

REGISTERED
SPEED POST



F.No. 373/43/B/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 17/4/14

Order No. 70 /14-cus dated 15-4-2014 of the Government of India, passed by Shri D. P. Singh, Joint 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.
1603/2012-Air dated 31-12-2012 passed by the
Commissioner of Customs (Appeals),
Custom House, Chennai.

Applicant : Shri Imtiyaz Fatima Shakeel,
Orange Palace,
86, Lingi Chetty Street,
Mannady, Chennai-600001.

Respondent : Commissioner of Customs,
Meenabakkam Airport, Chennai.

ORDER

This revision application is filed by applicant Shri Imtiyaz Fatima Shakeel, Orange Palace, 86, Lingi Chetty Street, Mannady, Chennai against the Order-in-Appeal No. 1603/2012-Air dated 31-12-2012 passed by the Commissioner of Customs (Appeals), Chennai, with respect to Order-in-Original No. 283/2012 Air dated 17-05-2012 Chennai passed by the Deputy Commissioner of Customs, Air Port, Chennai.

2. Brief facts of the case are that the applicant Shri Imtiyaz Fatima Shakeel is Shrilankan Passport holder and had arrived at Chennai Airport from Shrilanka and attempted to clear 4 nos of crude gold bangles totally weighing 105 grams valued at Rs. 3,09,855/-. The said gold did not belong to the applicant and was brought for monetary consideration. Passenger did not declare the said gold before customs as required under section 77 of Customs Act, 1962. The lower adjudicating authority after following due process of law confiscated the said gold jewellery absolutely under section 111 (d) (l) & (m) of Customs Act, 1962. Penalty of Rs. 25,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962.
3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the same.
4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:
 - 4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.
 - 4.2 Both the respondents failed to see that the true declaration made by the applicant before the concerned officer at Airport and nothing concealed nor mis-declared by the applicant.

4.3 The request for re-export of the above gold jewellery were not at all considered by the lower authorities and further they have failed to consider that the value adopted by the lower authorities were not in order and the same was figured higher side.

4.4 Both the lower authorities have ignored the Government of India order reported in ELY 1005 pages 287 to 208 wherein re-export was allowed on payment of redemption fine.

4.5 Under the above facts and circumstance of the case the applicant therefore prays that this Hon'ble revision authority may be pleased to set aside both the lower authorities orders and grant relief of fully set aside personal penalty of Rs. 25,000/- an order for re-export of the same and thereby render justice.

5. Personal hearing scheduled in this case 21-03-2014 at Chennai was attended by Shri K. Ayankhan, Advocate on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records Government observes that the applicant passenger had not declared the said gold before customs. The gold did not belong to him and he had brought it for somebody else for monetary consideration, with a motive to smuggle the same into India by evading payment of Customs Duty. The passenger was not eligible to import gold in terms of notification No. 31/2003-Cus dtd. 01-03-2003 and did not declare the gold to customs as required under section 77 of Customs Act, 1962. In addition, the pax acted as carrier for monetary consideration as gold did not belong to her. These facts have been admitted by the applicant before customs officer. Since the gold imported in trade quantity and that too not declared, so the same cannot be treated as bonafide baggage in terms of section 79 of Customs Act, 1962. The said gold is imported in violation of Foreign Trade the

provisions of section 77,79,11 of Customs Act, 1962, para 2.20 of Exim Policy 2009-2014 and also the provision of section 3 (3) and 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law absolutely confiscated the said gold under section 111 (d) (l) & (m) of Customs Act, 1962. Penalty of Rs. 25,000/- was also imposed on applicant under section 112 of Customs Act, 1962. The Commissioner (Appeals) has rejected the appeal. Now in this revision application the applicant has contested the order of absolute confiscation and imposition of high penalty and requested to allow either its redemption on payment of redemption fine under section 125 of Customs Act, 1962 or re-export.

8. Applicant has pleaded for allowing redemption of goods under section 125 of Customs Act on payment of fine in lieu of confiscation or to allow re-export. Government observes that in this case, the passenger did not declare gold to Customs and attempted to smuggle the same without payment of Customs duty. She had acted as carrier and gold did not belong to her. She had to receive monetary consideration for the carriage of said gold. These facts are admitted by the applicant before Customs officer as recorded in Order-in-Original.

