

## **Detention of licensed Firearms brought into India on transfer of residence – Supreme Court's recent finding on the issue**

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Supreme Court decided an interesting question in its recent decision in the matter of *Anirudh Singh Katoch Vs. Union of India (UOI) and Ors.*, dated 05.05.2010 (MANU/SC/0336/2010). The core question that arose for consideration before the Apex Court was *whether the Additional Commissioner of Customs, Indira Gandhi International Airport, New Delhi was justified in detaining two duly licensed firearms which the appellant brought from United States of America (USA) on transfer of his residence into India.*

### **Case Background:**

Appellant, an Indian citizen had gone to USA for further studies in 1984, where he graduated in Computer Science and worked with Medical Instrumentation firm there. He was holding licences for the possession of three firearms under the Arms Act, 1959 and the Arms Rules, 1962.

Before coming to India, he is said to have consulted the Indian Consulate in San Francisco, USA with regard to the firearms and he was told that he was allowed to take his personal firearms to India provided he held valid Indian firearms licences. He, accordingly, brought the aforesaid three firearms with him on transfer of his residence to India.

When he arrived at the Indira Gandhi International Airport, New Delhi with his baggage and firearms, he was told at the customs clearance counter that he was permitted only one firearm under the Transfer of Residence Rules and he had to obtain the firearms import licence for the other two firearms from the Director General of Foreign Trade (DGFT). All the three firearms were detained and a detention order was issued recording, 'detained for clearance as per Rules'.

Thereafter, one of the firearms was released to him and the other two firearms remained in the custody of the custom officials.

Despite various efforts when other two firearms were not released, legal notices were upon the Additional Commissioner of Customs, IGI Airport, New Delhi, Deputy Director General of Foreign Trade and Ministry of Commerce. In response thereto, the Appellant received a communication from the DGFT informing him that he was entitled to bring only one firearm into India.

He thereafter approached Delhi High Court for quashing the detention order in question and also the above mentioned communication and sought direction for

release of his two firearms with a further direction to the District Magistrate (Nainital) to keep the licences of the two firearms detained by custom officials alive till such time the said firearms were returned to him.

In the counter affidavit filed by opposite parties, it was pointed out that firearms fall under the restricted category of Exim Policy (1997-2002) and as such import of firearms is not permitted except against an import licence issued by the DGFT to renowned shooters/Rifle Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports. It was further submitted that although import of firearms is not permitted as per the Exim Policy, yet one firearm has been allowed under instructions dated January 5, 1988 and June 7, 1995 issued by the Ministry of Finance applicable to persons transferring their residence to India.

High Court dismissed the petition. The Letters Patent Appeal alongwith two other miscellaneous applications were also dismissed by the Division Bench, leading to filing of SLPs before the Supreme Court.

### **Holding:**

The Supreme Court upheld the finding given by the Division Bench in the impugned finding wherein the High Court had considered the provisions of the Exim Policy (1997-2002) with regard to import of firearms and concluded that the relevant extract of the Exim Policy clearly showed that the import of sporting, hunting or target-shooting shotguns, including combination shotgun-rifles is not permitted except against a license by renowned Shooters/Rifle Clubs for their own use and that too on the recommendation of the Government of India. Thus, the import of firearms, which governed by the Exim Policy, was prohibited, except to the extent stated therein.

The Supreme Court in the context of Baggage Rules, 1998 stated that the said Rules deal with import of duty free articles by a person in his bona fide baggage. The contention of the Appellant in the instant SLP that he is entitled to bring in more than one firearm because of transfer of residence by relying upon Baggage Rules was misconceived. The only inference that can be drawn from these Rules is that duty free import of firearms is not permissible.

The Division Bench was held to be right in considering the provisions contained in Customs Act, 1962, Baggage Rules, Arms Act, 1959 and Rules framed thereunder, Foreign Trade (Development and Regulation) Act, 1992 Act and the Exim Policy and did not commit any error in holding that a person is not entitled by virtue of Arms Act, 1959 or the Rules framed thereunder to bring into India

such licensed firearms, if any provision of law prohibits or restricts the bringing of such articles.

What was important to be noticed was that in the light of the Exim Policy, the import of firearms is permissible only against an import licence issued by the DGFT to renowned shooters / rifle clubs for their own use on the recommendation of the Department of Youth Affairs and Sports and the Appellant was denied import licence because he is not covered by this category.