

REGISTERED  
SPEED POST



F.No. 375/78/B/16-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-110066

Date of Issue... 16/8/19

Order No. 03/19-Cus dated 14-08-2019 of the Government of India passed by Mrs. 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-1/Air/141/2016 dated 15.03.2016, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Gaurav Paul

Respondent : Commissioner of Customs (Airport & General), New Delhi

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**ORDER**

A Revision Application No.375/78/B/16-RA dated 05.06.2017 has been filed by Mr. Gaurav Paul (hereinafter referred to as the applicant) against the Order No.CC(A)Cus/D-1/Air/141/2016 dated 15.03.2016, issued by the Commissioner of Customs (Appeals), New Delhi, whereby the Order-in-Original No. 146/2015 dated 17.04.2015 of the Additional Commissioner of Customs, IGI Airport, New Delhi, absolutely confiscating the gold articles of value of Rs. 8,82,150/- and imposing penalty of Rs. 2,25,000/-, has been upheld. The above said revision application was disposed of by the then Additional Secretary (RA) vide its Order No. 148/18-Cus dated 04.09.2018, whereby the revision application filed by the applicant was rejected as non maintainable for the reason that the applicant had not paid the mandatory fees of Rs. 1,000/- as required under Section 129DD(3) of the Customs Act, 1962 for filing the revision application before the revisionary authority. Aggrieved, the applicant approached the Hon'ble High Court of Delhi and who vide its order dated 20.05.2019 remanded the case back to revisionary authority with the direction to applicant to deposit the balance fees of Rs. 800/-. The applicant has deposit the balance fees of Rs. 800/- vide TR-6 challan No. 1786 dated 28.06.2019.

2. The revision application is filed mainly on the grounds that he had brought the gold articles for self use only, gold is not prohibited goods and, therefore, the Commissioner(Appeals) has passed wrong order by upholding the Order-in-Original confiscating gold absolutely.

3. A personal hearing was held in this case on 07.08.2019 and Sh. B.L. Yadav, Consultant, appeared on behalf of the applicant and he reiterated the above grounds of revision already pleaded in the revision application. However, no one appeared for the respondent and no request for any other date of hearing was also received.

4. Government has examined the matter and it is found that there is no dispute regarding the fact that the applicant had violated Section 77 of Customs Act, 1962 by not declaring gold articles to the Custom authorities on his arrival at Airport from Dubai. Accordingly,

Commissioner (Appeals) has rightly upheld the Order-In-Original to the extent of confiscating the gold articles which were brought from Dubai with the intention to evade custom duty. However, the Commissioner (Appeals) has upheld Additional Commissioner's order of absolute confiscation of gold on the premise that the gold brought by the applicant had become prohibited when it was sought to be smuggled in by hiding the same in an unusual manner. He has stated that the applicant was not an eligible passenger to bring any quantity of gold as per Notification No. 12/2012-Cus (N.T.) dated 17.03.2012 and thus an option for redemption of confiscated gold could not be given. This contention of Commissioner (Appeals) is untenable. Government finds that the said Notification is only a general exemption notification for several goods and Gold is one of many items in respect of which concessional rate of duty is provided on fulfilment of condition Number 35 of the notification. This Notification prescribes the conditions for import of gold by an eligible passenger and it also prescribes applicable rate of duty on such import.

However it is observed that any import of gold, which is not in consonance with notification 12/ 2012 (supra) will not become prohibited and liable for absolute confiscation under Section 111 (d) of Customs Act 1962.

Although Government is fully convinced that unusual method of concealment of gold is a very relevant factor for determining the quantum of fine and penalty, it does not agree with the Commissioner (Appeals) contention that gold had become prohibited only because of its concealment in an unusual manner.

Prohibited goods are a distinct class of goods which can be notified by the Central Government only. The goods cannot be called prohibited goods simply because they have been brought by any person in violation of any legal provisions of law or non-fulfilment of any statutory conditions prescribed by a notification or without payment of customs duty. The Apex Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi, 2003(155) ELT423 (S.C) has held that "*from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*" However the Apex court has further

held in Para No. 22 of the said judgment that the authorities' decision to impose redemption fine and penalty cannot be said to be unreasonable.

Therefore, it is apparent that Gold is not notified as prohibited goods under Section 11 of the Customs Act, 1962 or any other law for the time being in force.

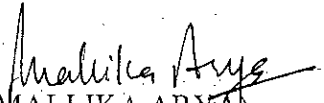
Further the Hon'ble Madras High Court, in its decision in the case of T. Elavarasan Vs CC (Airport), Chennai, 2011(266) E.L.T.167 (Mad.), has held that "*..gold is not a prohibited item. Further, an option is available to a person, who is the owner of the goods, or where such owner is not known, the person from whose possession or custody such goods had been seized, to pay fine, in lieu of confiscation, under Section 125 of the Customs Act, 1962.*"

The Apex court in the case of Sapna Sanjiv Kohli, 2010(253)ELT A52(SC), has upheld the judgment of Bombay High Court and CESTAT, Mumbai. In this case the Tribunal's order of release of gold jewellery on payment of redemption fine and penalty was upheld by the Bombay High Court and subsequently upheld by the Supreme Court.

Even the Hon'ble High Court of Andhra Pradesh in the case of Shaikh Jamal Basha Vs GOI, 1997(91) E.L.T.277 (A.P), has also held that as per Rule 9 of Baggage, Rules, 1979 read with Appendix-B, gold in any form other than ornament could be imported on payment of Customs Duty only and if the same was imported unauthorisedly the option to owner of the gold is to be given for redemption of the confiscated gold on payment of fine.

Therefore, in light of the various judicial pronouncements on the subject, I hold that the Commissioner (Appeals) should have provided an option to the applicant under Section 125 of the Customs Act 1962 to redeem the confiscated goods on payment of custom duties, redemption fine and penalty. Since it was not done so earlier, Government, therefore, allows the applicant to redeem the confiscated gold items on payment of Redemption Fine of Rs. 4,00,000/- and penalty of Rs. 2,25,000/- as already imposed by the Additional Commissioner of Customs, IGI Airport within 30 days from the date of receipt of this order. The applicant will also pay customs duties as applicable on the impugned goods within above stipulated time period.

5. Accordingly, the revision application is disposed and the Commissioner (Appeals)'s order is modified in above terms.

  
(MALLIKA ARYA)

Additional Secretary to the Government of India

Sh. Gaurav Paul,  
1H-95, NIT, Faridabad-121001

Order No. 03/19-Cus dated 14-08-2019

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi-110037
4. Sh. B.L. Yadav, Consultant, 113, Sector,-10, Gurugram, Haryana-122001
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

*Nay*  
14/8/19  
(Nirmala Devi)

Section Officer (REVISION APPLICATION).