

REGISTERED

SPEED POST



F. No. 372/28/B/2017-R.A.  
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... 25/9/19.

ORDER NO. 14/19- Cus dated 25-9-2019 OF THE GOVERNMENT OF INDIA, PASSED BY  
SMT. MALLIKA ARYA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA,  
UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal No.  
KOL/CUS(A/P)/AA/604/2017 dated 23.05.2017, passed by the  
Commissioner (Appeals), Kolkata.

APPLICANT : Mr. Shyamlal Jangid, Jaipur.

RESPONDENT : Commissioner of Customs, Kolkata.

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## ORDER

A Revision Application No. F. No. 372/28/B/2017-R.A. dated 01.09.2017 has been filed by Mr. Shyamlal Jangid, Jaipur (hereinafter referred to as the applicant) against order-in-appeal No. KOL/CUS(A/P)/AA/604/2017 dated 23.05.2017, passed by the Commissioner (Appeals), Kolkata. The order-in-appeals has upheld the Deputy Commissioner's order-in-original no.22/2016-DC dated 28.09.2016 wherein silver items collectively weighing 10 kgs valued at Rs. 3,45,600/- have been confiscated and a penalty of Rs.34,560/- has been imposed.

2. The Revision application has been filed on the ground that the order of the Commissioner (Appeals) is erroneous as he has not allowed the release of the silver articles on payment of redemption fine as these were owned by the applicant and were not prohibited goods.
3. A personal hearing was held on 11.09.2019. Shri Nilotpal Chowdhury, Advocate and Shri Pradeep Sharma, Attorney appeared for the applicant and contended that the applicant had brought 10 Kgs of silver utensils valued at Rs, 3,45,600/- in his baggage from Myanmar. He was not aware of the Customs procedures and walked through the green channel. The applicant was intercepted while he was walking through the green channel at the exit gate by customs authorities. No one appeared for the respondent and no request for any other date of hearing has been received. Therefore the matter is being taken up on the basis of available evidence on record.
4. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the silver which was brought by

him from Myanmar. His request is limited to the point that he should be allowed to redeem the confiscated goods.

5. Government has examined the matter. Rule 3 of the Baggage Rules, 2016 stipulates as under:

*"3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar- An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bonafide baggage, that is to say-*

*(a) Used personal effect and travel souvenirs; and*

*(b) Articles other than those mentioned in Annexure-I, up to the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bonafide baggage, that is to say,*

*(a) Used personal effect and travel souvenirs; and*

*(b) Articles other than those mentioned in Annexure-I, up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.*

*Explanation – The free allowance of a passenger under this rule shall not be allowed to pool the free allowance of any other passenger.*

Annexure I of the said rules reads as follows:-

**ANNEXRE-I**

1. *Fire Arms.*
  2. *Cartridges of fire arms exceeding 50.*
  3. *Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.*
  4. *Alcoholic liquor or wines in excess of two litres.*
  5. ***Gold or silver in any form other than ornaments.***
  6. *Flat Panel (Liquid Crystal Display)/ Light-emitting Diode/Plasma) television.*
6. Para 2.26 of the Foreign Trade Policy [2015-2020] defines passenger baggage as under:

*2.26 "Passenger Baggage*

- (a) Bonafide house hold goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.*
- (b) Samples of such items that are otherwise freely importable under FTP may also be imported as part of personal baggage without an authorisation.*
- (c) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for exports, as part of their baggage without an authorisation."*

7. Silver in any other form other than ornaments does not come within the ambit of bonafide baggage as per the Baggage Rules, 2016. The applicant has brought 8 pieces of silver bowls of foreign origin. This is an admitted fact by the applicant in his voluntary statement tendered under Section 108 of Customs Act, 1962 that he owns a shop dealing in silver utensils and he purchased these utensils from Yangon, Myanmar. The Cash Memo dated 13.03.2016 produced by him shows the purchase of the silver bowls. Since the applicant is dealing in silver items, he has bought these for commercial use. As held by Commissioner (Appeals), the applicant is not eligible to import silver under Notification no. 12/2012- Customs dated 17.03.2012. From the evidence on record it is observed that the applicant crossed the green channel without declaring the impugned articles in his possession in the Customs declaration form or in any other form to the Customs officers and thereby violated Section 77 of the Customs Act, 1962. The applicant has attempted to smuggle the impugned silver articles with an intention to evade customs duty and in gross violation of provisions of Customs Act, 1962 and rules made thereunder read with Foreign Trade Policy (2015-2020).

8. Section 125 of Customs Act, 1962 stipulates as under:-

**"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:**

It is observed that the adjudicating authority has the discretion to release the seized goods on redemption under Section 125 of Customs Act, 1962 which has not been given in the present case keeping in view the nature of offence. The order-in-original has been upheld by Commissioner (Appeals) also.

9. Although silver does not fall under the category of prohibited goods, the import of silver is governed by certain terms and conditions as per Customs Act, 1962 and rules made thereunder. Any import in violation of the above renders the goods liable for confiscation. The passenger cannot use "baggage" as a route to smuggle silver items for commercial use.

10. Hence the Government does not find any deficiency in the order of the Commissioner (Appeal) and Revision Application filed by the applicant is rejected.

*Mallika Arya*  
(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

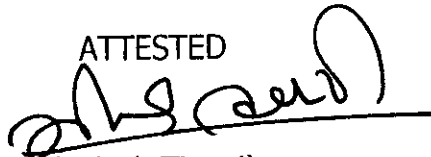
Mr. Shyamlal Jangid,  
Plot No. 20, Rameshwar Dham K,  
Benar Road, Jhotwara,  
Jaipur-302012.

ORDER NO. 14/19 - Cus dated 25-9-2019

Copy to:-

1. The Commissioner of Customs, N.S.C.B. International Airport, Kolkata-700052.
2. The Commissioner (Appeals), Customs, Kolkata
3. P.S. to A.S.
4. Guard File.
5. Spare Copy.

ATTESTED



(Ashish Tiwari)

ASSISTANT COMMISSIONER