

SPEED POST



F.No. 372/10/B/18-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110066

Date of Issue 19/12/19.....

Order No. 67/19-Cus dated 18-12-2019 of the Government of India passed by Ms. 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/121/2018 dated 09.01.2018, passed by the Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001.

Applicant : **Mr. Yasar Arabath Naina Mohamed.**

Respondent : Commissioner of Customs (Airport), Kolkata.

ORDER

A Revision Application No. 372/10/B/18-RA dated 27.02.2018 has been filed by Mr. Yasar Arabath Naina Mohamed, (hereinafter referred to as the applicant) against the Order-in-Appeal No.KOL/Cus/Airport)/AA/121/2018 dated 09.01.2018, passed by the Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001, wherein the Order-in-Original No. 39/2017 dated 07.04.2017 of the Additional Commissioner of Customs, Kolkata confiscating the impugned cut pieces of gold bars weighing 200 grams valued at Rs. 5,36,000/- and with penalty of Rs.60,000/- has been upheld.

2. The revision application has been filed on the grounds that the applicant had brought the gold bars for self-use and gold is not prohibited item. Commissioner (Appeals) has passed a wrong order by upholding the Order-in-Original in confiscating the gold absolutely. The applicant may be permitted to re-export the gold or it may be released on payment of redemption fine under section 125 of Customs Act. Penalty is also excessive and merits reduction.

3. Personal hearings were granted in this case on 20.11.2019 and 05.12.2019. No one appeared on behalf of the applicant or respondent, nor any request for adjournment was received. Therefore, the matter is being taken up for a decision on the basis of evidence available on record.

4. Government has examined the matter. It is observed that there is no dispute regarding the fact that the applicant has violated Section 77 of Customs Act, 1962 by not declaring gold bars to the Custom authorities on his arrival at Kolkata Airport from Kuala Lumpur. The applicant had concealed the impugned gold in his rectum and has admitted the fact of non-declaration and concealment in his voluntary statement tendered under Section 108 of the Customs Act, 1962.

5. Reliance is placed on the judgment of 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.)], wherein the Honourable High Court has considered concealment

as a relevant factor meriting absolute confiscation. The Honourable High Court has held as follows:

"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"*.

Hence the adjudicating authority has correctly confiscated the impugned goods under Section 111 of Customs Act, 1962 without an option for redemption under Section 125 of Customs Act, 1962.

7. In light of various judicial pronouncements on the subject Government upholds the orders of the lower authorities regarding confiscation under Section 111 of Customs Act, 1962 without an option for redemption. Penalty of Rs. 60,000/- is also upheld under Section 112(a) of the Customs Act, 1962.

8. Revision Application is rejected.


(MALLIKA ARYA)

Additional Secretary to the Government of India

1.Mr.YasarArabathNaina Mohamed, S/o Naina Mohamed, No. 876,South Street, Senthalaivayal, Ammanichatram(PO),Pattukkottai(TK), Thanjavur(DT),614802.

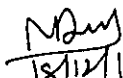
2. Commissioner of Customs, (Airport & Administration), Custom House, 15/1, Strand Road, Kolkata

Order No. 67/19-Cus dated 18/12-2019

Copy to:

1. Commissioner of Customs (Appeals) Custom House, 15/1, Strand Road,
Kolkata.
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ATTESTED


18/12/19
(Nirmala Devi)

S.O. (REVISION APPLICATION)