

SPEED POST



F. No. 380/35/B/2017-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue... 6/11/19

ORDER NO. 38/19 - Cus dated 05-11-2019 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-191/2017 dated 18.05.2017, passed by the  
Commissioner (Appeals), Delhi.

APPLICANT : Commissioner of Customs, (General & Airport)

RESPONDENT : Mr. Sandeep Kaushik

ORDER

A Revision Application No. F. No. 380/35/B/2017-R.A. dated 16.08.2017 has been filed by Commissioner of Customs, IGI Airport, Terminal 3, New Delhi (hereinafter referred to as the applicant) against order-in-appeal No. CC (A)/CUS/D-I/Air-191/2017 dated 18.05.2017, passed by the Commissioner of Customs (Appeals), Delhi. Commissioner (Appeals) vide the above mentioned Order-in-Appeal has set aside the Additional Commissioner's Order-in-Original No. 18/2015 dated 30.01.2015 whereby gold chain and gold wrist watch collectively weighing 573.7 grams valued at Rs. 15,20,417/- were absolutely confiscated and a penalty of Rs. 6,00,000 was imposed on the respondent. The goods were ordered to be released on payment of redemption fine of Rs. 3,60,000/- and penalty has been reduced from Rs. 6,00,000/- to Rs. 2,50,000/-.

2. The Revision application has been filed on the ground that the impugned gold articles were non-bonafide baggage and commercial in nature. The respondent had tried to smuggle the gold articles and has not made a truthful declaration at the red channel. Therefore, the Commissioner (Appeals) order is erroneous to the extent that the gold articles cannot be allowed to be cleared on payment of Redemption fine and penalty. Further, the reduction of penalty is not proper as the respondent had adopted a method of ingenious concealment by concealing the gold chain by polishing it with silver to avoid detection by customs. Wrist watch body was made of gold to avoid detection by Customs.

3. Personal hearing in the matter was fixed on 13.12.2018 and 18.09.2019 which was not availed either by the applicant or by respondent. Another date of hearing was fixed on 03.10.2019. Personal Hearing was attended by Sh. Amit Kumar Attri, Advocate on behalf of the respondent. He reiterated the reply to revision application. He further stated that they had produced the purchase invoice of the gold articles before the customs authorities and could submit the same before revisionary authority. The respondent was allowed time to submit the documents which he has not submitted. No one appeared from the applicant's side and no communication for adjournment has been

received from them. Therefore, the case is being taken up for decision on the basis of evidence on record.

4. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application it is evident that the respondent was wearing the impugned items made of gold on his person. The goldchain was painted in silver colour and the watch in an unfinished condition and dark colour. He did not declare the same under Section 77 of Customs Act, 1962 to the customs authorities at the airport.

5. Rule 3 of the Baggage Rules, 1998 (2016 as amended) stipulates as under:

*"3. Passenger arriving from countries other the 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.*

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 only in the form of ornaments as personal baggage.

It is observed that the adjudicating authority has given the following finding as per para 1.6 of his adjudication order-

*"During the personal search of the Noticee one silver colour chain was worn by the Noticee which was quite heavy. Sh. Sandeep Kaushik admitted that this silver colour chain was actually made of Gold. After further frisking of the Noticee it was found that he was wearing a wrist-watch. It was observed that the wrist watch was unusually heavy and except its dial which was white in colour, its backside and the rest of its body was very dark and was not smoothly finished. Sh. Sandeep Kaushik admitted that except the white dial, the rest of this watch was actually Gold. The white dial had the brand ASSET SHOPPE WRITTEN ON IT IN RED COLOUR AND ALSO HAD A MOVEMENT FIXED INTO IT. Its strap was mix of black and blue colour."*

Therefore it is evident that the respondent had concealed the impugned gold items in an ingenious manner by polishing the gold chain with silver paint and concealing the rest of the gold in the watch body worn by him on his person.

It has been further observed that the colour and method of concealment necessitated the examination of the impugned goods by the jewellery appraiser. The Order-in-Original while referring to report of Jewellery appraiser states that

*"Jewellery Appraiser was called upon to verify the weight and purity and to appraise the value of the said recovered chain and the watch body which the Noticee admitted to be made of gold. He gave his report dated 18.02.2014 and as per the report, the total weight of gold chain and watch body is 573.70 grams and value was Rs. 15,20,417."*

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 contention of the applicant that the goods were concealed in an ingenious manner is tenable and the order of absolute confiscation of the impugned gold articles by the adjudicating authority is correct.

Reliance is placed on judgment of Andhra Pradesh High Court order in the case of Shaikh Jamal Basha vs. G.O.I. [1997 (91) E.L.T. 277 (A.P.)] which 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. Section 125 of the Act leaves option to the officer to grant the benefit or not so far as goods whose import is prohibited but no such option is available in respect of goods which can be imported, but because of the method of importation adopted, become liable for confiscation."*

Section 119 of the Customs Act, 1962 provides that any goods used for concealing smuggled goods shall also be liable to confiscation.

Hence the wrist watch dial (brand ASSET SHOPPE written on it) used for concealment of gold items has also been correctly confiscated by adjudicating authority under Section 119 read with Section 118 of the Customs Act, 1962.

The original adjudicating authority has denied free baggage allowance of Rs. 35,000/- to the respondent and imposed penalty of Rs. 6 lacs under Section 112 read with Section 114AA of the Customs Act, 1962 on him. Government observes that order of the adjudicating authority on absolute confiscation of impugned gold items alongwith the article used for concealment, penalty of Rs. 6 lacs (Rupees Six Lacs) and denial of baggage allowance is legally sustainable.

6. In view of the above discussions, the Government sets aside the order of the Commissioner (Appeals) and upholds the Order-in-Original. The Revision Application is allowed.

*Malika Arya*  
(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Sandeep Kaushik, Ho.No. 659, Fatepur, Kaithal, Haryana, Pin code -13642.
2. The Commissioner of Customs, IGI Airport, T-3, New Delhi -110037

ORDER NO. 38/19-Cus dated 5-11-2019

Copy to:-

1. The Commissioner (Appeals), New Customs House, , Near IGI Airport, New Delhi-110037
2. P.S. to A.S.
- ✓ 3. Guard File.
4. Spare Copy.

ATTESTED

*M Devi*  
5-11-19  
(NIRMALA DEVI)

Section Officer (RA)