

REGISTERED
SPEED POST



F.No. 375/01/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... 5/11/18

Order No. 13/18-Cus dated 4-1-2018 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-I/Imp/2179/2015 dated 6.11.2015 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Surya Babbar, Karnal, Haryana

Respondent : Commissioner of Customs, New Delhi

ORDER

A Revision Application No. 375/01/B/16-RA dated 7.01.16 has been filed by Mr. Surya Babbar, Haryana (hereinafter referred to as the applicant) against the Order No.CC(A)Cus/D-I/Imp/ 2179/2015 dated 6.11.2015, issued by Commissioner of Customs (Appeals), New Delhi, who has allowed the applicant to redeem the confiscated gold articles on payment of fine of Rs.480000/- and a penalty of Rs.250000/- on the applicant.

2. The revision application has been filed mainly on the ground that he had requested the Commissioner (Appeals) to allow re-export of the confiscated gold articles on payment of reasonable fine and penalty. But the Commissioner (Appeals) has completely ignored their above request and has instead allowed redemption of confiscated goods on payment of custom duty, heavy redemption fine of Rs.480000/- and harsh fine of Rs. 250000/- In the revision application the applicant has once again requested to modify the Commissioner (Appeals)'s Order and allow him to re-export the confiscated gold articles on payment of reasonable redemption fine and penalty.

3. A personal hearing was held in this case on 15.12.17 which was attended by Shri S.S.Arora, Advocate, on behalf of the applicant who reiterated the above grounds of revision already pleaded in their application and he especially requested for allowing re-export of confiscated gold items for the reason that the applicant is working in Dubai for long time; that he is almost settled there and he is not in a position to redeem the goods on payment of customs duty and fine etc. in India. He also placed reliance upon Supreme Court's decision in the case of DRI Vs. Pushpa Lekhumal Tolani 2017(353)ELT 129 (S.C.) and GOI Order No.317/11-Cus dated 20.10.11, in addition to several other case laws cited in their revision application.

4. On examination of copy of the appeal filed by the applicant before Commissioner (Appeals) against the Order of the Additional Commissioner of Customs and the Order of the Commissioner (Appeals), it is observed by the

Government that the applicant had expressly requested at S.No.8 of the appeal to allow re-export of the gold jewellery and one gold piece on payment of nominal redemption fine and for reduction of personal penalty imposed by the Additional Commissioner. This request was repeated even in the 'Prayer' portion of the revision

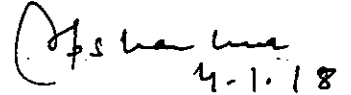
application. However, while passing the order-in-appeal, the Commissioner (Appeals) has not discussed the above request of the applicant at all and has just allowed the applicant to redeem the confiscated goods on payment of custom duty, redemption fine and penalty as mentioned above. Therefore, the applicant has requested for re-export of the goods once again on several grounds such as the applicant is working in Dubai for long time as Sales Manager on the basis of a work visa issued by Dubai Government, he earned monthly salary of 15000 Dhiraams, (equivalent to Rs.2.5 lakhs approximately); that he had purchased only one gold kara, one gold chain and one gold cut piece for himself and for his wife; that these three items are manifestly not for commercial use and he had not concealed these three items from the Custom Officers as is alleged in the Orders of Additional Commissioner and the Commissioner (Appeals). These facts were stated by the

applicant even in his personal statement dated 23.3.14 and discussed in the order-in-original also. Further, the facts regarding his job as a Sales Manager in Dubai for long time, his high salary given for his job and his frequent visits between Dubai and Delhi have not been denied in the OIO and even in the OIA. Therefore, the Government finds that the gold articles namely one gold kara, one gold chain and one gold cut piece, total weighing 454 gms are apparently not of commercial quantity for a person earning such high salary. It has not been alleged even in the above two orders. The purchase of these articles by the applicant from his own income source is also not dispute in the above two orders. Above all it is not established in this case that the applicant had concealed these three articles in his baggage or in his body parts. On the contrary the applicant had claimed that he was wearing gold kara and gold chain on his body and these could be seen by any person with the naked eyes. However, as per OIO these 3 articles of gold were recovered from the applicant only on search of his body. But the Government finds that it is not mentioned anywhere in the OIO or OIA as to from which body part of

