

SPEED POST



F.No. 375/19/B/2017-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.. 22.11.19

Order No. 29/19-Cus dated 21-10-2019 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.CC(A)Cus/D-I/Airport/ 124/ 2017 dated 14.03.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037

Applicant : Mr. Gagan Vaid.

Respondent : Commissioner of Customs, New Delhi

ORDER

A Revision Application No.375/ 19/B /2017-R.A dated 13.06.2017 has been filed by Mr. Gagan Vaid, (hereinafter referred to as the applicant) against the Order-In-Appeal No. CC (A) Cus /D-I /Airport / 124/ 2017 dated 14.03.2017 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. 76-Adj/ 2015/ 2018-19 dated 10.08.2015 to order for absolute confiscation of the gold articles weighing 466 grams valued at Rs. 11,87,480/-, denying the free allowance and imposition of penalty of Rs. 1,70,000/- on the applicant.

2. The brief facts of the case are that the applicant on arrival on 26.05.2014 at IGI Airport was intercepted near the exit gate after he had crossed the customs green channel. After personal examination one Gold Kada and one Gold Chain was recovered from his possession. The gold articles were 24 karat, weighing 466 grams and were appraised at Rs. 11,87,480/- by the Jewellery Appraiser at IGI airport.. The applicant in his statement recorded under Section 108 of the Customs Act, 1962 admitted that the recovered gold articles did not pertain to him and the same were handed over to him by Mr. Asif and he carried the same to India in lieu of some consideration.

3. The revision application has been filed on the grounds that as Gold is not a prohibited item it cannot be confiscated absolutely. It has also been claimed that the statement dated 26.05.2014 tendered by the applicant under Section 108 of the Customs Act, 1962 was taken under duress, and later on the applicant retracted from his statement. The applicant has submitted a copy of his reply dated 14.12.2014 to the show cause notice which contains his retraction. It is observed that the retraction was given after more than six months after and that too in response to the show cause notice.

4. Personal hearing was fixed on 11.12.2018 in this case. Neither the applicant nor the respondent appeared for hearing on this date. Another date of hearing was fixed on 18.09.2019. Ms. Archana Sharma, Advocate appeared on behalf of the applicant. She stated that the two gold ornaments were on the person of the passenger and gold is not a prohibited item, therefore, it should be released on payment of redemption fine and duty. She also requested for reduction in personal penalty and submitted that the Commissioner (Appeals) has not specified the subsection of Section 112 of the Customs Act, 1962 under which the penalty has been imposed. No one appeared from the Respondent's side nor any written submissions have been received from them. Another date of personal hearing was given to the respondent on 04.10.2019 for better appreciation of the facts of the case in view of the non-representation from the respondent's side. Sh. Neeraj Aneja, Jewellery Appraiser of the case was asked to appear for personal hearing on 04.10.2019. During personal hearing on 04.10.2019 he stated as follows:

“On points viz. 1. Whether the jewellery was old or new, 2. Whether it was in crude form and 3. Whether it was of 24k purity- 1. Such jewellery brought by passengers is new. If it is very much old and used, only then it is mentioned on the report as old. 2. All type of jewellery- crude-semi finished- almost finished come in 24 carat purity now a day. So I do not remember. 3. The jewellery was tested by touch stone method and it was found to be of 24 carat purity. There was no Caratometer at the Airport at that time.”

Original case file no. VIII (AP) 10/ Adj./ 617/ 2014 from the office of the Commissioner of Customs, IGI Airport, T-3, Delhi-110037 was called and inspected. Since no one appeared for the respondent on this date also nor any request for adjournment has been received, the case 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 evident that the applicant was wearing the impugned gold items on his person. He did not declare the same under Section 77 of Customs Act, 1962 to the customs authorities at the airport. It is observed that there is no charge of concealment against the applicant in the show cause notice.

6. The impugned gold items are in jewellery form viz. one Gold Kada and one Gold, having 466 gm weight in total. The applicant's contention that the impugned goods were a gift given to him from his grandfather when he was fourteen years of age and he was wearing them at the time of departure from India is not tenable. No export certificate in light of CBIC circular no 2/ 2002- Cus VI dated 08.01.2002 (issued vide F. No. 495/ 31/ 2001- Cus VI) has been produced by the applicant. The applicant should have availed the said facility of obtaining an Export Certificate if these were his ancestral property and ignorance of law is no excuse.

