

REGISTERED

SPEED POST



F.No. 375/56/B/ 2016-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... 12.07.18

Order No. 118/18-Cus dated 7-8-2018 of the Government of India, passed by Shri R.P.Sharma, 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. ASR-CUS/ PVR/ APP/ 0046/ 16-17 dated 12.05.2016, passed by the Commissioner of Customs (Appeals), Customs & Central Excise, Chandigarh-I.

Applicant : Mr Lakhmi Chand.

Respondent: Commissioner of Customs (Prev), Amritsar.

ORDER

A revision application no. 375/56/B/2016-RA dated 06.08.2016 is filed by Mr Lakhmi Chand, a resident of Pakistan (hereinafter referred to as the applicant) against the Order-in-Appeal no. ASR-CUS/ PVR/ APP/ 0046/ 16-17 dated 12.05.2016, passed by the Commissioner of Customs (Appeals), Customs & Central Excise, Chandigarh-I, whereby the absolute confiscation of gold jewellery, imposition of personal penalty of Rs. 20,000/- on the applicant and allowing redemption of garments and oven on payment of customs duty and fine of Rs. 10,000/- have been upheld. import of suits and ovens on payment of Customs duty of Rs. 19,107/- and redemption fine of Rs. 10,000/-.

2. The revision application has been filed mainly on the grounds that absolute confiscation of gold jewellery and imposition of penalty are not legally justified as all the goods, gold jewellery viz. the four bangles and one ring, suits and oven, were meant for gift to his relatives and friends in India and these goods were not concealed by the applicant in any manner.

3. Personal Hearing was held in this case on 06.07.2018 and it was availed by Sh. K. K. Sharma, advocate, who reiterated the above-mentioned grounds of revision. However, no one appeared for the respondent and no request for any other date of hearing was also received from which it is implied that the respondent is not interested in availing this hearing.

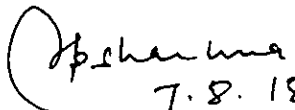
4. The Government has examined the matter and it is found that the applicant had undoubtedly violated section 77 of the Customs Act, 1962 by not declaring the above-mentioned goods on his arrival at Attari border and accordingly the Commissioner (Appeals) has rightly upheld the Order-in-Original to the extent of

confiscating the goods illegally brought from Pakistan with the intention to evade customs duty. However, he has been lenient with regard to confiscation of garments and the oven in as much as these were allowed for redemption on payment of fine of Rs.10,000/- and the same have been redeemed by the applicant also by paying the redemption fine of Rs. 10,000/- and penalty of Rs. 20,000/-. But he has upheld the Assistant Commissioner's original order of absolute confiscation of gold jewellery on the premise that gold jewelleryes were prohibited goods and these were sought to be smuggled by concealing them from customs officers. But the Order-in-Appeal as well as the Order-in-Original are completely silent about the method and place of concealment adopted by the applicant. On the other hand, the applicant has claimed that four bangles and one ring had been worn by him on his body and the same had been declared to the customs authorities. As the Spot Adjudication Order issued by the Assistant Commissioner does not mention any particular place for concealment of the jewellery and there is no other evidence to corroborate the charge of concealment, the Government finds that the fact of some unusual concealment is not properly established in this case. With regard to other reason as that the gold jewelleryes are prohibited goods, it is observed that the Commissioner (Appeals) has not cited any particular legal provision under which the import of gold is specifically notified as prohibited goods and has merely stated that the value of the jewellery was in excess of the baggage limit provided with the Baggage Rules. While the Government is fully convinced that excess baggage is to be subjected to levy of duty and can also be confiscated if it is for commercial purpose. But it does not agree with the view that the goods becomes prohibited just for the reason of being in excess of the limit specified for the baggage in the Baggage Rules. Prohibited goods is a different class

of goods which can be notified by the Central Government only and the goods cannot be and do not become prohibited goods simply because it was brought by any person in violation of any legal provision. Any goods imported without payment of duty and in violation of any provision of the Customs Act, 1962 is certainly liable for confiscation under section 111 of the Customs Act, but confiscated goods are not necessarily to be always prohibited goods. While there is no dispute in this case that the gold brought by the applicant from Pakistan is liable for confiscation because he did not follow the proper procedure for import thereof in India and attempted to smuggle it without payment of customs duties, it is beyond any doubt that the gold is not a prohibited item under the Customs Act. 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 goods and a mandatory option is available to the owner of the goods to redeem the confiscated gold on payment of fine under Section 125 of Customs Act, 1962. 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 held that as per Rule 9 of the 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 unauthorizedly the option to owner of the gold is to be given for redemption of the confiscated gold on payment of fine. In fact the Commissioner (Appeals), Delhi, Chandigarh and the Government of India have consistently held the same view in a large number of cases in past that gold is not prohibited goods as it is not specifically notified by the Government. Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding absolute confiscation of gold in this case. Accordingly, 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 customs duties, redemption fine and penalty and because it was not done so earlier, the Government now allows the applicant to redeem the confiscated gold jewellery ^{within 30 days of this order} on payment of customs duty and fine of Rs. 1,00,000/-. The quantum of penalty amounting to Rs.20,000/- imposed by the adjudicating authority and upheld by the appellate authority for the applicant's wrong activities is found to be reasonable and no interference in the same is warranted.

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


7.8.18
(R.P.Sharma)

Additional Secretary to the Government of India

Mr Lakhmi Chand, S/o Sh. Ghansham Dass,
Mander Wali Street, Ganpati Rai Road, Sibi Balochistan.
Through the Advocate
Sh. K. K. Sharma, Advocate
A-115, Ground Floor, Ashoka Enclave Part-II,
Sector-37, Faridabad-121003.

ATTESTED


(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 119 /18-Cus dated 7-8-2018

Copy to:

1. Commissioner of Customs (Prev), C. R. Building, The Mall, Amritsar-143001.
2. Commissioner of Customs (Appeals), Customs & Central Excise, Chandigarh-I.
3. Deputy/Assistant Commissioner of Customs, LCS, Attari Road, Attari, District-
Amritsar.
4. PS to AS(RA)
5. Guard File.