

SPEED POST



F.No. 375/19/B/2017-RA
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. 3/12/19.....

Order No. 55/19-Cus dated 03-12-2019 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/ 545/ 2017 dated 05.12.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Ms Pooja Solanki.

Respondent : Commissioner of Customs, New Delhi

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ORDER

A Revision Application No. 375/19/B/2017-RA dated 27.02.2018 has been filed by Ms Pooja Solanki, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/ 545/ 2017 dated 05.12.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 10-Adj/2016 dated 27.04.2014 wherein six gold bangles and one gold chain total weighing 505 grams valued at Rs. 12,28,766/- have been confiscated and free allowance has been denied to the applicant. The adjudicating authority has imposed a penalty of Rs. 2, 50,000/- under Section 112 & 114AA of the Customs Act, 1962 on the applicant.

2. The brief facts of the case are that the applicant arrived on 13.04.2015 at IGI Airport and was intercepted near the exit gate after she had crossed the customs green channel. After personal search six gold bangles and one gold chain was recovered from her possession. The gold articles were of 99.9% purity, weighing 505 grams and were appraised at Rs. 12,28,766/- by the Jewellery Appraiser at IGI airport. The applicant in her statement recorded under Section 108 of the Customs Act, 1962 admitted that the recovered gold articles did not belong to her and she had carried the impugned gold items for a consideration of 800 dirhams. As per adjudication order the impugned gold articles were handed over to her by Mr. Chhagan Lal in Dubai who arranged for her tickets and the same were to be delivered to a person in Harsh Hotel.

It is observed that the applicant at the time of personal hearing on 22.01.2016 made a deposition before the adjudicating authority on 13.04.2005 that the statement tendered under Section 108 of the Customs Act, 1962 was not voluntary and it was dictated and typed. The applicant had put her signatures without knowing the contents of the statement.

3. The revision application has been filed on the grounds that Gold is not a prohibited item and since it was not concealed it cannot be confiscated absolutely and should be allowed to be redeemed as per condition no. 35 of notification no. 12/2012- Cus dated 18.04.2012. The revision application also contends that the applicant brought her personal jewellery from U.A.E. on 13.04.2005. Her father is a photographer in Dubai and the jewellery was purchased from her personal savings and from the money given by her father and her relatives.

4. Personal hearing was fixed on 19.11.2019 in this case. Sh. R. S. Yadav, Advocate appeared on behalf of the applicant. He stated that the gold ornaments weighing 505 grams were recovered from the purse of the applicant although the panchnama states that it was recovered from her personal/ baggage search. The applicant is the bonafide owner of the goods and should have been given an option for redemption under Section 125 of Customs Act, 1962. The applicant was asked to submit a copy of passport which has been subsequently submitted vide their letter dated 25.11.2019. Since no one appeared for the respondent nor any request for adjournment has been received, the case is being taken up for final disposal.

5. 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 the applicant. She did not declare the same under Section 77 of Customs Act, 1962 to the customs authorities at the airport. Further the applicant has admitted the fact of non-declaration in her statement tendered under Section 108 of Customs Act, 1962.

6. Section 123 of Customs Act 1962 reads as follows:

"123. Burden of proof in certain cases. —1[

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—

- (a) in a case where such seizure is made from the possession of any person, —
- (i) on the person from whose possession the goods were seized; and
- (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]

(2) This section shall apply to gold 2[and manufactures thereof] watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify."

Hence the observation of adjudicating authority and Commissioner (Appeals) that the burden of proof is on the PAX from whom the impugned goods are recovered is correct in terms of Section 123 of Customs Act, 1962. No evidence has been put forth by the applicant to establish the ownership of the impugned goods in the revision application as well.

The applicant has denied the statement tendered under Section 108 of Customs Act, 1962 after nine months during the course of personal hearing before the adjudicating authority. This appears to be an afterthought.

It is observed that the impugned goods were seized under Section 110 of the Customs Act, 1962. Hence statement recorded under Section 108 of the Customs Act, 1962 is admissible in this case, even when it is retracted.

Reliance is placed on the Supreme Court of India in the case of Surjeet Singh Chhabra Vs. U.O.I.[1997 (89) E.L.T. 646 (S.C.)] wherein the Hon'ble court has held as follows:-

"Evidence - Confession statement made before Customs officer though retracted within six days is an admission and binding since Customs Officers are not Police Officers - Section 108 of the Customs Act and FERA."

7. A plain reading of Notification no. 12/ 2012- customs dated 17.03.2012 makes it clear that a passenger returning to India only after six months can bring one kg of gold on payment of customs duty. Since the stay of the applicant outside India was less than six months as per the copy of the passport submitted by the PAX, she does not fulfil the definition of an 'eligible passenger' as per condition no. 35 of Notification no. 12/ 2012- customs dated 17.03.2012. Therefore benefit of Notification no. 12/ 2012- customs dated 17.03.2012 is not available to her.

8. 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 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 ratio of aforesaid judgment is squarely applicable to the facts of this case.

9. In the present case the adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962, as she was a carrier.

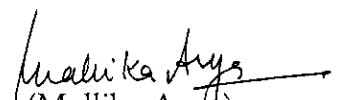
The High Court of Bombay in the case of Union of India Vs. Aijaj Ahmad – 2009(244)ELT 49 (Bom), while deliberating on option to be given to whom to redeem the goods has held in para 3 of the judgment as follows:-

"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."

It is evident that the applicant had brought the 6 gold bangles and one gold chain on behalf of someone as a carrier and did not declare the items to the customs authorities with an intention to evade customs duty. It is reiterated that she has accepted this fact in her statement under Section 108 of Customs Act, 1962.

10. In light of above judicial pronouncements Government upholds the orders of the lower authorities regarding absolute confiscation of the impugned six gold bangles and one gold chain total weighing 505 grams and valued at Rs. 12,28,766/- under Section 111 of Customs Act, 1962. Penalty of Rs. 2.50 lacs (Rupees Two Lac Fifty Thousand) was imposed cumulatively under Section 112 & 114AA of the Customs Act, 1962. As penalty under Section 114AA of the Customs Act, 1962 is not impossible; penalty of Rs. 2 lacs (Rupees Two Lacs) is imposed under Section 112 (a) of the Customs Act, 1962.

11. Accordingly the order-in-appeal is modified to the above extent and revision application is rejected.


(Mallika Arya)

Additional Secretary to the Government of India

1. Ms Pooja Solanki, R/O Anand Nagar, Nehru Nagar, Sheoganj, Sirohi, Rajasthan.
2. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037

Order No. 55/19-Cus dated 03-12-2019

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 Devi
03/12/19
(Nirmala Devi)

S.O (R. A.)