the goods. Section 80 of the Customs Act, 1962 provides that the detained imported goods can be re-exported at the request of the passenger where he/ she is returning from India to a foreign country. Thus, apart from declaration of the imported goods at the time of arrival of passenger, return of the passenger to the foreign country after a short visit to India as a tourist or otherwise is a crucial condition for re-export of such goods. While it is true that the applicant did not declare the gold item in writing at the time of her arrival at Delhi Airport, and kept them in her purse, she has returned to Uzbekistan after a short visit to India.

Moreover, such non-declarations by foreigners have been condoned in past by this authority itself. Reliance is placed on order no. 56/ 18- Cus dated 02.04.2018, passed by the Revisionary Authority in a similar matter.

Considering these facts, the Government holds that the re-export of the confiscated cargo is allowed on payment of redemption fine of Rs. 1,50,000/- under Section 125 of the Customs Act. I uphold the penalty of Rs. 50,000/- as ordered by the Assistant Commissioner and upheld by the Commissioner (Appeals) on the applicant under Section 112 of Customs Act, 1962. The above fine and penalty should be paid within 30 days of the receipt of the order.

6. Accordingly, the revision application is allowed and the Order-in-Appeal is modified in terms of above discussion..

  
(Mallika Arya)

Additional Secretary to the Government of India

1. Ms. Karima Kuzbakova, Uzbekistan's Passport No. AA4101534 dated 29.01.2014

Through the Embassy of Uzbekistan in India,

EP-40, Dr. S. Radhakrishna Marg,

Chanakyapuri, New Delhi- 110021.

2. Ms. Karima Kuzbakova, Uzbekistan's Passport No. AA4101534 dated 29.01.2014

C/o Smt. Sangita Bhayana, Advocate.

Chamber No. 707, LCB-III, Delhi High Court, New Delhi-110001

Order No. 05 /19-Cus dated 21-2-2019

Copy to:

1. The Commissioner of Customs IGI Airport Terminal-3 New Delhi-110037
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi
3. Assistant Commissioner of Customs, IGI Airport, Terminal-3. New Delhi-110037
4. PA to AS(RA)
5. ~~Guard File.~~
6. Spare Copy

ATTESTED

*N.D.*  
*21/8/19*

(Nirmala Devi)  
S.O (Revision Application)