

REGISTERED
SPEED POST



F.No. 375/25/B/16-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... 14/8/15

Order No. 127/18-Cus dated 13-8-2018 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.CC(A)Cus/D-1/Air/151/2016 dated 17.03.2016, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Fahimuddin, Delhi

Respondent : Commissioner of Customs, New Delhi

ORDER

A Revision Application No. 375/25/B/16-RA dated 18.05.16 has been filed by Mr. Fahimuddin (hereinafter referred to as the applicant) against the Order No. CC(A)Cus/D-1/Air/151/2016 dated 17.03.2016, issued by the Commissioner of Customs (Appeals), New Delhi, whereby the Order-in-Original No. 274/2015 dated 16.10.2015 of the Additional Commissioner of Customs, IGI Airport, New Delhi, absolutely confiscating the gold bars of value of Rs. 5,75,447/- and imposing penalty of Rs. 1,00,000/-, was upheld.

2. The revision application is filed mainly on the grounds that he had brought the gold bars for self use only, he was implicated falsely in this case due to some altercation with Customs Officer, gold is not prohibited goods and, therefore, the Commissioner(Appeals) has passed wrong order by upholding the Order-in-Original.

3. A personal hearing was held in this case on 26.06.2018 and Ms. Sangeeta Bhayana, Advocate, appeared on behalf of the applicant who reiterated the grounds of revision already stated in the revision application. However, no one appeared for the respondent.

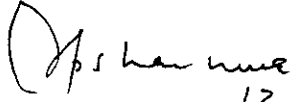
3. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the goods which were brought by him illegally from Dubai in violation of Customs Act and the Foreign Trade (Development and Regulation) Act 1992 and his request is limited to a point that the confiscated gold may be released on payment of redemption fine and penalty.

4. Government has examined the matter and it is found that there is no dispute regarding the fact that the applicant had violated the Section 77 of Customs Act, 1962 by not declaring gold bars 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 bars 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 his rectum. But he has not cited any legal provision under which the import of gold is expressly prohibited and has only stated that the applicant was not an eligible passenger to bring any quantity of gold as per Notification and thus an option for redemption of confiscated gold could not be given. The relevant Notification number is not cited in the Order-in-Appeal under which the applicant was not eligible to import gold. However, from the definition of eligible passenger quoted in Para 6.3 of the Order-in-Appeal it appears that the Commissioner (Appeals) intended to refer to Notification No. 12/2012-Cus dated 17.03.2012. But Government find that the said Notification is only a general exemption notification for several goods and gold is also one of many goods in respect of which concessional rate of duty is provided on fulfilment of condition Number 35. Thus, under this Notification eligibility of the passenger is relevant only for determining the admissibility of concessional rate of duty and not for deciding the eligibility to import or not to import gold. The exemption from customs duty was never the issue in this case and it could not be given because the applicant did not declare the importation of gold at all and rather used his rectum for hiding gold bars with clear intention to evade customs duty. While the 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) that the gold had become prohibited only because of its unusual hiding in the applicant's rectum even when the gold is not notified as prohibited goods under Section 11 of the Customs Act, 1962 or any other law. Prohibited goods is a distinct class of goods which can be notified by the Central Government only and the goods cannot be called as prohibited goods simply because it was brought by any person in

violation of any legal provision or without payment of custom duty. Any goods imported without payment of duty and in violation of any provision of the Customs Act is also certainly liable for confiscation under Section 111 of the Customs Act, but confiscated goods is not necessarily to be always prohibited goods. While there is no dispute in this case that the gold brought by the applicant from Dubai 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 custom duties, it is beyond any doubt that the gold is not a prohibited item under 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 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. In fact the Commissioner (Appeals), Delhi and the Government of India have consistently held the same view in a large number of cases 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 provide 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 and because it was not done so earlier, the Government now allows the applicant to redeem the confiscated gold ^{within 30 days of} on payment of customs duty, ^{This and} fine of Rs. 2,75,000/- and penalty of Rs. 1,00,000/-.

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


(R.P.Sharma) 13.8.18

Additional Secretary to the Government of India

Mr. Fahimuddin,
R/o 3297, Phatak Teliyan Turkan Gate,
Delhi 110006

Order No. 127 /18-Cus dated 13-8-2018

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
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi
4. Mrs. Sangeeta Bhayana, Advocate, Chamber No. 707, LCB-III, Delhi High Court, New Delhi 110001
5. PA-to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED


(Ravi Prakash) 13/8/18

OSD (REVISION APPLICATION)