

REGISTERED

SPEED POST



F. No. 375/14/B/2015-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...7/9/18...

ORDER NO. 138/18-Cus dated 4-9-2018 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/2166/2015 dated 13.11.2018 passed  
by the Commissioner of Customs (Appeals), New  
Customs House, New Delhi

APPLICANT : Mr. Mohd. Aswad, Muzaffar Nagar

RESPONDENT: Commissioner of Customs, New Delhi

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ORDER

A Revision Application No. 375/14/B/2016-R.A. dated 03.12.2015 has been filed by Sh. Mohd. Aswad, Muzaffarnagar (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. CC(A)Cus/D-I/Air/2166/2015 dated 13.11.2015. whereby the order of the Additional Commissioner of Customs, IGI Airport, New Delhi, confiscating the gold weighing 933.12 grams of the value of Rs.23,44,819/- and imposing penalty has been upheld.

2. A personal hearing was held in this case on 25.06.2018 and Ms. Harsimran Kaur, Advocate, appeared on behalf of the applicant who reiterated the grounds of revision already pleaded in their application. However, no one appeared on behalf of respondent and no request for any other date of hearing was also received from which it is implied that they do not want to avail any further hearing in the matter.

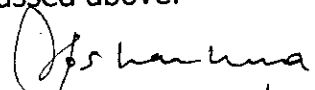
3. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding absolute confiscation of the gold which were brought by him from Riyadh in violation of Customs Act and Foreign Trade Policy (FTP), 2009-14 and his request is limited to the point that he should be allowed to redeem the gold on payment of duty, redemption fine and penalty etc or re-export of the gold out of India.

4. On examination of the Revision Application, the government finds that the applicant has not made out any case for re-export of goods under Section 80 of the Customs Act, 1962 and thus re-export of the gold items illegally imported cannot be allowed. As regards the issue of redemption of goods on payment of redemption fine and reduction in penalty etc., it is observed that the Commissioner (Appeals) has upheld the Order-In-Original vide which it was absolute confiscation of gold on the

premise that the goods are prohibited goods and liable for absolute confiscation for importation purpose. However, he has not cited any legal provision under which the import of gold is expressly prohibited. Instead, he has observed that any goods imported in the baggage beyond what is permitted in the Baggage Rules, 1998 are prohibited goods as defined under section 2 ( 33) of the Customs Act. But the Government does not agree with his views as prohibition of the goods has to be notified by the Central Government under section 11 of the Custom Act or any other law and the goods cannot be called as prohibited goods simply because the goods are not covered in the terms "baggage" or are brought by any person in violation of any legal provision or without payment of custom duty. Any goods imported without payment of duty or in violation of any provision of the Customs Act is certainly liable for confiscation under Section 111 of the customs Act, but it cannot be accepted that all goods liable for confiscation are prohibited goods .While there is no dispute in this case that the goods brought by applicant from Riyadh are liable for confiscation because he did not follow proper procedure for import thereof in India and attempted to import the goods without payment of custom duties, it is beyond any doubt that the gold are not prohibited goods under Customs Act or any other law. Even the Courts, Tribunal, Commissioner of Customs (Appeals), Delhi, Chandigarh and J.S (RA) have held in large number of orders that gold is not a prohibited item. Therefore, the Commissioner (Appeals) has taken a different stand by upholding absolute confiscation of gold in this case. Unusual concealment of the gold in the underwear is certainly a relevant factor for deciding the quantum of fine and penalty, but the goods cannot become prohibited goods just because of such concealment if these are otherwise legally non-prohibited goods. Since the gold is

not proved to be prohibited goods, an option to redeem the confiscated gold should have been given to the applicant by the Commissioner (Appeals) under Section 125 of the Customs Act. and because it was not given earlier the government now allows *within 30 days of this order* the applicant to redeem the gold on payment of customs duty and fine of Rs. 9,50,000/- within 30 days of this order. The applicant's contention regarding heavy penalty of Rs. 8,00,000/- under Section 112 and 114AA of the Customs Act is also found legally tenable as revenue has not been able to make any case against the applicant that he had made or signed any declaration, statement or document which was false or incorrect as envisaged under Section 114AA of the said Section. Instead the department's case is that he had not declared the imported goods to the Customs Authorities for which the penalty is imposable under Section 112 of the Customs Act, 1962. Thus penalty under Section 114AA is not imposable in this case. But the combined penalty of Rs. 8,00,000/- has been imposed on applicant by the Commissioner (Appeals) by considering the penalty under Section 114AA also and when the penalty under Section 114AA is not found imposable, the Government considers it appropriate to reduce the penalty from Rs. 8,00,000/- to Rs. 7,00,000/- under Section 112 of the Customs Act, 1962.

5. Accordingly, the revision application filed by Mr. Mohd. Aswad is allowed and the Commissioner (Appeals)'s order is modified to the extent as discussed above.

  
(R. P. SHARMA) 4.9.18

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Mr. Mohd. Aswad  
R/o VPO-Dadhera Kalan, PS-Charthawal  
Muzaffar Nagar (UP)

Order No. 138 /18-Cus dated 4-9-2018

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. Smt. Harsimran Kour, 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

*N Dew*  
*4/9/18*  
(Nirmala Devi)  
Section Officer (RA)