

REGISTERED
SPEED POST



F.No. 375/15/B/15-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.....

Order No. 139/18-Cus dated 4-9-2018 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)/D-1/AIR/1942/2015 dated 19.10.2015, passed by the Commissioner of Customs, NCH, New Delhi.

Applicant : Mr. Mohammad Halim Khan, Delhi

Respondent : Commissioner of Customs, NCH, New Delhi

ORDER

A Revision Application No. 375/05/B/2016-RA dated 27.10.15 is filed by Mr. Mohammad Halim Khan, R/o House No. 1439, 3rd floor, Gali Murliban, Chitli Qabar, Jama Masjid, New Delhi (hereinafter referred to as the applicant) against the Order in Appeal No. CC(A)/D-1/AIR/1942/2015 dated 19.10.2015, passed by the Commissioner of Customs (Appeal), NCH, New Delhi, whereby the applicant has been allowed to redeem the confiscated goods on payment of redemption fine of Rs.14,50,000/-, and personal penalty of Rs.2,00,000/- under Section 112 and penalty of Rs. 50,000/- under Section 114AA of Custom Act, 1962.

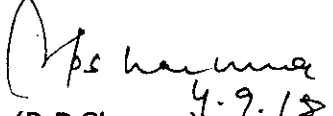
2. The revision application is filed mainly on the ground that the applicant had brought the gold for the self-use without any concealment and, therefore, redemption fine and personal penalties imposed on him are excessive. It is also pleaded that penalty under section 114AA is not maintainable at all as the applicant did not use any false and incorrect material for importation of gold.

3. A personal hearing was held on 21.06.2018 and Sh. S.S. Arora, Advocate, availed the hearing on behalf of the applicant who reiterated the above mentioned grounds of revision already pleaded in their application. However, no one appeared for the respondent and no request for any other date of hearing was also received from them from which it is implied that the respondent is not interested in availing personal hearing.

4. From the Revision Application it is evident that the applicant does not dispute the Commissioner (Appeal)'s order regarding confiscation of gold which were brought by him illegally in violation of Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992 and his request is limited to a point that the redemption fine and penalty should be reduced.

5. As regard his prayer for reduction in redemption fine and penalty imposed by the Commissioner (Appeal) in his order, the Government finds that applicant has not advanced any convincing reason and it is merely stated that redemption fine should not be more than the margin of profit. However, the Government does not agree with this contention as the redemption fine is in lieu of the value of the confiscated goods whose ownership is vested with Government and, therefore, value of the confiscated goods is relevant for determination of redemption fine and not the margin of profit. If the above argument of the applicant is accepted, there will not be any redemption fine on confiscated goods if these were illegally imported without having any profit margin which is manifestly absurd. However, the applicant's contention regarding non-maintainability of penalty under Section 114AA of the Customs Act is 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 in the said section. Instead the department's case against the applicant is that he had not declared the imported goods to the Customs Authorities at all and for this a penalty of Rs. 2,00,000/- has already been imposed under Section 112 of Customs Act, 1962. Accordingly the penalty under Section 114AA is set aside.

6. In view of the above discussion, the Order in Appeal is modified and the Revision Application is allowed to the above extent.


(R.P.Sharma) 4.9.18

Additional Secretary to the Government of India

Mr. Mohammad Halim Khan,
R/o House No. 1439,
3rd floor, Gali Murliban, Chitli Qabar,
Jama Masjid, New Delhi

Order No. 139/18-Cus dated 4-9-2018

Copy to:

1. Commissioner of Customs, IGI Airport, Terminal-3, New Delhi
2. Commissioner of Customs (Appeals), New Custom House, near IGI Airport, New Delhi
3. Additional Commissioner of Customs, IGI Airport, New Delhi
4. Shri SS Arora, Advocate, SS Arora & Associates, B-1/71, Safdarjung Enclave, New Delhi
5. PA to AS(RA)
- ~~6. Guard File.~~

ATTESTED

R. Prakash

(Ravi Prakash)

OSD (REVISION APPLICATION)