

SPEED POST



F.No. . 372/21/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. 69/19-Cus dated 19/12-2019 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/301/2018 dated 05.02.2018, passed by the Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001.

Applicant : Mr.Vijay Kumar Pandey.

Respondent : Commissioner of Customs (Airport), Kolkata.

ORDER

A Revision Application No. 372/21/B/18-RA dated 23.03.2018 has been filed by Mr. Vijay Kumar Pandey, (hereinafter referred to as the applicant) against the Order-in-Appeal No.KOL/ Cus/ Airport/ AA/ 301/ 2018 dated 05.02.2018, passed by the Commissioner of Customs (Appeals), Customs House, 15/1, Strand Road, Kolkata-700001, whereby applicant's appeal was rejected. Aggrieved, the applicant preferred this appeal.

2. The brief facts of the case are that the applicant was intercepted by the CISF officials outside the arrival hall at NSCBI Airport, Kolkata near the glass wall of closed gate in vicinity of the toilet area adjacent to belt no. 11. He was found with one packet wrapped with black adhesive tape thrown by some passenger, namely, Raju who arrived by flight No. B3-701 dated 15.05.2016. The appellant was brought in the AIU room by CISF Officials. Thereafter his personal search was conducted which resulted in the recovery of two (02) gold chains of 24 karat purity collectively weighing 91.300 grams and valued at Rs. 2,78,465/-. A statement under Section 108 of the Customs Act, 1962 was recorded wherein the applicant admitted that he had been carrying imported goods from Bangkok to India and was earning Rs. 2000/- per trip and Rs. 12,000/- to Rs. 15,000/- per month in this manner in the past as well. The gold items were handed over to him by a PAX namely Raju. He knew him by name only. Raju told him that he would collect the gold items from him on coming out of the airport.

3. The revision application has been filed on the grounds that the gold chains were not concealed in any manner and hence they are not liable for absolute confiscation. He prayed for release of impugned gold chain on payment of duty and requested for waiver of penalty.

4. Personal hearing was fixed on 11.12.2019. Sh. Barinder Singh, Consultant, appeared on behalf of the applicant and contended that the impugned gold chains wrapped in a packet were recovered from the applicant who was standing in the

waiting area of the arrival hall. Apparently the goods were thrown from the customs area of the airport by a passenger named Raju who is the actual owner of the impugned gold items. 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.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision Application it is evident that the impugned gold items were recovered from the applicant by CISF personnel. Further the applicant has admitted in his statement tendered under Section 108 of Customs Act, 1962 that he is only a carrier and not the owner of the impugned goods.

6. It is observed that the impugned goods have although been recovered from the applicant, he is not the actual owner and is merely a custodian. The goods appear to be of some other passenger, who has attempted to smuggle in connivance with the applicant so as to evade payment of customs duty.

Hence the applicant has abetted the smuggling of impugned goods by acquiring possession of the same.

7. The fact remains that the applicant has himself contended that he is a carrier and has been working for a consideration.

The adjudicating authority has confiscated the impugned goods under Section 111 of Customs Act, 1962 and denied redemption under Section 125 of Customs Act, 1962 to the applicant since he is a carrier.

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.”.

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

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:

“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.”

Therefore the adjudicating authority has correctly denied the release of impugned goods viz. two (02) gold chain of 24 karat purity collectively weighing 91.300 grams and valued at Rs. 2,78,465/- to the applicant on redemption fine under Section 125 of Customs Act, 1962. **The order of Commissioner (Appeals) confirming the above is upheld.**

9. As far as imposition of penalty on the applicant is concerned, Section 112 (a) of the Customs Act, 1962 reads as follows:

“112. Penalty for improper importation of goods, etc. — Any person, —

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act.”

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner

dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty²¹⁶ [not exceeding the value of the goods or five thousand rupees], whichever is the greater."

Reliance is placed on the judgment of Hon'ble Delhi High Court in the case of Sudhir Sharma Vs Commissioner of Customs [2015 (319) E.L.T. 450 (Del.)], wherein it has held as follows:

"Penalty - Imposition of - Abetment of smuggling [para 41]-As far as the question of non-service of notice upon the main culprits is concerned, the Commissioner rendered his findings in Para 418, holding that some of those foreign nationals could not be personally served; yet notice was issued and published in a known manner. The Appellants were, however issued notice; there was clear evidence of their culpability. Therefore, the Customs authorities were entitled to proceed and impose the penalties and make adverse orders."

The ratio of aforesaid judgment squarely applies to the present case. Therefore imposition of penalty under Section 112 (a) & 112 (b) of Customs Act, 1962 is legally sustainable and is upheld.

10. Revision Application is rejected and disposed off.


(MALLIKA ARYA)

Additional Secretary to the Government of India

1.Mr:Vijay Kumar Pandey, S/o Shri Prayag Pandey, R/o 23/2, Ganesh Ghosh Lane, Ist Floor, FL-1C, Kolkata-700039.

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

Order No. 69/19-Cus dated 19-12-2019

Copy to:

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

ATTESTED

Naw
19/12/19
(Nirmala Devi)

S.O. (REVISION APPLICATION)