

REGISTERED
SPEED POST



F.No. 375/39/B/18-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... 05/02/21

Order No. 31/21-Cus dated 03-02-2021 of the Government of India passed by Shri Sandeep Prakash, 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-1/Air/138/2018 dated 13.04.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Mohd Kallu

Respondent : Commissioner of Customs (Airport & General), New Delhi

ORDER

A Revision Application No.375/39/B/18-RA dated 24.04.2018 has been filed by Shri Mohd Kallu (hereinafter referred to as the applicant) against the Order No.CC(A)Cus/D-1/Air/138/2018 dated 13.04.2018, passed by Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 300/Adjn./2017 dated 08.12.2017, wherein three gold bars, which were recovered from the applicant, weighing 349.92 grams, valued at Rs. 8,62,836/-, have been confiscated. The adjudicating authority has also imposed a penalty of Rs. 1,70,000/- under Sections 112 and 114A of the Customs Act, 1962 on the applicant. Commissioner (Appeals), vide the above mentioned Order-in-Appeal dated 13.04.2018, allowed the redemption of gold bar on payment of redemption fine of Rs. 1,70,000/- and baggage rate of duty, however, the penalty imposed by adjudicating authority was upheld.

2. The brief facts of the case are that the applicant arrived on 07.07.2015 at IGI Airport, New Delhi from Riyadh and was intercepted near the exit gate of the arrival hall after he had crossed the Customs Green Channel. After search of his person and of his baggage three gold bars were recovered from his possession. The gold bars, weighing 349.92 grams, were appraised at Rs.8,62,836/- by the Jewellery Appraiser at IGI airport. The applicant in his statement, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of gold bar and stated that he was a carrier who had

carried the contraband for someone else. The revision application is filed mainly on the ground that the applicant is eligible for concessional rate of duty, instead of baggage rate of duty, as prescribed under Notification No. 12/2012-Customs dated 17.03.2012 being a eligible passenger

3. Personal hearing was held on 02.02.2021. Sh. S.S. Arora, Advocate appeared on behalf of the applicant and reiterated the grounds of revision already stated in the revision application. Sh. Arora also stated that the applicant was an eligible passenger and the proviso to condition 35 of the notification dated 17.03.2012, requiring declaration to be filed in the prescribed form, is applicable only if the passenger proposes to take delivery from the custom bonded warehouse of the State Bank of India or Minerals & Metals Trading Corporation. In this case, therefore there was no requirement of any declaration to be filed. Sh. R.P. Bairwah, Superintendent, appeared on behalf of the respondent. He reiterated the findings of the authorities below and requested that revision application be rejected since gold was neither declared nor was the concessional rate of duty claimed.

4. From the revision application, it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding release of the goods on payment of redemption fine which were brought by him illegally from Riyadh in violation of Customs Act and the Foreign Trade (Development and Regulation) Act 1992 and the penalty imposed on him. His request is limited to a point that he is eligible to bring gold at concessional rate of duty in terms of Notification no. 12/ 2012- customs dated 17.03.2012, instead of baggage rate of duty.

5. The Government has carefully examined the case records and the submissions made. A plain reading of Notification no. 12/ 2012- customs dated 17.03.2012 makes it clear that a passenger returning to India after six months can bring one kg of gold on payment of concessional rate of customs duty subject to condition 35 of the said notification, which, inter-alia, requires the eligible passenger to file a declaration before the proper officer of customs at the time of arrival in India. In the instant case, such a declaration was not made in respect of the gold bar seized, with a claim for exemption, and instead a conscious attempt has been made to smuggle by not declaring the same. Thus, the applicant does not fulfil the condition no. 35 of Notification no. 12/ 2012- Customs dated 17.03.2012. The contention of the applicant that the proviso to condition no. 35 requiring declaration to be made is applicable only to the cases where the delivery of gold has to be taken from SBI or MMTC is not tenable as in the condition no. 35 it is nowhere specified that the proviso is applicable only to clause (c) thereof and not to other clauses. Further, the exemption under notification dated 17.03.2012 is conditional. By its very nature a conditional notification has to be claimed. Hon'ble Bombay High Court has, in the case of Kalpavruksha Charitable Trust vs. Union of India {2017 (350) ELT 371 (Bom)}, held that "A conditional exemption is available and can be availed of on tendering proof of satisfaction of the terms and conditions thereof, else the exemption cannot be availed of." In the present case, leave alone claiming the exemption and tendering the proof of compliance with the terms and conditions of the notification to the satisfaction of the customs office concerned, the applicant did not even declare the goods and attempted to clear them by concealment.

Therefore, in the facts and circumstances of the case, Government holds that the applicant is not eligible for the concessional rate of duty in terms of Notification no. 12/2012- customs dated 17.03.2012 and the impugned OIA does not warrant any interference, on this count.

6. The revision application is rejected.



(Sandeep Prakash)
Additional Secretary to the Government of India

Mr. Mohammad Kallu,
Village Baghonwali, Post Khas,
PS New Mandi Muzaffar Nagar,
Uttar Pradsh.

Order No. 3 / 21-Cus dated 03-02-2021

Copy to:

1. Commissioner of Customs (Airport & General), IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Assistant Commissioner of Customs, IGI Airport, New Custom House, New Delhi
4. Shri S.S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi -110029
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED



(Nirmala Devi)
Section Officer (Revision Application)