

SPEED POST



F.No. 375/10/B/2018-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...13/12/19....

Order No. 60/19-Cus dated 11-12-2019 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/ 511/ 2017 dated 16.11.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Ms Talat Zamani Begum.

Respondent : Commissioner of Customs, New Delhi

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ORDER

A Revision Application No. 375/10/B/2018-RA dated 12.02.2018 has been filed by Ms Talat Zamani Begum (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC (A) Cus/ D-I/ Air/ 511/ 2017 dated 16.11.2017 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. 26-Adj/ 2016 dated 10.05.2016 regarding absolute confiscation of impugned gold bars weighing 600 grams valued at Rs. 15,90,117/- and denial of baggage allowance. A penalty of Rs. 3,80,000/- has been imposed on the applicant under Section 112 read with Section 114AA of the Customs Act, 1962.

2. The brief facts of the case are that the applicant was crossing the green channel on her arrival from Dubai on 18.02.2014 when she was diverted for baggage x-ray. From her purse three white packets containing two metal pieces each inside the laminated pouch bearing log of 'Pamp Suisse 100 g Fine Gold 999.9' cumulatively weighing 600 grams were recovered. A statement under Section 108 of the Customs Act, 1962 was recorded wherein the applicant admitted that the gold was handed over to her by her son in Dubai.

3. 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 applicant is eligible to bring gold in terms of Notification no. 12/ 2012- customs dated 17.03.2012. A request for reduction in penalty of Rs.3,80,000/- has been made in application.

4. Personal hearing was fixed on 18.11.2019 in this case. Since no one appeared for the respondent as well as the applicant another hearing was fixed on 06.12.2019. Since no one appeared for hearing nor any request for adjournment has been received either from the applicant or from the respondent, 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 bars were recovered from the applicant's purse. She did not declare the same under Section 77 of Customs Act, 1962 to the customs authorities at the airport. The applicant has contended that she is a housewife and the gold bars were inside three white packets in her purse and were not concealed. She was carrying the impugned gold bars for the first time. As per Order-in-Original she had informed the customs officers regarding these three white packets. The relevant portion of order-in-original reads as follows:

"The pax was again asked whether she was carrying any dutiable goods to which she admitted that she had three white packets in her purse. The packets were opened and six metals were recovered On enquiry she told that the above said piece of yellow metal was of gold".

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. Further the applicant is not an eligible passenger under Notification no. 12/ 2012- customs dated 17.03.2012.

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.)] 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. Since the impugned goods are 'prohibited', they have been confiscated correctly under section 111 of Customs Act, 1962 in light of aforesaid judgment of the Apex court.

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

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.

Andhra Pradesh High Court in its 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. It is observed that the applicant brought 'prohibited goods' in her purse and was crossing the green channel without declaring the same under Section 77 of Customs Act 1962 with an intention to evade customs duty. Therefore the decision of adjudicating authority denying the option of redemption under Section 125 of Customs Act, 1962 is legally sustainable.

10. Applicant has requested for reduction in penalty. Penalty of Rs. 3,80,000/- has been imposed under Section 112 read with Section 114AA of Customs Act, 1962. It is observed that this is not a case for penalty under Section 114AA of the Customs Act, 1962.

Since the applicant is a housewife and has committed the offence for the first time, Government takes a lenient view and reduces the penalty to Rs. 2 lacs (Rupees Two Lacs) on the applicant under Section 112 (a) of Customs Act, 1962.

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

Mallika Arya
(Mallika Arya)

Additional Secretary to the Government of India

1. Ms Talat Zamani Begum, R/o Gher Meer Baz Khan Jail Road, P.S. Ganj Sadar, Rampur (U.P.).

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

Order No. 60/19-Cus dated 11/12-2019

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037

2. PA to AS(RA)

3. Guard File.

4. Spare copy.

ATTESTED

Nirma
11/12/19

(Nirmala Devi)

S.O (R. A.)