

SPEED POST



F. No. 375/51/B/2018-R.A.
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...*22/1/19*...

ORDER NO. *28/19*-Cus dated *21-10-2019* 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-69/2018 dated 07.03.2018, passed by the Commissioner (Appeals), Delhi.

APPLICANT : Mr. Shavi Kundra.

RESPONDENT : Commissioner of Customs (General & Airport), Delhi.

ORDER

A Revision Application No. F. No. 375/51/B/2018-R.A. dated 11.06.2018 has been filed by Mr. Shavi Kundra, (hereinafter referred to as the applicant) against order-in-appeal No. CC (A)/CUS/D-I/Air/69/2018 dated 07.03.2018, passed by the Commissioner (Appeals), Delhi. The Order-in-Appeal has upheld the Additional Commissioner's Order-in-Original No. 28/Adj/2016 dated 11.05.2016 wherein gold bars collectively weighing 1070 grams valued at Rs. 25,89,710/- (Twenty five lakhs eighty nine thousand seven hundred ten only) have been absolutely confiscated as these were concealed in pant's pocket and socks and nothing was produced regarding its lawful import/ possession and penalty of Rs. 5,70,000/- (Five lakhs seventy thousand only) 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. The gold is not a prohibited item and prayed for the release of gold and reduction of penalty.

3. Personal hearing in the matter was fixed on 26.09.2019. Sh. Amit Kumar Attri, Advocate, Sh. Shavi Kundra, applicant and Smt. Rohini Kundra, mother of applicant has attended the Personal hearing. They reiterated the grounds of revision already stated in their revision application. They also requested for the reduction of penalty as he is without any job and facing acute financial condition. No one from respondent's side appeared for Personal hearing. The case is being taken up for final disposal.

4. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of gold bar which was brought by him from Abu Dhabi. His request is limited to the point that he should be allowed to redeem the confiscated gold on payment of fine and penalty.

5. Government has examined the matter. Rule 10(1) of the Baggage Rules, 2006 stipulates as under:

10. (1) Application of these Rules to members of the crew-

- The provisions of these Rules shall apply in respect of members of the crew engaged in a foreign going vessel for importation of their baggage at the time of final pay off on termination of their engagement.

Provided that except as specified in this sub-rule, a crew member of a vessel shall be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of rupees one thousand five hundred.

Hence, it is evident, no baggage allowance except as mentioned overleaf is available to a crew member of a foreign going vessel under the Baggage Rules.

6. The applicant has stated, he had bought the impugned gold item from Abu Dhabi for his own personal use. The applicant has further taken a plea that gold does not fall under the category of 'prohibited goods' and, therefore, the impugned goods should be released on redemption fine.

7. It is observed that 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. From the evidence on record it is observed that the applicant did not declare the impugned article concealed on his person to the Customs officers at the airport. However, he handed over the gold bar to the customs officer on asking. Nevertheless the applicant has violated Section 77 of the Customs Act, 1962 and has attempted to smuggle the impugned gold bar 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 as held by the lower authorities.

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 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 article which was concealed in the applicant's pant pocket and socks without giving an option of redemption under Section 125 of Customs Act, 1962 is correct. This has been upheld by Commissioner (Appeals) also.

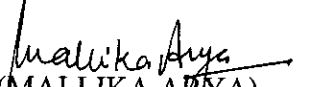
As far the applicant's contention regarding the release of the impugned item since 'gold' is not prohibited is concerned, reliance is placed on the judgement of Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I vs. Samynathan Murugesan, 2009 (247) E.L.T. 21 (Mad.) wherein relying 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)] the Honourable Court 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".

In a recent case, Hon'ble Rajasthan High Court, Jaipur bench has stayed the order of G.O.I. order 190/2018-Cus dated 05.10.2018 in a Civil writ petition no. 5517 of 2019, in the case of Commissioner of Customs (Preventive) Jaipur vs. Salamul Hakh on a similar issue. The order of absolute confiscation of impugned gold bar is upheld.

9. Penalty of Rs. 5,70,000/- (Five lakhs seventy thousand only) has been imposed under Section 112 and Section 114AA of the Customs Act, 1962 even when Section 114AA is not found attracted in this case. The penalty under Section 114AA can be imposed only when a person has resorted to some false declaration/statement/document in the transaction of any business which is not the case here. Therefore, penalty is imposable under Section 112 of the Customs Act, 1962. Since penalty of Rs. 5,70,000/- (Five lakhs seventy thousand only) has been imposed collectively under two sections, reduction in the said penalty amount is warranted. The applicant was a crew member of Jet airways at the material time. As stated by him during the course of personal hearing, he committed the offence for the first time and is presently under dire financial constraints. Keeping in view the financial condition of the applicant and the fact that he is not regular carrier of impugned goods and a first time offender, penalty under section 112 is reduced from Rs. 5,70,000/- (Five lakhs seventy thousand only) to Rs. 2,50,000/- (Two lakhs fifty thousand only).

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


(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

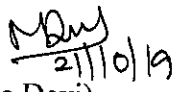
1. Sh. Shavi Kundra, R/o B-69, lane no. 4,
Guru Amardas Avenue, Airport Road ,
Amritsar, Punjab-143001

ORDER NO. 28/19-Cus dated 21-10-2019

Copy to:-

1. Commissioner of Customs, (General & Airport), New Custom House, near IGI Airport, New Delhi--110037
2. The Commissioner (Appeals), New Customs House, near IGI Airport, New Delhi—110037
3. Additional Commissioner of Customs, IGI Airport, New Delhi-110037
4. Guard file
5. PS to AS

ATTESTED


21/10/19
(Nirmala Devi)
Section Officer (RA Unit)