

SPEED POST



F. No. 375/58/B/2019-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..10/12/19.....

ORDER NO. ~~58/19~~ - Cus dated ~~8-12~~-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/Airport/326/2019-20 dated 20.09.2019, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi.

APPLICANT : Mr. Sangwoo Choi.

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

ORDER

A Revision Application No. F. No. 375/58/B/2019-R.A. dated 11.10.2019 has been filed by Mr. Sangwoo Choi, Passport no. M74611434 issue date 27.05.2010 (hereinafter referred to as the applicant) against order-in-appeal No. CC(A)/CUS/D-I/Airport/326/2019-20 dated 20.09.2019, 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. 172/AS/JC/2019 dated 30.05.2019 wherein 4 pieces of gold bars weighing 4000 grams concealed in a black coloured custom made zipper worn around his waist valued at Rs. 1,17,89,204/- (Rupees One Crore Seventeen Lakh Eighty Nine Thousand Two Hundred and Four only) have been absolutely confiscated. Besides, disallowance of free baggage allowance a penalty of Rs. 23, 00,000/- (Rupees Twenty Three Lakh only) was also imposed on the applicant.

2. The brief facts of the case are that the applicant arrived in India on 08/09.2019 and was intercepted near the exit gate by the customs officers when he was crossing the green channel. Upon personal search 4 kgs of gold bars concealed inside a black coloured custom made zipper worn around the waist of the applicant was detected. The applicant in his statement tendered under section 108 of the Customs Act, 1962 contended that he came in contact with one Paul King through WeChat and placed an order for 4kg of gold. The same was handed over to him at Incheon Airport, South Korea. He further stated that during his last visit to India he had researched gold market in India and found that there was huge price difference in value of gold in India vis-a-vis South Korea. Hence he resorted to smuggling to take care of his debts in South Korea.

The impugned 4 gold bars weighing 4 kgs were seized under Section 110 of Customs Act, 1962. The applicant was arrested by customs authorities on 09.01.2019 and was granted bail on 06.03.2019 by the Special Judge (PC Act), CBI-02, Patiala House Court Delhi. The conditions of bail imposed on him are as follows:

"..the applicant/ accused shall join the investigation as and when required by investigation agency and further applicant/ accused shall not leave the country without prior permission of the court and also not keep in touch with any of the witnesses and he will also not make any attempt to influence the witnesses."

3. The Revision application has been filed on the ground that the order of the Commissioner (Appeals) is erroneous, the applicant was coerced and was falsely implicated and was forced to sign certain papers. The applicant has requested for reduction in penalty since he has no resource being a foreign national and permission to re-export the impugned gold.

4. Personal hearing in the matter was fixed on 14.11.201. Neither the applicant nor the respondent attended the personal hearing. Personal hearing was re-fixed on 22.11.2019. The applicant alongwith Ms Sangita Bhayana, Advocate attended the hearing. The applicant submitted an invoice from Golden Petal Precious Metal Co., Hongkong bearing his name evidencing purchase of 4 kg of gold. 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.

5. Section 80 of Customs Act, 1962 reads as follows:

"80. Temporary detention of baggage.—Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India 1[and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name]."

Section 80 of the Customs Act, 1962 provides that the detained imported goods can be re-exported on the request of the passenger where he/ she is returning from India to a foreign country. Hence apart from declaration of the prohibited goods at the time of arrival of passenger, return of the passenger to the foreign

country after a short visit to India as a tourist or otherwise is a crucial condition for re-export of impugned goods.

It is observed that the applicant concealed impugned gold bars on his arrival at Delhi Airport with an intention to evade customs duty. Section 80 allows re-export only in a case "*a true declaration has been made under section 77*", which is not the case here. Moreover the applicant is not in a position to return to his native land in light of bail condition imposed on him by the Special Judge (PC Act), CBI-02, Patiala House Court, Delhi. Since the conditions stipulated under Section 80 of Customs Act 1962 do not get fulfilled re-export of the impugned gold bars cannot be allowed to the applicant under Section 80 of Customs Act, 1962.

6. From the records it is evident that the applicant did not retract his statement nor did he represent regarding being falsely implicated by the customs officers at airport before the higher customs authorities. This issue has been brought up by the applicant for the first time in revision application. Hence this appears to be an afterthought. The fact of recovery of impugned gold bars from his person, concealed inside a black coloured custom made zipper worn by him around his waist, has not been refuted by the applicant.

7. Reliance is placed on the judgment of Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I vs. Samynathan Murugesan [2009 (247) E.L.T. 21 (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."

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.

In light of aforesaid judicial pronouncement, Government upholds the orders of the lower authorities regarding absolute confiscation of impugned gold bars under Section 111 of Customs Act, 1962.

8. Penalty of Rs. 23 lakhs has been imposed under Section 112 and 114AA of Customs Act, 1962. It is observed that no penalty is imposable under Section 114AA of the Customs Act, 1962. Keeping in view the financial condition of the applicant and the fact that he is facing another trial in a prosecution case, Government imposes a penalty of Rs. 15 lacs (Rupees Fifteen Lacs) on the applicant under Section 112 (a) of Customs Act, 1962.

8. Accordingly, the Order-in-Appeal is modified in the above terms and revision application is disposed off.


(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Mr. Sangwoo Choi S/o Young Dae Choi R/o DAE GU Susiing GU Dalqu BO DAE 3320, 102 DONG 505 HO.
2. The Commissioner of Customs, IGI Airport, T-3, New Delhi -110037

ORDER NO. **56/19-** Cus dated 9-12-2019

Copy to:-

1. The Commissioner (Appeals), New Customs House, Near IGI Airport, New Delhi-110037
2. P.S. to A.S.
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ATTESTED

(NIRMALA DEVI)

S. O.