

SPEED POST



F.No. 375/57/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. 64 /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/ 560/ 2017 dated 12.12.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Firoj Kuniyil Muiyyarikandy.

Respondent : Commissioner of Customs, New Delhi .

ORDER

A Revision Application No. 375/57/B/2018-RA dated 16.03.2017 has been filed by Firoj Kuniyil Muyyarikandy (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC (A) Cus/ D-I/ Air/ 560/ 2017 dated 12.12.2017 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. 234-Adj/2015 dated 01.03.2016 regarding absolute confiscation of 12 gold bars cumulatively weighing 1399.68 grams valued at Rs. 33,95,841/- and on denial of baggage allowance. A penalty of Rs. 7 lac has been imposed on the applicant under Section 112 and 114 AA of the Customs Act, 1962.

2. The brief facts of the case are that the applicant was crossing the green channel on his arrival from Dubai on 07.11.2014 wherein he was diverted for x-ray of his baggage. Twelve gold bars were found concealed inside the battery charger wrapped with carbon paper and aluminium foil. A statement under Section 108 of the Customs Act, 1962 was recorded wherein he admitted that the recovered gold bars did not belong to him and were given to him by Mr. Latif in Dubai. It was to be handed over to a person at Delhi Airport and he had done this for a consideration of Rs. 30,000/-. He 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 ground that the applicant was harassed because he is from the minority community and hails from poor economic background. It has been prayed for setting aside the absolute confiscation of impugned gold and penalty of Rs. 4 lac. It has also been prayed for release of confiscated brown colour box alongwith Sony Bravia 32 inch CX LED TV.

4. Personal hearing was fixed on 10.12.2019 in this case. Sh. N. P. Rakeesh Panicker, advocate appeared on behalf of the applicant and reiterated the grounds of revision application. He contended that the applicant is only 20 years of age and the

request is limited to reduction of penalty. Since no one appeared for personal hearing from the respondent's side 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 recovered from the applicant during the x-ray of his baggage. He did not declare the same under Section 77 of Customs Act, 1962 to the customs authorities at the airport. The applicant admitted the fact of non-declaration under Section 108 of the Customs Act, 1962 with an intention to evade customs duty. The gold bars were concealed ingeniously inside the battery charger. The applicant has himself admitted that he is only a carrier and the goods do not belong to him.

6. The impugned goods are prohibited, which were ingeniously concealed inside the battery charger by the applicant. Hence the order of lower authorities in confiscating the impugned goods under Section 111 of Customs Act, 1962 is legally sustainable.

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".

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.

7. 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"*.

8. Apart from the above, the fact remains that the applicant has himself contended that he is a carrier and has been working for a consideration.

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."

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

9. It is also observed that there are factual inaccuracies in the revision application. The penalty imposed by the adjudicating authority is Rs. 7 lac (Rupees Seven Lacs) and not 4 lacs (Rupees Four Lacs) and no confiscation of Sony Bravia TV has been carried out by the adjudicating authority, as mentioned in the revision application. The charge of harassment levelled by the applicant has no bearing on merits of the case.

10. Penalty of Rs. 7 lacs (Rupees Seven Lacs) has been imposed under Section 112 read with Section 114AA of Customs Act, 1962. It is observed that this is not a case for imposition of penalty under Section 114AA of the Customs Act, 1962. However in view of the seriousness of the offence, wherein 12 gold bars cumulatively weighing 1399.68 grams valued at Rs. 33,95,841/- have been smuggled by the applicant, Government upholds penalty of Rs. 7 lacs (Rupees Seven Lacs) imposed on the applicant under Section 112 (a) of the Customs Act, 1962.

11. Revision Application is rejected.

Mallika Arya
(Mallika Arya)

Additional Secretary to the Government of India

1. Mr Firoj Kuniyil Muiyyarikandy, R/o Kuniyilpalorath Kandy House, 1465, P.O. Panoor, Kannur district, Kerala-670692.

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

Order No. 64 /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

Nandu
12/12/19

(Nirmala Devi)

S.O (R. A.)