

SPEED POST



F. No. 375/08/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.. 18/11/19.....

ORDER NO. 45/19-Cus dated 18-11-2019 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/442/2017 dated 18.10.2017, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi.

APPLICANT : Mr. Mubashir Amin Bhat.

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

ORDER

A Revision Application No. 375/08/B/2018-R.A. dated 30.01.2018 has been filed by Mr. Mubashir Amin Bhat (hereinafter referred to as the applicant) against order-in-appeal No. CC(A)/CUS/D-I/Air/442/2017 dated 18.10.2017, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi. The Order-in-Appeal has upheld the Additional Commissioner's Order-in-Original No. 206-Adj/2015 dated 02.02.2016 wherein gold bars weighing 2000 grams (2 kgs) concealed in the baggage valued at Rs. 50,56,920/- which have been absolutely confiscated. Besides, disallowance of free baggage allowance a penalty of Rs. 10,00,000/- (Ten Lakhs) has been imposed on the applicant.

2. The Revision application has been filed on the ground that the order of the Commissioner (Appeals) is erroneous and requested to release the impugned gold bars on payment of redemption fine and personal penalty. The applicant prayed for setting aside the impugned Order-in-Appeal besides reduction of penalty.

3. Personal hearing in the matter was fixed on 14.11.2019. Mr. VS Negi, Advocate, attended the hearing on behalf of the applicant. He submitted that the applicant was the owner of the impugned gold bars and he had purchased them in Dubai from his own resources. Since the impugned goods are not prohibited the same should be released on payment of redemption fine and penalty. Since 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. 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.

5. 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."*

6. 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. 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 follows:-

"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".

7. 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 bars 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. 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 redemption fine.

8. 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".

Andhra Pradesh High Court in its 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. 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."

9. The applicant has mentioned in his revision application that he had brought gold bars weighing 2000 grams valued at Rs. 50,56,920/- concealed in the pocket of his trouser. This fact has also been admitted by him in his voluntary statement tendered under Section 108 of Customs Act, 1962. Applicant's contention that he brought the gold bars without concealment is fallacious since he did not declare these under Section 77 of Customs Act, 1962. This was done intentionally so as to evade payment of customs duty on illegally smuggled items. **The applicant cannot use "baggage" as a route to smuggle gold items in form of bars concealed in the pocket of his trouser or his baggage.**

Reliance is 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."

Relying on the decision of Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I vs. Samynathan Murugesan [2009 (247) E.L.T. (Mad.)], Hon'ble Rajasthan High Court, Jaipur bench in its 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.

Therefore the decision of the adjudicating authority in confiscating the impugned gold which is prohibited and was concealed without giving an option of

redemption under Section 125 of Customs Act, 1962 is correct and has been upheld by Commissioner (Appeals) also.

In the light of the nature of the offence there is no cogent reason for waiving or reducing penalties or allowing the baggage allowance to the applicant either.

The adjudicating authority has correctly denied free allowance to the applicant. This has been upheld by the Commissioner (Appeals) also. Further penalty of Rs. 10,00,000/- (Rupees Ten Lakhs) on the applicant Sh. Mubashir Amin Bhat under Section 112 (a) & 114AA of the Customs Act, 1962 has been correctly imposed by the adjudicating authority which has been upheld by Commissioner (Appeals).

10. In view of above discussion, Government do not find any reason to interfere with the order of the Commissioner (Appeals) and the revision application is rejected.

Mallika Arya
(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Mr. Mubashir Amin Bhat, S/o Mohd Amin Bhat R/o D 210, Lajpat Nagar-I, New Delhi- 110024

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

ORDER NO. 45/119- Cus dated 18/11/2019

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
Nirma
18/11/19
(NIRMALA DEVI)
Section Officer