

SPEED POST



F.No. 375/16/B/2018-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-110 066

Date of Issue. 6/1/2020.....  
Order No. 02/2020-Cus dated 01/01/2020 of the Government of India passed by  
19 Cus 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/ 546/ 2017 dated 30.11.2017 passed by the  
Commissioner of Customs (Appeals), New Customs House,  
Near IGI Airport, Delhi-110037

Applicant : Mr. Ajay Gupta.

Respondent : Commissioner of Customs, New Delhi

**ORDER**

A Revision Application No. 375/16/B/2018-RA dated 01.03.2018 has been filed by Mr. Ajay Gupta (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC (A) Cus/ D-I/ Air/ 546/ 2017 dated 30.11.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the order bearing no. 301/ 2016-17 dated 15.04.2017 of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi regarding confiscation of one gold bracelet/ kada and two gold chains cumulatively weighing 264.000 grams and valued at Rs. 6,27,982/-. The applicant was given an option of redemption on redemption fine of Rs. 1 lac within three months alongwith payment of applicable customs duty @ 36.05% within one month and. A penalty of Rs. 1, 00,000/- 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 16.12.2016, he was diverted for detailed examination of his baggage and frisking by way of hand held metal detector. It was found that the applicant was carrying one gold bracelet/ kada weighing 31.8 grams and two gold chains weighing 232.2 grams. All these items were of 22k purity. The passenger was coming after 2 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 impugned gold was recovered from his body search.

3. The revision application has been filed on the grounds that the Gold was purchased by the applicant from M/s Kishan Lal Jewelers Pvt Ltd in India and he should be allowed to clear the gold jewellery without redemption fine, personal penalty and customs duty. He further submitted that as the applicant is a resident of Dubai and at the time of arrival at the airport he was wearing gold items on his body and it was not concealed. He may be allowed to re-export the impugned goods.

4. Personal hearing was fixed on 09.12.2019 in this case. Sh. S. S. Arora, advocate appeared on behalf of the applicant and reiterated the grounds of revision

application. He contended that the impugned gold items were of Indian origin and were purchased in 2014. The applicant did not get an export certificate made at the time of departure while he was carrying the impugned items to Dubai. Further he did not declare the impugned goods at the time of his arrival at IGI Airport, Delhi. On being asked the applicant produced the purchase invoices dated 13.05.2014 and 11.07.2014 on 16.12.2019. 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. 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 recovery of impugned gold items from his body search in his statement tendered under Section 108 of Customs Act, 1962 on 16.02.2017. During personal hearing the applicant admitted that he did not get an export certificate made nor did he declare the impugned goods at the time of his arrival at IGI Airport, Delhi. Later on the applicant submitted invoices issued by M/s Kishan Lal Jewels Pvt. Limited, 1244, Kucha Mahajani, Chandni Chowk, Delhi-110006, bearing nos. C-440 dated 13.05.2014 and C-668 dated 11.07.2014 regarding purchase of impugned items in India.

6. Section 123 of Customs Act 1962 reads as follows:

*"123. Burden of proof in certain cases. — 1[*

*(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—*

*(a) in a case where such seizure is made from the possession of any person, —*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*

(2) This section shall apply to gold 2[and manufactures thereof] watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify."

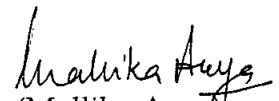
Hence the burden of proof is on the PAX from whom the impugned goods are recovered that they are not smuggled goods in terms of Section 123 of Customs Act, 1962.

No evidence has been put forth by the applicant establishing his contention that impugned goods are of Indian origin except the invoices which cannot be treated as substantive evidence. The applicant was asked to give evidence regarding the mode of payment in respect of purchase invoices No. C-440 dated 13.05.2014 and No. C-668 dated 11.07.2014 and the fact that he was in India on these dates, i.e., the dates of purchase of impugned goods. Since the applicant has not furnished cogent evidence in support of his contention that the goods are of Indian origin the same cannot be accepted and is rejected.

7. It is observed that the applicant did not request for permission to re-export the impugned goods before the lower authorities. Government holds that re-export of the confiscated goods cannot be considered at this stage.

8. It is held that the adjudicating authority has correctly imposed redemption fine of Rs. 1 lac (Rupees One Lac) for release of goods along with applicable customs duty @36.05%. The said Order-in-Original and Order-in-Appeal are upheld.

9. In view of the above discussions, the Government does not find any deficiency in the Commissioner (Appeals)'s order and the revision application filed by the applicant is rejected.

  
(Mallika Arya)

Additional Secretary to the Government of India

1. Ajay Gupta, R/o 76, Jorbagh, Delhi.

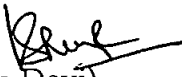
2. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037

Order No. 02/2020-Lus dated 01/01/2020  
19 Cus 2019

Copy to:

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

  
(Nirmala Devi) **ISHWER CHANDER**  
S.O (R. A.) **Super (R.A.)**