

SPEED POST



F. No. 375/06/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.....9/10/19.....

<sup>17/19-Cus</sup>  
ORDER NO/Cus dated 07-10-2019 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. CC(A)/CUS/D-I/Air-31/2017 dated 17.02.2017, passed by the Commissioner (Appeals), Delhi.

APPLICANT : Mr. Abdul Kalam Ammangod Kunhamu, Kasaragod.

RESPONDENT : Commissioner of Customs. Delhi.

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**ORDER**

A Revision Application No. F. No. 372/06/B/2017-R.A. dated 05.04.2017 has been filed by Abdul Kalam Ammangod Kunhamu, Kasaragod (hereinafter referred to as the applicant) against order-in-appeal No. CC (A)/CUS/D-I/Air-31/2017 dated 17.02.2017, passed by the Commissioner (Appeals), Delhi. The order-in-appeals has upheld the Additional Commissioner's Order-in-Original No. Adj/191/2015 dated 14.01.2016 wherein gold bars collectively weighing 1000 grams valued at Rs. 24, 20,290/- have been absolutely confiscated as these were concealed in baggage trolley by way of pasting the white metal coated plate pasted with plastic sticker thereon, and nothing was produced regarding its lawful import/ possession. Further the applicant had mentioned NIL in the column no. 9 and marked 'no' in column no. 10 (ii) against any gold jewellery and gold bullion of the said slip. Free allowance was disallowed and penalty of Rs.4,80,000/-has been imposed under Section 112 and 114 AA of the Customs Act, 1962.

2. The Revision application has been filed on the ground that the order of the Commissioner (Appeals) is erroneous and prayed to allow the applicant to redeem the gold in terms of Section 125 of the Customs Act, 1962 on payment of redemption fine for home consumption or re-export out of India. He also requested for reduction of personal penalty.

3. Personal hearing in the matter was fixed on 30.11.2018 which was not availed by the applicant and the respondent. Instead, a letter dated 30.11.2018 was received from applicant with a request for adjournment and further requested for fixation of another date of personal hearing. As per their request they were provided the next date of hearing on 18.09.2019. The same was attended by Sh. S.S. Arora, Advocate, who reiterated the grounds of revision application and contented that the gold weighing 1 kg in small pieces (raw gold) were seized by Customs from the passenger which he had kept in his baggage trolley. He did not file any baggage declaration for the same. The applicant was going out from the green channel when he was intercepted by the customs officials at the airport. The applicant is the owner of the impugned goods as per the statement tendered under Section 108 of the Customs Act, 1962. Penalty should not be imposed under section 114A of the Customs Act, 1962. Certain case laws in support of his contention have been taken on record. No one appeared from the respondent's side, and no communication for adjournment has been received from them. The case is being decided on the basis of 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 gold bars which was brought by

him from Dubai via Bahrain. 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. It is observed that Gold 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 gold of foreign origin in raw form/ small pieces weighing 1000 grams. This is an admitted fact by the applicant in his voluntary statement tendered under Section 108 of Customs Act, 1962 wherein he has stated that he is the owner of the recovered gold and the same has been purchased by him on cash payment in Dubai. He has further stated that Gold was costlier in India and the margin would further increase if one avoids payment of customs duty. He was aware of the customs procedure but did not declare the gold at the Red channel.

8. The applicant has taken a plea that gold does not fall under the category of prohibited goods and, therefore, the impugned goods should have been released on redemption fine.

The import of gold is governed by certain terms and conditions as per the Customs Act, 1962 and rules made there under. Any import in violation of the above renders the goods liable for confiscation. Commissioner (Appeals) has correctly held that the applicant is not eligible to import gold 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. Therefore the applicant has attempted to smuggle the impugned gold bars with an intention to evade customs duty in gross violation of provisions of Customs Act, 1962 and rules made thereunder read with Foreign Trade Policy (2015-2020). Hence the impugned goods are liable for confiscation under section 111 of Customs Act, 1962.

9. 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 CBIC had issued instruction vide letter F. No. 495/ 5/ 92- Cus. VI dated 10.05.1993 wherein it has been instructed that *“in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudication authority is satisfied that there was no concealment of the gold in question”*.

Therefore the decision of the adjudicating authority in confiscating the impugned goods which were concealed in the baggage trolley in a unique manner without giving an option of redemption under Section 125 of Customs Act, 1962 is correct. This has been upheld by Commissioner (Appeals) also. The applicant cannot use “baggage” as a route to smuggle gold items in form of bars.

Hon’ble Madras High Court in the case of Commissioner of Customs (AIR) Chennai- I vs. Samynathan Murugesan, 2009 (247) E.L.T. 21 (Mad.), relying on the definition of ‘prohibited goods’ given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi [2003(155) ELT 423 (SC)] has held as under:-

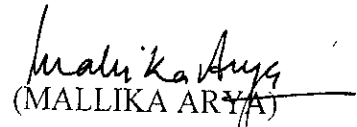
*“In view of meaning of the word “prohibition” as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold that the imported gold was ‘prohibited goods’ since the respondent is not an eligible passenger who did not satisfy the conditions”*.

Relying on the aforesaid decision of Madras High Court, Hon’ble Rajasthan High Court, Jaipur bench in it’s recent order dated 26.03.2019 in Civil writ petition no. 5517 of 2019 in the case of Commissioner of Customs (Preventive) Jodhpur vs. Salamul Hak has stayed G.O.I. order 190/2018-Cus dated 05.10.2018.

Although the penalty of Rs. 4,80,000/- has been imposed under section 112 (a) read with Section 114AA of the Customs Act, 1962, it is observed that penalty is not imposable under section 114 AA of the Customs Act, 1962. Since penalty can only be imposed under

section 112(a) of Customs Act, 1962, penalty of Rs.4,80,000/- under Section 112 (a) of Customs Act, 1962 is upheld.

10. Hence the Government modifies the order of the Commissioner (Appeals) to the above extent and Revision Application filed by the applicant is rejected.

  
(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Abdul Kalam Ammangod Kunhamu, R/o 8/289 258, ABK House, Povval Ammankod, PO Muliya, Kasargod-42
2. The Commissioner of Customs, IGI Airport, New Delhi -110037

17/10/19  
ORDER NO. Cus dated 07-10-2019

**Copy to:-**

1. The Commissioner (Appeals), New Customs House, New Delhi
2. P.S. to A.S.
- ~~3. Guard File.~~
4. Spare Copy.

ATTESTED

  
9/10/19

(NIRMALA DEVI)

S. O.