

SPEED POST



F. No. 375/14/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. 19/11/19.....

ORDER NO 46/19 - 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/564/2017 dated 13.12.2017, passed by the
Commissioner of Customs (Appeals), New Customs House,
Near IGI Airport, Delhi.

APPLICANT : Mr. Saiyed Qamrul Islam.

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

ORDER

A Revision Application No. F. No. 375/14/B/2018-R.A. dated 27.11.2017 has been filed by Mr. Saiyed Qamrul Islam (hereinafter referred to as the applicant) against order-in-appeal No. CC(A)/CUS/D-I/Air/564/2017 dated 13.12.2017, 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. 32/2015 dated 30.01.2015 wherein 5 pieces of gold bars weighing 2051 grams concealed in his pant pocket valued at Rs. 56,58,709/- which have been absolutely confiscated. Besides, disallowance of free baggage allowance a penalty of Rs. 15, 00,000/- 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 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 with consequential relief.

3. Personal hearing in the matter was fixed on 14.11.2019. The applicant alongwith Ms Sangita Bhayana, Advocate attended the hearing on behalf of the applicant. The applicant submitted that gold bars were brought for the marriage of his niece and he had purchased them in Bangkok by taking credit from a friend. 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. 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. 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. 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.

7. 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".

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 it's 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 brought 5 pieces of gold bars weighing 2051 grams concealed in his pant pocket valued at Rs. 56,58,709/-. As per the order-in-appeal no. CC(A)/CUS/D-I/Air/564/2017 dated 13.12.2017 this has been admitted by the applicant in his voluntary statement tendered under Section 108 of Customs Act, 1962. The fact of non-declaration of impugned gold bars at the red channel has also been mentioned in his statement under section 108 of Customs Act, 1962. All alibis of the applicant justifying the possession of the impugned gold bars and his intention to declare impugned goods to customs authorities are an afterthought. Hence they merit no consideration.

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 gold bars are liable for confiscation under section 111 of Customs Act, 1962.

Reliance is placed on Madras High Court judgment 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.

In light of various judicial pronouncements the decision of the adjudicating authority in confiscating the impugned gold bars which are both prohibited and were concealed in the pant pocket of the applicant without giving an option of redemption under Section 125 of Customs Act, 1962 is correct and has been rightly upheld by Commissioner (Appeals). **The applicant cannot use "baggage" as a route to smuggle gold items in form of bars concealed in his pant pocket.**

The option of re-export is not available to a pax of Indian origin under section 80 of Customs Act, 1962 and hence denied.

The adjudicating authority has correctly denied free allowance of Rs. 35,000/- to the applicant. This has been upheld by the Commissioner (Appeals) also. Further penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs) on the applicant Sh. Saiyed Qamrul Islam under Section 112 (a) & 114AA of the Customs Act, 1962 was correctly imposed by the adjudicating authority and has been upheld by Commissioner (Appeals).

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


(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Mr. Saiyed Qamrul Islam, R/o 725-A main Road, Indira Chowk, Jafrabad, Delhi
2. The Commissioner of Customs, IGI Airport, T-3, New Delhi -110037

ORDER NO. 46/19 - Cus dated 18/11-2019

Copy to:-

1. The Commissioner (Appeals), New Customs House, Near IGI Airport, New Delhi-110037
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ATTESTED

Naw
18/11/19
(NIRMALA DEVI)

S. O.