

SPEED POST



F. No. 375/03-05/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....{19/11/18}

ORDER NO ~~48-50/19~~ Cus dated 19/11-2019 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/315-17/2017 dated 29.08.2017, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi.

APPLICANT : Mohammad Aslam, Naushad Ansari, Mayank Parmarathi.

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

ORDER

Three Revision Applications bearing nos. F. No. 375/03-05/B/2018-R.A. dated 09.01.2018 has been filed by Mohammad Aslam, Naushad Ansari, Mayank Parmarhi (hereinafter referred to as the applicants) against order-in-appeal No. CC(A)/CUS/D-I/Air/315-17/2017 dated 29.08.2017, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi. The Order-in-Appeal has upheld the Joint Commissioner's Order-in-Original No. 94/ J.C./ U.S./ 2016 dated 31.03.2016 wherein 8 gold bars weighing 933.12 grams recovered from backpack of Mayank Parmarhi valued at Rs. 23,77,814/- have been absolutely confiscated. Besides, disallowance of free baggage allowance of Rs. 35,000/- to Mohammad Aslam and Naushad Ansari, a penalty of Rs. 6,00,000/- was also imposed on Mayank Parmarhi under Section 112 (a) of the Customs Act, 1962. Penalty of Rs. 3,00,000/- each imposed on Mohammad Aslam and Naushad Ansari each under Section 112 (a)/ 114AA of the Customs Act, 1962.

2. The brief facts of the case are that Sh. Mayank Parmarhi, a Jet Airways Security Assistant, was found roaming in baggage reclaim area of IGI Airport, T-3 Delhi on 21.05.2014, where the luggage of the passengers coming by flight no. AI 912 from Dammam was being offloaded. Upon search he was found concealing 8 gold bars in his backpack inside Cold Leaf brand cigarette packet, which was handed over to him by Naushad Ansari and Mohammad Aslam in the toilet of the airport on a consideration of Rs. 20,000/-. Mohammad Aslam and Naushad Ansari were waiting outside the Airport to receive the gold bars. Subsequently they were brought inside by the Customs officers and they admitted that they were the owners of the impugned gold bars. All the three applicants were arrested on 22.05.2014 and were released on bail.

The Revision applications have been filed on the two grounds (i) gold is a bonafide baggage and is not prohibited and therefore they should be allowed redemption of the impugned gold bars under Section 125 of the Customs Act, 1962

and (ii) Personal penalties be waived/ reduced on Mohammad Aslam, Naushad Ansari and Mayank Parmarhi.

3. Personal hearing in the matter was fixed on 21.10.2019. Neither the applicant nor the respondent appeared on this date. However the applicants vide their letter dated 21.10.2019 requested for another date of hearing. Accordingly a second hearing was granted on 08.11.2019. Sh. S. S. Arora, Advocate attended the hearing on behalf of the applicants and submitted that the two pax Mohd. Aslam and Naushad Ansari carried 933.12 grams of gold in the form of eight bars from Saudi Arabia, which was recovered from Mayank Parmarhi. The finding of the adjudicating authority is incorrect since the baggage search of Mayank Parmarhi shows 'NIL' recovery. The applicants Mohd. Aslam and Naushad Ansari are the owners of the impugned gold items. The applicants reiterated the grounds of revision application which have been taken on record. He submitted a copy of notice under Section 102 of the Customs Act, 1962 issued to Mayank Parmarhi by Sh. Vinay Kumar, Air Customs Officer, IGI Airport, New Delhi. 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. From the revision application it is evident that the applicants do not dispute the Commissioner (Appeals)'s order regarding confiscation of gold bars which was brought by Mohd. Aslam and Naushad Ansari from Dammam, Saudi Arabia. Their request is limited to the point that Mohd. Aslam and Naushad Ansari should be allowed to redeem the confiscated gold and penalty on all the three applicants should be waived/ reduced. From the Para 5 read with Para 3 of the order-in-original, it is clear that the gold bars were recovered from Sh. Mayank Parmarhi and recorded in a Panchnama dated 21.05.2014. The Government has no reason to disbelief the same in the absence of any documentary evidence to the contrary.

