

REGISTERED

SPEED POST



F. No. 372/04/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.. 6/11/19

ORDER NO. 39/19- Cus dated 06-11-2019 OF THE GOVERNMENT OF INDIA, PASSED BY MS. 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. KOL/CUS(A/P)AA/2041/2017 dated 05.12.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : **Shri Shashi Kant Pathak, Kolkata.**

RESPONDENT : Commissioner of Customs, Kolkata.

ORDER

A Revision Application No. 372/04/B/2018-R.A. dated 02.01.2018 has been filed by Mr. Shashi Kant Pathak, Kolkata (hereinafter referred to as the applicant) against the Order-in-Appeal No. KOL/CUS (A/P)AA/2041/2017 dated 05.12.2017, passed by the Commissioner of Customs (Appeals), Kolkata, wherein the applicant's appeal has been rejected.

2. The applicant was intercepted at the Green Channel by the Kolkata Customs officers and a gold chain of 45.6 grams was recovered from him valued at Rs. 1,32,696/- which was absolutely confiscated by the adjudicating authority. A penalty of Rs. 40,000/- was also imposed on the applicant. The order of the original adjudicating authority has been upheld by the Commissioner (Appeals) and the revision application has been filed by the applicant to seek revision of this order-in-appeal on the grounds that the gold chain in question was worn by him and is old and used; gold is not prohibited goods and, therefore, the Commissioner (Appeals) has passed wrong order by upholding the Order-in-Original confiscating gold absolutely.

3. A personal hearing was granted on 23.10.2019 but no one appeared from applicant's as well as respondent's side. However, a letter dated 14.10.2019 has been received from the applicant who has requested that his case may be decided on the basis of available evidence. He has also requested that he is not in a position to pay duty and fine. Hence the gold chain may be allowed to be re-exported. Penalty imposed

on him is also high and merits waiver or reduction. No one appeared for the respondent and no request has been received for adjournment. Hence, the matter is being taken up for disposal on the basis of facts on record.

4. Section 80 of the Customs Act, 1962 stipulates as under:-

SECTION 80. Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India [and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name].

It is observed that this Section is applicable only to cases of true declaration having been made to customs which the applicant failed to do at the time of his arrival. The applicant neither made any declaration of the impugned gold chain under Section 77 of the Customs Act, 1962 to the customs officers on his arrival from Bangkok nor did he request for its detention for taking it back while moving out of India. Also, a plain reading of the Section 80(supra) indicates that the facility of re-export is only available to passengers who are visiting India and are not resident Indians. The law clearly states that the person seeking re-export has to either take the goods back himself or the goods can be carried out of India by his authorized passenger representative if he leaves India without them or as cargo consigned in his name. Therefore it is evident that Section 80

will apply to a tourist of foreign origin or a non-resident Indian who visits the country for a short period and goes back which is not the case here apart from the fact that the gold chain has not been declared under Section 77 of the Customs Act, 1962.

In the case of Vikas Rathi [2018(364) ELT1187 (GOI)], the government has denied the re-export of gold on the ground that the applicant was a resident Indian.

Hon'ble Supreme Court in the case of CC Kolkata Vs. M/s Grand Prime Ltd. [2003(155) ELT417 (SC)] has further held as under:-

"that import of the consignments in question being contrary to law, the goods were liable to confiscation under Section 111 of the Customs Act. The order of confiscation of goods passed by the Commissioner of Customs is held to be in accordance with law. We are unable to agree with the view taken by the Tribunal in permitting re-export of the goods."

Relying on this judgement, the Government of India has denied the re-export of goods in the cases of Hemal K Shah [2012(275) ELT266 (GOI)]. Therefore the re-export of the impugned goods cannot be permitted.

5. There is no dispute regarding the fact that the applicant has violated Section 77 of Customs Act, 1962 by not declaring the gold chain to the Custom authorities on his arrival at Airport from Bangkok.

6. Rule 3 of the Baggage Rules, 2016 stipulates as follows :-

"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.
7. 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."

8. 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.

9. The adjudicating authority has not allowed the impugned goods to be released on redemption fine under Section 125 of Customs Act, 1962. The applicant has claimed that he was wearing the said gold chain on his person, a fact which has not been negated by the respondent.

10. Andhra Pradesh High Court order in the case of Shaikh Jamal Basha vs. G.O.I. [1997 (91) E.L.T. 277 (A.P.)] 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 Hon'ble High Court has considered that concealment as a relevant factor meriting absolute confiscation. The Hon'ble 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 chain was 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 valued at Rs. 1,32,696/- to be released on payment of redemption fine of Rs. 40,000/- (Rupees Forty Thousand only) under Section 125 of the Customs Act, 1962 along with applicable duties. Penalty imposed under Section 112 (a) of Customs Act, 1962 is also reduced from Rs. 40,000/- to Rs. 20,000/-. Request for re-export of the impugned item and free baggage allowance is denied to the applicant. The payment of the duty, fine and penalty should be made within 30 days from the date of the receipt of this order.

12. The revision application is allowed in the above terms.

Mallika Arya
(Mallika Arya)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Mr. Shashi Kant Pathak,
C/o Shri Punam Chand Jain,
64, Burtolla Street, Kolkata-700007.

ORDER NO. 39/19- Cus dated 4-1-2019

Copy to:-

1. Commissioner of Customs (Airport & Admin), NSCBI Airport, Kolkata-770 052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
3. Guard File

ATTESTED

Ishwer Chander
(Ishwer Chander)

Superintendent (Revision Application)