

SPEED POST



F.No. 372/18/B/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.. 10/10/19.....

Order No: 22/19-Cus dated 10-10-2019 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.KOL/ Cus (A/P)/ AA/ 122/ 2018 dated 09.01.2018 passed by the Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.

Applicant : Mr. Ashok Kumar Chirimar.

Respondent : The Principal Commissioner of Customs (Airport), NSCBI Airport, Kolkata.

ORDER

A Revision Application No. 372/18/B/2018-RA dated 13.02.2018 has been filed by Mr. Ashok Kumar Chirimar, (hereinafter referred to as the applicant) against the Order-In-Appeal No. KOL/ Cus (A/P)/ AA/ 122/ 2018 dated 09.01.2018 passed by the Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001. Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, NSCBI Airport, Kolkata bearing ASA no. 2887/ 2017 (AIU) dated 15.10.2017 ordering absolute confiscation of two gold biscuits weighing 158.32 grams valued at Rs. 4,53,426.50/- and imposition of penalty amounting to Rs. 50,000/- on the applicant.

2. The brief facts of the case are that the applicant arrived on 12.09.2016 at NSCBI Airport, Kolkata. The hand baggage of the applicant was x-rayed and two gold biscuits of 24K purity was absolutely confiscated under Section 111 (d) of the Customs Act, 1962 and penalty under Section 112 of the Customs Act, 1962 amounting to Rs. 50,000/- was imposed on him. The applicant asked for waiver of show cause notice. Annexure-F to the order contained purchase receipt which establishes the ownership of the impugned goods by the applicant. Being aggrieved the applicant appealed against the order-in-original before the Commissioner (Appeals) and prayed for re-export of the impugned goods to Dacca as he is a Non Resident Indian, that his request for re-export was neither recorded nor considered by the lower adjudicating authority. He also submitted that he was not given an opportunity to declare the impugned goods. He also asked for setting aside the penalty imposed on him.

3. The revision application has been filed on the grounds that the order-in-appeal be set aside, the re-export of the absolutely confiscated goods be allowed without fine and penalty which has already been paid vide challan dated 15.10.2017, should be waived and consequential relief be granted.

4. Personal hearing was fixed on 03.10.2019. The applicant submitted request for postponing the hearing by one day. Accordingly another date for hearing was given to the applicant on 04.10.2019. The applicant submitted his written submissions and reiterated the grounds of appeal in his hearing. The applicant during the course of personal hearing contended that he is an NRI living in Singapore as Permanent Resident since 2008. His hand

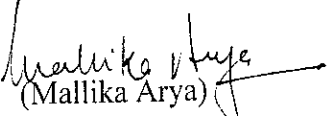
baggage was x rayed and the two gold biscuits were intercepted from the hand baggage before crossing the green channel. He had bought 158.32 grams in form of two gold biscuits from Singapore for his personal use. He had requested for re-export of the impugned goods valued at Rs. 4,53,426.50/- to the customs authorities as well as Commissioner (Appeals), which has not been allowed. Since nobody appeared on behalf of the respondent nor any request for adjournment has been received, the matter is being taken up for final disposal.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, it is observed that in the instant case, it is evident that applicant is the bonafide owner of impugned goods and the applicant had requested the Commissioner (Appeals) to allow the re-export of impugned 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. The applicant has contended that he was not given an opportunity to declare the gold items in writing at the time of his arrival at Kolkata Airport. No baggage declaration had been filed by him under section 77 of Customs Act, 1962 since the goods were intercepted by the customs after immigration before the applicant went to green channel. There is no finding to the contrary in the order of lower adjudicating authority or in the Commissioner (Appeals) order on the aforesaid contention of the applicant. Therefore the applicant's contention regarding non declaration under section 77 of Customs Act, 1962 is accepted. The applicant returned after a short visit to India.

Moreover, such non-declarations by foreigners and NRIs 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 gold biscuits can be allowed in the present case. Hence, re-export of the impugned gold items are allowed on payment of redemption fine of Rs. 2,00,000/- (Two lakhs only) under Section 125 of the Customs Act, 1962. The penalty of Rs. 50,000/- (Fifty thousand only) as ordered by the Assistant Commissioner and upheld by the Commissioner (Appeals) on the applicant under Section 112 of Customs Act, 1962 is upheld. 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.


(Mallika Arya)

Additional Secretary to the Government of India

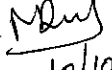
1. Mr. Ashok Kumar Chirimar, S/o Sh. Krishan Kumar Chirimar, 100, Beltolla Road, Kolkata 700026.
2. The Pr. Commissioner of Customs, NSCBI Airport, 15/1, Strand Road, Kolkata-700001.

Order No. 22 /19-Cus dated 10-10-2019

Copy to:

1. Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
2. PA to AS(RA)
3. ~~Guard File.~~
4. Spare Copy

ATTESTED


10/10/19

(Nirmala Devi)

S.O (Revision Application)