

REGISTERED
SPEED POST



F. No. 380/117/B/2016-R.A.
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..14/8/18

Order No. 128/2018-Cus dated 13-8-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R.P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A) CUS/D-I/AIR/07/2016 dated 22.01.2016, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : The Commissioner of Customs, New Customs House, IGI Airport, Terminal-3, New Delhi- 110037

Respondent: Mr. Luvleen Maingi, 6/47, Punjabi Bagh, New Delhi

ORDER

A Revision Application no. 380/117/B/2016-R.A. dt. 31.05.2016 is filed by the Commissioner of Customs, NCH, Delhi (hereinafter referred to as the applicant) against OIA no. CC(A) CUS/D-I/AIR/07/2016 dated 22.01.2016, passed by the Commissioner of Customs (Appeals), Delhi, whereby the appeal of the respondent, Sh. Luvleen Maingi was allowed and the Additional Commissioner's Order-in-Original confiscating the gold articles and imposing penalty was set aside.

2. The Revision Application is filed mainly on the grounds that the respondent had brought the gold articles weighing 501 grms in violation of Section 77 of Customs Act, 1962 with the intention to evade Customs duty and the Commissioner (Appeals) has erroneously set aside the OIO without appreciating the facts and the legal provisions.

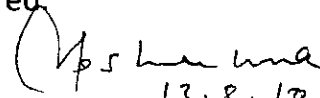
3. Personal hearing was offered on 25.06.2018 and it was availed by respondent who pleaded that the Order- in- Appeals is correct and also produced the copy of gold purchase invoice dated 21.04.2012 from Shagun Jewellers Pvt Ltd., Pashchim Vihar, his Canara bank account passbook showing the payment for the gold bars purchased from Shagun Jewellers Pvt Ltd. and the job work challan dated 24.01.2014 issued by Roop Jeweller, Rani Bagh, New Delhi. However no one appeared for the applicant and no request for any other date of hearing was also received from the applicant from which it is implicit that respondent is not interested in personal hearing. Hence, revision application is taken up for a decision on the basis of available case records.

4. The Government has examined the matter and it is observed that while the Additional Commissioner of Customs confiscated the gold articles but allowed the respondent to redeem the gold articles on payment of Customs duty, fine of Rs. 2,00,000/- and penalty of Rs. 1,25,000/- after being convinced that the gold articles had been brought by the respondent in India in contravention of Section 77 of the Customs Act 1962 and Section 7 of Foreign Trade (Development and Regulation) Act

1992 with the sole intention of evasion of Customs duty, the Commissioner (Appeal) has set aside the Order-in-Original by just writing two small paras with his general observations and by not elaborating any cogent reason for reversing the Order-in-Original in toto. He has not spoken a word with regard to non-declaration of gold articles of more than half kg to the Customs authorities and abruptly concluded that the gold articles worn by the respondent had been got made by the respondent out of the gold purchased by him. But no reference of any document relating to the purchase of gold is made and how the gold articles brought by the respondent from Thailand could be related to the purchase of gold is also not explained in Order-in-Appeal. Therefore, the Order-in-Appeal is manifestly non-speaking in nature. As regards evidences relating to the purchase of gold articles in the Order-in Appeal, the respondent produced the 3 documents, as mentioned in above para No. 3, as per which the gold bars weighing 1742.565 gms were purchased from Shagun Jewellers Pvt Ltd. and its payment was made on 23.04.2012 from the Canara bank account, Raja Garden, Delhi and 499.88 gms gold was given to Roop Jeweler for some job work. According to the respondent the gold articles worn by the respondent at the time of arrival from Bangkok on 25.04.2014 were got manufactured from Roop Jeweller out of the gold purchased from Shagun Jewellers. But the Government finds that this claim is entirely based on assumption and presumption and there is no direct evidence to establish that the articles illegally brought by the respondent had been got manufactured in India only. Even there is no linkage between the gold bars purchased from Shagun Jewellers and the job work done by Roop Jeweller since there is no reference of the invoice of Shagun Jewellers in the job work done by Roop Jewellers. The quantity of gold purchased from Shagun Jewellers and the gold quantity given to Roop jeweler also do not match and the invoice of job work was also issued after more than 1 year and 8 months from the purchase of the gold bar. Further job work challan is hand written not bearing any running Sr. No. and does not mention the name of any gold articles such as 'kada' and 'chain' and their weight etc. Thus, just on the basis of above discussed documents the gold articles brought

by the respondent from Thailand can not be related to the gold bars purchased from Shagun Jewellers way back on 21.04.2012 and no evidence has been produced to prove that the gold articles made out of the gold purchased in India were ever taken by the respondent from India to Thailand. On the contrary, it cannot be denied that the respondent had brought chain and kada by wearing them on his body while arriving from Bangkok and the same were not declared to the Customs authority in gross violation of Section 77 of the Customs Act,1962. Had these articles really been those which had been got made from Roop Jewellers India earlier, the respondent would have been honest to declare the same to the Customs authority at the time of his arrival. Since he is a frequent visitor from Thailand to India and vice versa, the respondent was certainly aware of the Indian Customs laws and accordingly he was expected to adhere to Section 77 and other legal provisions. But the applicant did not declare the gold articles at all and the circumstances fully corroborate the departmental case that he did not do so at Delhi Airport on 25.04.2014 to evade Customs duty only. Considering these facts and circumstances of the case, the Government is convinced that the applicant had illegally brought gold articles from Thailand, the Additional Commissioner (Customs) had rightly confiscated the said gold articles and he was lenient enough to release these articles on payment of modest fine of Rs. 2,00,000/- only. Whereas, the Commissioner (Appeals) has completely overlooked these relevant facts and legal provisions and has passed the non-speaking Order-in-Appeal erroneously which deserves to be set aside for the aforesaid reasons.

5. Accordingly, the revision application filed by the Commissioner of Customs is allowed, Order-in-Appeals is set aside and the Order-in-Original is restored.


13.8.18
(R.P. Sharma)

Additional Secretary to the Government of India


The Commissioner of Customs,
New Customs House, IGI Airport, Terminal-3,
New Delhi- 110037

GOI ORDER No 28/18.Cus dt. 13-8-2018

Copy to-

- 1) Mr. Luvleen Maingi, 6/47, Punjabi Bagh, New Delhi.
- 2) The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
- 3) The Additional Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037.
- 4) P.S. to A.S.
- 5) Guard file
- 6) Spare Copy

ATTESTED


13.8.2018

(Debjit Banerjee)

Sr. Technical Officer