

SPEED POST



F.No. 375/12/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. 16/12/19...

Order No. 65/19-Cus dated 13-12-2019 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/ 507/ 2017 dated 13.11.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Mohd. Usman Faruq Chandiwala.

Respondent : Commissioner of Customs, New Delhi

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ORDER

A Revision Application No. 375/12/B/2018-RA dated 13.02.2018 has been filed by Mohd. Usman Faruq Chandiwala (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC (A) Cus/ D-I/ Air/ 507/ 2017 dated 13.11.2017 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. 143/ 2017-18 dated 18.08.2017 regarding absolute confiscation of one gold biscuit and two cylindrical shaped gold pieces cumulatively weighing 348 grams valued at Rs. 9,08,976/-. A penalty of Rs. 50,000/- has been imposed on the applicant under Section 112 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 24.05.2017 when he was diverted for baggage x-ray by the customs officers. One gold biscuit was found concealed in place of battery in his galaxy mobile battery slot and two cylindrical shaped gold pieces were concealed in 'hair styling'. The passenger was coming after 3 days and his total stay abroad was less than six months. A statement under Section 108 of the Customs Act, 1962 was recorded wherein he admitted that the recovered gold belonged to him and he did not declare the impugned goods at the red channel to evade customs duty.

3. The revision application has been filed on the grounds that Gold was not concealed and was kept in hand bag and the applicant is not a carrier. Moreover Gold is not a prohibited item. Hence it should not have been confiscated absolutely and should have been allowed to be released on redemption.

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. Sh. D. S. Chadha, advocate appeared on behalf of the applicant and reiterated the

grounds of revision application. He contended that the applicant is not a carrier and had carried the impugned gold items in his bag although the allegation was that the same were concealed. He requested for a liberal view on humanitarian grounds. Since no one appeared 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. He 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 so as to evade customs duty. The gold bars were concealed ingeniously, since the gold biscuit was found concealed in the battery slot of galaxy mobile while the two cylindrical shaped gold pieces were concealed in 'hair styling'. Thus the contention of the applicant that the impugned goods were in his bag and were not concealed is not tenable and merits no consideration.

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. Moreover the applicant is not an eligible passenger to import gold 'in any other form' as per 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".

Reliance is further placed on the aforesaid case decided by Madras High Court, wherein the Honourable High Court has considered that concealment is 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 the 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 has issued instruction vide letter F. No. 495/ 5/ 92-Cus. VI dated 10.05.1993 wherein it has been stated 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"*.

Hence it is observed that the adjudicating authority has correctly confiscated the impugned goods under Section 111 of Customs Act, 1962.

8. The applicant has contended that the impugned goods should have been released on payment of redemption fine since they are not 'prohibited'.

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.

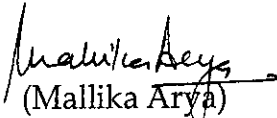
Andhra Pradesh High Court in it's order in the case of Shaikh Jamal Basha vs. G.O.I. [1997 (91) E.L.T. 277 (A.P.)] has held as follows:

"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."

In light of above, the order of the lower authorities in confiscating the impugned goods without giving the option of redemption under Section 125 of Customs Act, 1962 is legally tenable and is upheld.

9. Keeping in view the ingenious *modus operandi* adopted by the applicant for concealing the impugned goods, Government holds that penalty of Rs. 50,000/- (Rupees Fifty Thousand) imposed on the applicant is justified and is upheld under Section 112(a) of the Customs Act, 1962 .

10. Revision Application is rejected and disposed off.


(Mallika Arya)

Additional Secretary to the Government of India

1. Mr Mohd. Usman Faruq Chandiwala, C/o Mr. D. S. Chadha, 92, GF Block V, Eros Garden, Faridabad-121009.

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

Order No. 65/19-Cus dated 13-12-2019

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037
2. PA to AS(RA)
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ATTESTED

(Nirmala Devi)

S.O (R. A.)