

SPEED POST



F.No. 375/11/B/2018-RA  
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. 3/12/19

Order No. 54/19-Cus dated 02-12-2019 of the Government of India passed by Smt. Mallika Arya, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/D-I/Air/ 13/ 2018 dated 18.01.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr Banwari Lal.

Respondent : Commissioner of Customs, New Delhi

ORDER

A Revision Application No. 375/11/B/2018-RA dated 18.11.2019 has been filed by Mr Banwari Lal through Jamil Khan, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/ 13/ 2018 dated 18.01.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. It is observed that under the column of Signatures for the Applicant a person by the name of Mr. Jamil Khan has signed. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 32/ 2015-16 dated 21.05.2016 regarding absolute confiscation of the gold bars ( 2 nos.) total weighing 232.28 grams valued at Rs. 6,32,935/- with 24 carat purity alongwith RF-609C brand electric razor used for concealing the gold items. A penalty of Rs. 1,60,000/- has been imposed on the applicant under Section 112 read with Section 114AA of the Customs Act, 1962.

2. It is pertinent to mention that the PAX is not the applicant in the present case. A photocopy of power of attorney has been submitted by his advocate in favour of Jamil Khan. The revision application has been filed on the grounds that Gold is not a prohibited item. Hence it cannot be confiscated absolutely and should have been allowed to be released on redemption. The PAX is eligible to bring gold in terms of Notification no. 12/ 2012- customs dated 17.03.2012. The application also contended that the applicant is a permanent resident of Riyadh and was coming after 24 months. The two gold biscuits were recovered from his pant pocket. The advocate at the time of personal hearing submitted a copy of power of attorney given by Sh. Banwari Lal in favour of Jamil Khan. On the basis of the power of attorney the revision application has been filed by Sh. Jamil Khan on behalf of Banwari Lal.

3. Personal hearing was fixed on 18.11.2019 in this case. Sh. S.S. Arora, Advocate appeared on behalf of the applicant. He reiterated the grounds of revision application. He submitted a copy of contract/ visa issued by the 'protector of Emigrants', Mumbai in favour of Banwari Lal. Since no one appeared for the

respondent nor any request for adjournment has been received, the case is being taken up for final disposal.

4. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application it is evident that the impugned gold items were recovered from Banwari Lal (PAX). He did not declare the same under Section 77 of Customs Act, 1962 to the customs authorities at the airport. Further the PAX admitted the fact of non-declaration and concealment under Section 108 of Customs Act, 1962. He also contended that the gold bars did not belong to him and the said bars belonged to Sh. Tejpal.

5. A plain reading of Notification no. 12/ 2012- customs dated 17.03.2012 makes it clear that a passenger returning to India after six months can bring gold in the form of bars provided he informs it to customs *and pays the duty leviable thereon*, which is not the case here. The PAX has himself admitted that he is not the owner of the impugned gold bars and is a mere carrier. Therefore benefit of Notification no. 12/ 2012- customs dated 17.03.2012 is not available to him. The PAX carried the impugned gold bars on behalf of someone else and concealed the impugned goods inside RF-609C brand electric razor, with clear intention to evade the customs duty.

6. 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.)] relied 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)] and has also 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".*

The adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962.

Reliance is placed on the above case of Madras High Court, 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."*

The Apex Court has upheld this order of Madras High Court and dismissed the special leave to Appeal (Civil) no. 22072 of 2009 filed by Samynathan Murugesan.

The High Court of Bombay in the case of Union of India Vs. Aijaj Ahmad – 2009(244)ELT 49 (Bom), while deliberating on option to be given to whom to redeem the goods has held in para 3 of the judgment as follows:-

*"3. In the instant case, according to the respondent himself the owner was Karimuddin as he had acted on behalf of Karimuddin. The question of the Tribunal exercising the jurisdiction u/s 125 of the Customs Act and remit the matter to give an option to the respondent herein to redeem the goods was clearly without jurisdiction."*

In light of above judicial pronouncements Government upholds the orders of the lower authorities regarding absolute confiscation under Section 111 of Customs Act, 1962. Penalty of Rs. 1.60 lakhs is also being upheld under Section 112(a) of the Customs Act, 1962.

7. Revision Application is rejected.

  
(Mallika Arya)

Additional Secretary to the Government of India

1. Mr Banwari Lal, R/o VPO Bulyani, Via Sihot Bari, P.S. Nechhwa, District- sikar, Rajasthan.

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

Order No. 54/19-Cus dated 02-12-2019

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037
2. Assistant Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037
3. PA to AS(RA)
4.  Guard File.

ATTESTED

*N.D.*  
02/12/19

(Nirmala Devi)

S.O (R. A.)