

SPEED POST



F. No. 375/35/B/2017-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... 28/11/19

ORDER NO 3/19-Cus dated 25-10-2019 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-294/2017 dated 14.08.2017, passed by the Commissioner (Appeals), Delhi.

APPLICANT : Mr. Khalil Ahmed

RESPONDENT : Commissioner of Customs, IGI Airport, T-3, Delhi.

ORDER

A Revision Application No. F. No. 375/35/B/2017-R.A. dated 21.11.2017 has been filed by Mr. Khalil Ahmed (hereinafter referred to as the applicant) against order-in-appeal No. CC (A)/CUS/D-I/Air-294/2017 dated 14.08.2017, passed by the Commissioner (Appeals), Delhi. The order-in-appeals has upheld the Additional Commissioner's Order-in-Original No. 81/2016-17 dated 13.06.2016 wherein gold bars/ cut-pieces weighing 228.20 grams concealed in ladies hair clips valued at Rs. 6,19,152/-, 13 unbranded perfumes and 40 kgs of fabric, have been absolutely confiscated as nothing was produced regarding its lawful import/ possession. Besides, a penalty of Rs. 1,25,000/- was also imposed on the applicant.

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 release the gold bars on payment of duty or to allow its re-export and release other items as baggage. He also requested for setting aside of penalty.

3. Personal hearing in the matter was fixed on 03.10.2019. Sh. Parveen Yadav, Advocate, attended the hearing on behalf of the applicant. He reiterated the ground of revision already stated in their revision application. No one appeared from the respondent's side, and no communication for adjournment has been received from them. The case is being taken up for final disposal.

4. In the revision application the applicant has requested for release or re-export of gold and release of 13 pieces of perfumes and 40 kgs of stitched and non-stitched fabric.

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 bars of foreign origin in cut pieces weighing 228.20 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.

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 payment of customs duty or may be allowed to be re-exported.

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 knowingly did not declare the impugned articles in his possession at the Red channel and thereby violated Section 77 of the Customs Act, 1962. Therefore the applicant has attempted to smuggle the impugned gold items along with other items 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”.

10. 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:

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

11. It is observed that the decision of the adjudicating authority in confiscating the impugned gold cut pieces weighing 228.20 grams, which were concealed 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 concealed in hair clips.

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) Jaipur vs. Salamul Hak has stayed G.O.I. order 190/2018-Cus dated 05.10.2018.

Further the hair clips were used for concealment of gold items. Section 119 of the Customs Act, 1962 provides that any goods used for concealing smuggled goods shall also be liable to confiscation. **Section 119 of the Customs Act, 1962 reads as under:**

“Confiscation of goods used for concealing smuggled goods. —Any goods used for concealing smuggled goods shall also be liable to confiscation. Explanation.— In this section, “goods” does not include a conveyance used as a means of transport.”

Hence the order of lower authorities in confiscation of hair clips used for concealment of impugned gold items is upheld.

12. The adjudicating authority has not allowed release of 13 pieces of perfumes and 40 kgs of fabric on redemption fine under Section 125 of Customs Act, 1962, although these were not concealed and do not fall under the category of ‘prohibited’ goods.

It is observed that these items valued at Rs. 69,930/- can be released on payment of Redemption fine under Section 125 of Customs Act, 1962. Government allows the release of fabrics and perfumes on a redemption fine of Rs. 25,000/- (Rupees Twenty Five Thousand) alongwith duty under Section 125 of the Customs Act, 1962.

13. Considering the facts of the case and various judicial pronouncements on the subject the Government upholds absolute confiscation of 15 cut pieces of gold and the hair clips. The penalty of Rs. 1,25,000/- imposed under Section 112 (a) of the Customs Act, 1962 is upheld.

However Government allows the confiscated goods, viz. 13 pieces of perfumes of different brands and 40 kgs of Stiche and non-stitched fabric to be released on payment of Redemption fine of Rs. 25,000/- (Rupees Twenty Five Thousand) under Section 125 of the Customs Act, 1962 alongwith applicable duties. The above redemption fine alongwith duty should be paid within 30 days of the receipt of the order.

14. Accordingly, the revision application is partially allowed and the Order-in-Appeal is modified.

Mallika Arya
(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Mr. Khalil Ahmed, R/o, H.No. 10188, Gali Durga Mandir, Nawab Ganj, Delhi 110006.
2. The Commissioner of Customs, IGI Airport, T-3, New Delhi -110037

ORDER NO. 31/19- Cus dated 25-10-2019

Copy to:-

1. The Commissioner (Appeals), New Customs House, Near IGI Airport, New Delhi-110037
2. P.S. to A.S.
3. Guard File.
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ATTESTED
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25/10/19
(NIRMALA DEVI)

S. O.