the applicant these articles were recovered by the Custom Officers. As a result, the Government finds that the element of concealment of gold is not established and the only fault on the part of the applicant has been that he did not declare the importation of the above three articles to the Custom Officers before his departure from the arrival hall. Therefore, the above three articles of the value of Rs.1247535/- are certainly liable for confiscation under Section 111 of the Customs Act and the applicant has also not disputed this aspect. The applicant has requested for re-export of the goods for the above stated reasons and mainly on the ground that the applicant is not in a position to redeem the goods in India on payment of custom duty etc. as he is working in Dubai and is almost settled there. To support his request, the applicant has relied upon the above mentioned decision of Supreme Court in the case of Pushpa Lekhumal Tolani, GOI's Order dated 21.10.11 in the case of Zainul Abedin and Order of the Deputy Commissioner of Customs, IGI Airport, New Delhi, in the case of Mr. Aung Zeya. In the case of Pushpa Lekhumal Tolani, the Supreme Court has held that as per International Convention on Simplification and Harmonization of Customs Procedure (Kyoto 18.5.73), passenger going through green channel is itself declaration that he has not dutiable or prohibited articles. However, this decision is not found applicable in the present case as the three articles of gold brought by the applicant along with him are certainly dutiable if not prohibited and the applicant had not come to India as a tourist. However, the Government of India's Order dated 21.10.11 allowing re-export of the gold jewellery on payment of RF and PP is found supporting the applicant's request for re-export of the confiscated gold items. In the above referred Order dated 20.11.12 of the Deputy Commissioner also the gold jewellery of the value of Rs.350000/- was allowed to be re-exported on payment of redemption fine of Rs.20000/- and penalty of Rs.15000/-. Even Commissioner (Appeals), Delhi himself in his OIA No.CC(A)/Cus/385/2015 dated 3.6.2015 in the case of Mr. Abdul Wahab has allowed re-export of confiscated gold weighing 1.900 kg. of the value of more than Rs.38.00 lakhs on payment of fine & penalty. It is also noted that the respondent has not contested the applicant's request of re-export of confiscated goods in any manner. Considering all the above discussed facts, the decisions and

especially the fact that the applicant is working in Dubai as a Sales Manager and the Commissioner (Appeals) has not rejected the applicant's request for re-export of the goods in his Order, the Government allows the re-export of goods on payment of redemption fine of Rs.300000/- . Further, it also agrees that penalty of Rs.250000/- imposed on the applicant is also on the higher side and considering the above facts, the same is reduced to Rs.100000/-. The fine and penalty of the above amount will not only eliminate any profit of margin, if any, but will also have a positive effect on the applicant to ensure strict compliance of law in future. Thus, the applicant can re-export all the confiscated gold articles on payment of Redemption Fine of Rs.300000/- and Personal Penalty of Rs.100000/- .

5. In view of the above discussion, the Order of the Commissioner (Appeals) is modified and the revision application is allowed to the above extent.



(R.P.Sharma)

Additional Secretary to the Government of India

Mr. Surya Babbar,
R.o H.No.1109, Urban Estate, Sector-13
Karnal, Haryana-132001

Order No. 13 /18 Cus dated 4-1-2018

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, New Delhi
3. Additional Commissioner of Customs, IGI Airport, New Delhi-110037
4. Shri S.S.Arora, Advocate, S.S.Arora & Associates, B.1/71, Safdarjung Enclave, New Delhi-110029
5. PA to AS(RA)
6. Guard File.
- ✓ 7. Spare Copy

ATTESTED


(Debjit Banerjee)

STO (Revision Application)