

SPEED POST



F.No. 372/19/B/18-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-110066

Date of Issue. 19/12/19

Order No. 66 /19-Cus dated 17-12-2019 of the Government of India passed by **Mrs. 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.KOL/Cus/Airport)/AA/338/2018 dated 05.02.2018, passed by the Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001.

Applicant : Mr.Rambhavan Gupta.

Respondent : Commissioner of Customs (Airport ), Kolkata.

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ORDER

A Revision Application No. 372/19/B/18-RA dated 08.03.2018 has been filed by Mr. Rambhavan Gupta, (hereinafter referred to as the applicant) against the Order-in-Appeal No.KOL/Cus/Airport)/AA/338/2018 dated 005.02.2018, passed by the Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001, whereby the applicant's appeal was rejected. Aggrieved, the applicant preferred this appeal.

2. The brief facts of the case are that the applicant arrived from Bangkok on 27.03.2016 at Kolkata Airport. While he was crossing the green channel, he was asked by the customs officer whether he was carrying any dutiable goods to which he replied in negative. He was searched in person which resulted in the recovery of four (04) gold chains of 24 karat gold purity, collectively weighing 86.700 grams and valued at Rs. 2,58,366/-. The impugned goods were concealed with a black coloured carbon paper affixed with adhesive tapes in the pocket of the trouser worn by the applicant. Impugned gold chains were confiscated under Section 111 of Customs Act, 1962 vide the Order-in-Original No. 42/2017-DC dated 10.10.2017 passed by the Dy. Commissioner of Customs, NSCBI Airport, Kolkata. Apart from the above penalty of Rs. 55,000/- under Section 112 (a) and 112 (b) of Customs Act, 1962 was also imposed on the applicant. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was rejected vide the impugned Order-in-Appeal. The instant revision application has been filed on the ground that the gold chains were not concealed in any manner. The applicant has further contended that gold jewellery does not come under the category of 'prohibited goods'.

3. Personal hearing was fixed on 11.12.2019. Sh. Barinder Singh, Consultant, appeared on behalf of the applicant and reiterated the grounds of revision application. He contended that gold ornaments are not prohibited as baggage. The applicant submitted a copy of the appeal filed before Commissioner (Appeals) and other related

documents which have been taken on record. Since no one appeared for hearing from the respondent's side nor any request for adjournment has been received, the case is being taken up for final disposal.

4. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision Application it is evident that the impugned gold chains were recovered from the applicant's person. 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 in his statement tendered under Section 108 of Customs Act, 1962.

5. 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.

6. 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. The applicant has contended that the impugned goods should have been released on payment of redemption fine since they are not 'prohibited'. Although gold ornaments are not prohibited for import under the Baggage Rules, 1998 (2016 as amended), the manner of importation by way of concealment with an intention to evade customs duty has rendered the impugned goods liable for confiscation under Section 111 of Customs Act, 1962. As per evidence on record there is no justification given as to why the applicant was carrying four gold chains having purity of 99.7% (24 carats) clandestinely in his trouser pocket. The only plausible justification can be that the applicant brought the impugned gold chains for a commercial gain.

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:

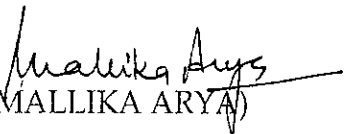
*"Attempt to import gold unauthorisedly will thus come under the second part of Section 125 (1) of the Act where the adjudging officer is under mandatory duty to give option to the person found guilty to pay (fine) in lieu of confiscation. Section 125 of the Act leaves option to the officer to grant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

Hence the adjudicating authority has correctly denied the release of impugned gold chains on payment of redemption fine under Section 125 of Customs Act, 1962 which were concealed in the trouser pocket and weighed 86.7000 grams and valued at Rs. 2,58,366/- alongwith concealment material.

8. In light of above judicial pronouncements Government upholds the orders of the lower authorities regarding confiscation under Section 111 of Customs Act, 1962 without redemption. Penalty of Rs. 55,000/- (Rupees Fifty Five Thousand) is also upheld under Section 112(a) of the Customs Act, 1962.

9. Revision Application is rejected and disposed off.

  
(MALLIKA ARYA)

Additional Secretary to the Government of India

1.Mr.Rambhavan Gupta, S/o Shri Shiv Moorat Gupta, 32, Ashutosh Mukherjee Lane,  
Howarah-711106.

2. Commissioner of Customs, (Airport & Administration), Custom House, 15/1, Strand  
Road, Kolkata.

Order No. 66/19-Cus dated 17-12-2019

Copy to:

1. Commissioner of Customs (Appeals) Custom House, 15/1, Strand Road, Kolkata.
2. PA to AS(RA)
3. Guard File.
4. Spare copy.

ATTESTED

(Nirmala Devi)

S.O. (REVISION APPLICATION)