8.1 Government notes that absolute confiscation in such cases is upheld in the judgments of Hon'ble High Court of Madras in the case of CC Air, Chennai Vs. Samynathan Murugesan 2009 (247) ELT 21 (Mad). Hon'ble High Court of Madras in this case has held as under :-

"Confiscation - Absolute confiscation of goods- 7.075 Kgs Gold ornaments recovered from T.V. Set- Goods were prohibited as petitioner did not belong to category of persons who could bring gold at concessional rate of duty - previous periods where petitioner stayed for longer duration, not relevant for the purpose of Notification No 31/2003-Cus- Liberalization policy and repeal of Gold control order weighed with the Tribunal -Tribunal ought to have considered whether he could have carried the gold as part of his baggage as an eligible passenger -Goods imported in violation of Import (control) Order, 1955 read with section 3 (i) of Import and Export Control Act, 1947 - Concealment weighed with the Commissioner to order absolute confiscation -Commissioner's order upheld - Section 111 of Customs Act, 1962."

The said order was upheld by Hon'ble Supreme Court in the order dated

11-01-2010 reported as 2010 (254) ELT A 015 (S.L) -dismissing the petition for special leave to Appeal (Civil) No. 22072 of 2009 filed by Samyanathan Murugesan. Supreme Court passed the following order:-

" Applying the ration of the judgment in the case of Om Prakash Bhatia II Commissioner of Customs/ Delhi reported in 2003 (155) ELT 423 (S.C)= 2003 (6) s.ec 161/ to the facts of the case/ we find that; in the present case/ the assessee did not fulfill the basic eligibility criteria, which makes the imported item a prohibited goods; hence/ we see no reason to interfere with the impugned order. The special leave petition is accordingly dismissed. "

8.2 Hon'ble High Court of Madras in their judgment dated 02-03-2012 in WP No. 21086/2002 in the case of Aiyakannu Vs JC Customs reported on 2012-110L- 806-HC-MAD-Cus has also held as under:-

" Petitioner being a foreign (Sri Lankan) national is not entitled to import gold in terms of clause 3 of Foreign Trade (Exemption from application of Rules in certain cases) order 1993/ as it will apply to the passenger of Indian origin-attempt to smuggle 10 gold bars with Foreign markings wrapped in carbon paper by concealing in baggage justifies the order of absolute confiscation. "

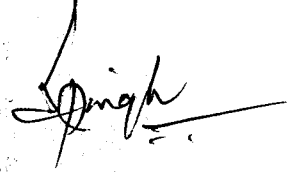
8.3 Government also notes that Hon'ble High Court of Bombay in its judgment dated 23-07-2009 in the case of UOI Vs Mohammed Aijaj Ahmed (WP No.1901/2003) reported as 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT ordering to allow redemption of gold and upheld the absolute confiscation of gold ordered by Commissioner of Customs. In this case the gold did not belong to passenger Mr. Mohammed Aijaj Ahamed who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reports as 2010 (253) ELT E83 (SC).

9. Government notes that ratio of above cited judgments are squarely applicable to this case as the facts of these cases are identical. The case laws cited by applicants cannot be made applicable to these cases as facts involved are not similar. In view of this position, Government upholds the absolute confiscation of gold as ordered by lower authorities. The penalty imposed in these cases is quite reasonable and same cannot be called harsh keeping in view the gravity of offence as such penalty imposed is upheld.

10. In view of above circumstances, Government finds no legal infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. The revision application thus stands rejected being devoid of merits.

12. So, ordered.



(D.P. Singh)
Joint Secretary to the Govt. of India

Shri Imtiyaz Fatima Shakeel,
Orange Palace,
86, Lingi Chetty Street,
Mannady, Chennai-600001.

ATTESTED



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 76 /14-Cus Dated 15-4-2014

Copy to:

1. The Commissioner of Customs, Custom House, Chennai-1
2. The Commissioner of Customs (Appeals), Custom House, 33 Rajaji Salai, Chennai-600001.
3. The Deputy Commissioner of Customs, Air Cargo Complex, Chennai-600001.
4. Shri K. Mohamed Ismail, B.A.B.L., Advocate & Notary Public, New No. 102, Lingi Chetty Street, Chennai 600001.
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(B.P.Sharma)

OSD (REVISION APPLICATION)