As regards the concerned notice under Section 102 of Customs Act, 1962 produced by the advocate of the applicant at the time of personal hearing, it is

observed that the receipt part of the notice has not been signed by any officer of Customs. Hence the authenticity of the said notice is doubtful and cannot be accepted as admissible evidence to establish that the impugned gold bars were not recovered from Sh. Mayank Parmarhi. The applicant has produced only a photocopy of the notice under Section 102 of Customs Act, 1962 and not the original. Moreover the witness name and addresses are also not there on the said notice. Regarding the second plea of the applicant that the statement under Section 108 of Customs Act, 1962 has not been recorded by a gazetted officer is not supported by any documentary evidence. It is observed that Mayank Parmarhi in his own handwriting, on the notice issued under Section 102 of Customs Act 1962, has mentioned that he has no objection if his baggage and personal search is conducted by any customs officer.

5. 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.*

6. 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.”

(d)

7. 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.

8. The applicants have taken a plea that since gold does not fall under the category of prohibited goods and, therefore, the impugned goods should be 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. 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 applicants have 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.

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".

9. The applicants have requested that the absolutely confiscated goods should be allowed to be redeemed on payment of Redemption fine.

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."

10. The applicants Mohammad Aslam and Naushad Ansari brought 8 gold bars weighing 933.12 grams valued at Rs. 23,77,814/-, which they handed over to Mayank Parmarhi in the toilet of the Airport. The gold bars were recovered from the possession of Mayank Parmarhi concealed inside Cold Leaf brand cigarette packet by him. The applicant's claim that they bought gold bars for marriage of their niece is an afterthought. The fact that the impugned goods were handed over to the Jet Security Assistant shows the intention of the applicant to illegally smuggle these items without payment of duty. This is a novel modus operandi adopted by the applicants to hoodwink the customs authorities. Needless to mention that Mayank Parmarhi had concealed these impugned gold bars inside the cigarette case so as to avoid detection by any agency.

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 it's 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.

Hence the decision of the adjudicating authority in confiscating the exorbitant quantity of impugned gold which is prohibited and was concealed inside Cold Leaf brand cigarette packet with the assistance of Mayank Parmarathi without giving an option of redemption under Section 125 of Customs Act, 1962 is correct.

The applicants cannot use "baggage" as a route to smuggle gold item. In the light of the nature of the offence committed by the applicants there is no cogent reason for waiving or reducing penalty on Mayank Parmarathi, Mohammad Aslam and Naushad Ansari or allowing the baggage allowance to the applicants, i.e., Mohammad Aslam and Naushad Ansari either.

The adjudicating authority has correctly denied free allowance of Rs. 35,000/- to the applicants Mohammad Aslam and Naushad Ansari. This has been upheld by the Commissioner (Appeals) also. Further penalty of Rs. 6,00,000/- (Rupees Six Lakhs) imposed on Mayank Parmarathi under Section 112 (a) of the Customs Act, 1962 and Penalty of Rs. 3,00,000/- (Rupees Three Lakhs) each on Mohammad Aslam and Naushad Ansari under the Customs Act, 1962 has been correctly imposed by the adjudicating authority and upheld by Commissioner (Appeals) also.

11. In view of above discussion, Government does not find any reason to interfere with the order of the Commissioner (Appeals). Commissioner (Appeals) order is upheld and Revision applications are rejected.


(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Mohammad Aslam, S/o Mohd. Hasa Ansari, R/o H.No. 170, Laddawal Uttar Muzaffar Nagar (U.P.)
2. Naushad Ansari, S/o Mohd. Umar, R/o H.No. 1204, Gali No 3, Ladhawala North, Muzaffar Nagar (U.P.)
3. Mayank Parmarhi, S/o Sh. J. B. Parmarhi, R/o H.No. 4, Vasant Kunj, Sector-B, Masoodpur, Delhi.
4. The Commissioner of Customs, IGI Airport, T-3, New Delhi -110037

ORDER NO. 48-50/19 - Cus dated 14/11-2019

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


19-11-19

(NIRMALA DEVI)

S. O.