

REGISTERED
SPEED POST



F.No. 375/08/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...7/9/18..

Order No. 135/18-Cus dated 4-9-2018 of the Government of India, passed by Shri R.P.Sharmā, 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/ Air/ 2428/ 2015 dated 19.12.2015, passed by the Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037

Applicant : Mr Nirvair Singh

Respondent : Commissioner of Customs, NCH, New Delhi.

ORDER

A revision application no. 375/ 08/B / 2016- RA dated 29.02.2016 is filed by Mr. Nirvair Singh, a resident of Delhi (hereinafter referred to as the applicant) against the Order-in-Original no. CC (A) Cus/ D-I/ Air/ 2428/ 2015 dated 19.12.2015, passed by the Commissioner of Customs (Appeals), NCH, New Delhi, whereby the applicant has been allowed to redeem the confiscated silver jewellery on fine of Rs. 1,10,000/- and penalty of Rs. 50,000/-.

2. The revision application has been filed mainly on the grounds that silver is not prohibited goods, he had declared importation of silver jewellery to the customs officer at red channel with a request to clear the same on payment of duty, did not contravene any other legal provision and, therefore, the Commissioner (Appeal)'s order upholding confiscation of goods and penalty on him is completely erroneous.

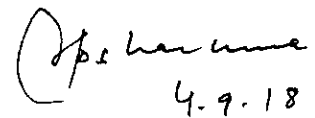
3. Personal Hearing was held in this case on 22.06.2018 and it was availed by Sh. Amit Attri, advocate, along with the applicant who reiterated the above-mentioned grounds of revision. However, no one appeared for the respondent and no request for any other date of hearing was also received from which it is evident that the respondent is not interested in availing this hearing.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) himself has admitted in his order that silver jewellery are not prohibited goods and the applicant had honestly declared the importation of jewellery to the customs officers, obviously with the intention to pay the customs duties liable thereon. But still the silver jewellery were confiscated solely for the reason that the applicant was not eligible to import silver jewellery in terms of serial no. 322 of the notification no. 12/ 2012- cus dated 17.03.2012 read with its condition no. 35. But neither in the Order-in-Original nor in the Order-in-Appeal, the text of above stated condition and the notification have been analysed and an abrupt conclusion is made that the applicant was not eligible to import silver jewellery. On examination of the notification no. 12/ 2012- cus dated 17.03.2012 it is found by the Government that this notification is a general exemption notification for a large number of goods on fulfilment of specified conditions or even otherwise and concessional rate of duty on silver is also provided therein subject to fulfilment of condition no. 35. The applicant certainly did not qualify the condition no. 35 and as a result he was not eligible to claim concessional rate of duty in respect of imported silver jewellery. Even the applicant also did not claim any concessional rate of duty or full exemption in respect of imported jewellery. But this notification is not relevant for examining whether the

applicant could import silver jewellery or not and the lower authorities have wrongly held on the basis of Notification no. 12/ 2012-cus that the applicant was not eligible to import silver jewellery. However, it also does not mean that the applicant was eligible to import so much silver silver jewelleryes and has not contravened any legal provision as is claimed by the applicant. On the contrary, the Government finds that the applicant was not eligible to import the silver jewellery without obtaining import-export code from the DGFT in accordance with section 7 of Foreign Trade (Development and Regulation) Act, 1992. An exception in this regard is provided in respect of a bonafide baggage in terms of Rule 3 (h) of Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993. But it will not be applicable in the instant case as the importation of 18 kgs silver jewellery cannot be considered as bonafide baggage by any standard as the same was brought manifestly for commercial purpose. Consequently, the silver jewellery imported in India in violation of aforesaid provision of Foreign Trade (Development and Regulation) Act, 1992 is liable for confiscation under Section 111 (d) of the Customs Act, 1962. Therefore, the goods are correctly confiscated and further rightly allowed to the applicant to redeem the confiscated goods on payment of redemption fine and penalty for the reasons that these are not prohibited goods. However, considering the facts that the applicant had declared the

imported jewellery to the customs officers with the intention to pay customs duty and no such case was earlier committed by him, the Government considers it appropriate to reduce the redemption fine and penalty to Rs.75,000/- and Rs. 25,000/- respectively.

5. Accordingly, the Order-in-Original is modified and the revision application is allowed to the above extent.



4.9.18

(R.P.Sharma)

Additional Secretary to the Government of India

Mr. Nirvair singh,
R/o H. No. 66, Gagan Vihar Extn.,
Delhi-110051.

ATTESTED


4/9/18
(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 135/18-Cus dated 4-9-2018

Copy to:

1. Commissioner of Customs, NCH, Near IGI Airport, New Delhi-110037
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037
3. Deputy/Assistant Commissioner of Customs, IGI Airport, Terminal-3, New Delhi.
4. PS to AS(RA)
- ✓ 5. Guard File.