

SPEED POST



F.No. 375/22/B/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 8/1/2020

Order No. 10/2020-Cus dated 02/01/2020 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/93/2018 dated 16.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Yogesh Kumar

Respondent : Commissioner of Customs, IGI- Airport, T-3, New Delhi

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ORDER

A Revision Application No. 375/22/B/2018-RA dated 27.03.2018 has been filed by Mr. Yogesh Kumar (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/93/2018 dated 16.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 420/2015-2016 dated 11.03.2016 regarding absolute confiscation of the two gold articles, total weighing 232 grams valued at Rs. 5,74,870/- ((Rupees Five lacs seventy four thousand eight hundred and seventy only). A penalty of Rs. 1,20,000/- has been imposed on the applicant read with Section 112 and Section 114AA of the Customs Act, 1962.

2. The brief facts of the case are that the applicant arrived from Dubai on 05.02.2016 at Terminal-3 IGI Airport, Delhi and was intercepted near the exit gate after he had crossed the customs green channel. Thereafter, he was directed to pass through the door frame metal detector (DFMD). After personal search 2 gold articles one in the shape of drum and other in the shape of cylinder were recovered from his hand bag which were concealed in hair styling crimper. The applicant in his statement tendered under Section 108 of the Customs Act, 1962 admitted that the recovered gold bars did not belong to him and were handed over to him by Mr. Sikander in Dubai. He was well aware of the fact that the import of gold attracts Customs duty and smuggling of the same is a punishable offence.

3. The revision application has been filed on the grounds that the applicant is the owner of the impugned gold bars and he was carrying the same under bonafide belief that this activity is not prohibited. The Statement tendered under Section 108 of Customs Act, 1962 before the customs authorities was recorded under duress.

Gold articles belonged to him as the same were purchased and brought from Dubai for his sister marriage. Gold bars are not prohibited under Section 2 (33) of Customs Act, 1962. Further the gold bars were not concealed as the same were recovered from the hand bag. Gold articles should be allowed to be released on redemption under Section 125 of Customs Act, 1962. He also requested that penalty under Section 114AA of Customs Act, 1962 is not imposable on him and also requested that penalty under Section 112 may also be reduced.

4. Personal hearing was fixed on 09.12.2019 and 30.12.2019 in this case. Neither the applicant nor the respondent appeared on either of the dates. However the applicant requested for another date of hearing without any satisfactory reasoning. Since the ample opportunities have already been granted to both applicant and respondent and no one has appeared, 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 articles 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 non-declaration of the impugned gold items in his statement tendered under Section 108 of Customs Act, 1962.

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 applicant to justify the bonafides of the import, from whom the impugned goods are recovered in terms of Section 123 of Customs Act, 1962. No evidence has been put forth by the applicant to establish the ownership of the impugned goods before the lower authorities as well as in the revision application. The contention of the applicant that gold articles were purchased and brought for his sister marriage appears to be an afterthought and hence not tenable. It is also on record that he admitted that the gold articles do not belong to him and the gold bars were handed over in Dubai to be carried to India.

The applicant has contended that he had tendered the statement under Section 108 under duress. The statement recorded under Section 108 of the Customs Act, 1962 is admissible in this case, even when it is retracted.

Reliance is placed on the judgment of Supreme Court of India in the case of Surjeet Singh Chhabra Vs. U.O.I.[1997 (89) E.L.T. 646 (S.C.)] wherein the Hon'ble court has held as follows:-

"Evidence - Confession statement made before Customs officer though retracted within six days is an admission and binding since Customs Officers are not Police Officers - Section 108 of the Customs Act and FERA."

"Natural Justice - Seized goods - Cross-examination of witnesses regarding the place at which recovery was made to be allowed but where Petitioner has confessed, non allowing of cross examination is not violative of principles of natural justice even if such

confession was retracted within six days - Customs Officers are not Police Officers hence confession though retracted is binding - Sections 108 and 111 of the Customs Act, and FERA."

Therefore the statement recorded under Section 108 of the Customs Act, 1962 is admissible, even when it is retracted as per the aforesaid judgment of Apex Court.

7. 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)] has 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".

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.

The ratio of aforesaid judgment is squarely applicable to the facts of this case.

8. Reliance is placed on Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I vs. Samynathan Murugesan [2009 (247) E.L.T. (Mad.)], 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."*

It is on record that the impugned gold articles were not declared by the applicant on his own. The gold articles were recovered only on his baggage search by the Customs Officers which were concealed in hair styling crimper. The concealment material was also seized as per the DR NO.53764 dated 05.02.2016.

9. The applicant has made a request for release of impugned goods on payment of redemption fine. In the present case the adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962, as he was a carrier. As per the provision of Section 125 of the Customs Act, 1962, the confiscated goods can be released only to owner of the goods whereas the applicant is only a carrier as per his own statement tendered under Section 125 of the Customs Act, 1962. Therefore Government upholds the order of lower authorities denying release of goods on redemption under Section 125 of the Customs Act, 1962.

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 has held as follows:-

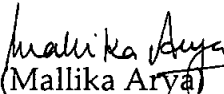
"3. In the instant case, according to the respondent himself the owner was Karimuddin as he had acted on behalf of Karimuddin. The question of the Tribunal exercising the jurisdiction u/s 125 of the Customs Act and remit the matter to give an option to the respondent herein to redeem the goods was clearly without jurisdiction."

It is evident that the applicant had brought the gold articles as a carrier totally weighing 232 grams valued at Rs. 5,74,870/- (Rupees Five lacs seventy four thousand eight hundred and seventy only) on behalf of someone and did not declare the impugned goods to the customs authorities with an intention to evade customs duty.

10. In light of various judicial pronouncements discussed in the earlier paras Government upholds the order of the lower authorities regarding absolute confiscation of the impugned gold articles (2 nos.) total weighing 232 grams valued at Rs. 5,74,870/- under Section 111 of Customs Act, 1962.

(ii) Penalty of Rs. 1,20,000/- has been imposed on the applicant under Section 112 read with Section 114AA of the Customs Act, 1962. As penalty is not imposable under Section 114AA of the Customs Act, 1962 a penalty of Rs. 1,20,000/- is imposed under Section 112 (a) of the Customs Act, 1962, keeping in view the gravity of offence .

11. Accordingly the order-in-appeal is upheld and revision application is rejected.


(Mallika Arya)

Additional Secretary to the Government of India

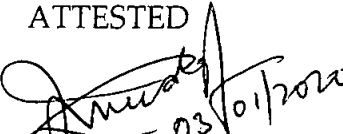
1. Mr. Yogesh Kumar, 120K, Ghati Kuwa Near, Satya Mandir, VPO Kuchaman City Nagour, Rajasthan.

Order No. 10/2020-119 Cus dated 02/01/2020
~~2019~~

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.
2. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
3. Sh. Sh. S. Arora, Advocate, B-1/71, Safdarjung Enclave, new Delhi 110029
4. PA to AS(RA)
- ✓ 5. Guard File.

ATTESTED


(Rohit Mudgal) 03/01/2020

Superintendent (R. A.)