

SPEED POST



F.No. 380/169/B/2016-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. 13/12/19.....:

Order No. 61/19-Cus dated 12-12-2019 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/ 738/ 2016 dated 30.08.2016 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Commissioner of Customs, New Delhi

Respondent : Ms Misba Mohd. Iqbal Limbuwala.

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**ORDER**

A Revision Application No. 380/169/B/2016-RA dated 28.11.2016 has been filed by Commissioner of Customs, New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC (A) Cus/ D-I/ Air/ 738/ 2016 dated 30.08.2016 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) modified the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 103-Adj/ 2016 dated 10.05.2016 regarding absolute confiscation of four gold bars cumulatively weighing 609.76 grams valued at Rs. 16,23,446/-. A penalty of Rs. 2,44,000/- has also been imposed on the respondent under Section 112 read with Section 114AA of the Customs Act, 1962 by the adjudicating authority. The Commissioner (Appeals) has allowed the confiscated goods to be released upon payment of applicable customs duty with redemption fine of Rs. 4,50,000/- under Section 125 of the Customs Act, 1962. He has, however, upheld the penalty imposed on the respondent.

2. The brief facts of the case are that the respondent was crossing the green channel on her arrival from Bangkok on 19.03.2014 when she was diverted for personal search by the customs officers. Two packets containing four gold bars were found concealed in her upper body part. A statement under Section 108 of the Customs Act, 1962 was recorded wherein she admitted that the recovered gold bars belonged to her and she had bought and brought these from Bangkok to earn profit. She further stated that her father had arranged money for the purchase by selling their house in Mumbra, Thane. She did not declare the impugned goods at the red channel so as to evade customs duty.

3. The revision application has been filed on the grounds that the respondent is not an eligible passenger as per condition no. 35 of Notification no. 12/ 2012- customs dated 17.03.2012. The goods were concealed ingeniously making it 'prohibited'. As no true declaration was made under Section 77 of the Customs Act, 1962, the option

of redemption under Section 125 of the Customs Act, 1962 cannot be given to the respondent.

4. Personal hearing was fixed on 18.11.2019 in this case. Since no one appeared on behalf of the respondent as well as the applicant another hearing was fixed on 06.12.2019. Since on this date also no one appeared for hearing 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 bars were concealed inside the respondent's body. The gold bars were concealed ingeniously wrapped in two packets and kept inside her upper body part so as to avoid detection and to evade payment of customs duty.

6. Reliance is placed on the case of Commissioner of Customs (AIR) Chennai-I vs. Samynathan Murugesan [2009 (247) E.L.T. 21 (Mad.)], wherein the Honourable Madras High Court has considered '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.

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"*.

7. 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:

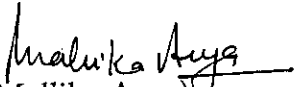
*"Attempt to import gold unauthorisedly will thus come under the second part of Section 125 (1) of the Act where the adjudging officer is under mandatory duty to give option to the person found guilty to pay (fine) in lieu of confiscation. Section 125 of the Act leaves option to the officer to grant 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."*

Hence it is held that Commissioner (Appeals) order in allowing release of impugned prohibited goods concealed in an ingenious manner is erroneous. The order of adjudicating authority regarding absolute confiscation of impugned goods is upheld.

8. Penalty of Rs. 2,44,000/- has been imposed under Section 112 read with Section 114AA of Customs Act, 1962 on respondent. It is observed that penalty is not imposable under Section 114AA of the Customs Act, 1962.

Therefore Government imposes a penalty of Rs. 2.44 lakhs (Rupees Two Lacs Forty Four Thousand) under Section 112(a) of the Customs Act, 1962 on the respondent.

9. Accordingly the order-in-appeal is set aside and Revision Application is allowed.

  
(Mallika Arya)

Additional Secretary to the Government of India

1. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Ms Misba Mohd. Iqbal Limbuwala, R/o Flat No. 101, 1<sup>st</sup> Floor, I wing, Amar Garden, Near Shireen Villa, Kausa Mumbra-Thane- 400612.

Order No. 6/19-Cus dated 12-12-2019

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

(Nirmala Devi)

S.O (R. A.)