7. It is observed that the respondents have not been able to establish that impugned items did not belong to the applicant and he was a carrier. The Appraisal Report dated 26.05.2014 clearly mentions that gold articles, namely, "Gold Kada" and "Gold Chain" cumulatively are weighing 466 grams and are valued at Rs. 11,87,480/- .

8. Rule 3 of the Baggage Rules, 1998 (2016 as amended) 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.*
9. A plain reading of the Rule 3 (b) of the Baggage Rules (ibid) makes it clear that a passenger returning to India can bring gold in the form of ornaments as personal baggage.

10. The adjudicating authority has not allowed the impugned goods to be released on redemption fine under Section 125 of Customs Act, 1962, even though they were not concealed and were in form of jewellery.

Reliance is placed on Andhra Pradesh High Court order in the case of Shaikh Jamal Basha vs. G.O.I. [1997 (91) E.L.T. 277 (A.P.)] wherein order of confiscation was made under Section 111 of the Customs Act, 1962 on account of concealment. The Honourable A.P. High court has held as follows:

“Attempt to import gold unauthorisedly will thus come under the second part of Section 125 (1) of the Act where the adjudging officer is under mandatory duty to give option to the person found guilty to pay (fine) in lieu of confiscation.”

Reliance is also placed on Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I vs. Samynathan Murugesan [2009 (247) E.L.T. (Mad.)], wherein the Honourable High Court has considered that concealment as a relevant factor meriting absolute confiscation. The Honourable High Court has held as under:

“In the present case too, the concealment had weighed with the Commissioner to order absolute confiscation. He was right, the Tribunal erred.”

Since the gold kada and chain were not concealed, it is held that they can be released on payment of redemption fine under Section 125 of Customs Act, 1962.

11. Considering the facts of the case and various judicial pronouncements on the subject the Government allows the confiscated goods to be released on payment of Redemption fine of Rs. 5, 50,000/- (Rupees Five Lacs and Fifty Thousand) under Section 125 of the Customs Act, 1962 alongwith applicable duties. However the baggage allowance is denied to the applicant on the same.

12. The applicant has contended at the time of personal hearing and in revision application that the relevant sub-section of Section 112 has not been mentioned by the lower authorities while imposing penalty. Moreover penalty under Section 114AA is not imposable. It is observed that Penalty of Rs. 1.70 lakhs has been imposed under Section 112 and Section 114AA of the Customs Act, 1962. 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. Penalty under Section 114 AA of the Customs Act, 1962 is not attracted in this case.

Section 112 (a) of the Customs Act, 1962 reads as under:

"112. Penalty for improper importation of goods, etc. —Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act."

13. Government holds that penalty can be imposed only under Section 112 (a) of the Customs Act, 1962 on the applicant. Since penalty of Rs. 1.70 lakhs (Rupees One Lac and Seventy Thousand) has been imposed collectively under aforesaid provisions of Customs Act, 1962, reduction in the said penalty amount is warranted since penalty can not be imposed under Section 114AA of Customs Act, 1962. Government reduces penalty from Rupees 1,70,000/- (Rupees One Lac and Seventy Thousand) to Rs. 1,00,000/- (Rupees One Lac) on the applicant under Section 112(a) of the Customs Act, 1962. The Customs duties, redemption fine and penalty should be paid within 30 days of the receipt of the order.

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

Mallika Arya
(Mallika Arya)

Additional Secretary to the Government of India

1. Mr. Gagan Vaid, R/o VPO- Ahiyapur The-Dasuya PS- Tanda, District- Hoshiarpur, Punjab.

2. The Commissioner of Customs IGI Airport Terminal-3 New Delhi-110037

Order No. 29 /19-Cus dated 21-10-2019

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, New Delhi
2. Assistant Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037
3. PA to AS(RA)

4. Guard File.

5. Spare Copy

ATTESTED

Nirmala Devi
21/10/19
(Nirmala Devi)

S.O (Revision Application)