



REGISTERED

SPEED POST

F. No. 375/17/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..7/9/18

ORDER NO. 140/18 - 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/2436/2015 dated 18.12.2015, passed by the Commissioner (Appeals), New Custom House, New Delhi-37.

APPLICANT : Mr. Shemeer Cheniyarakkal, Kerala.

RESPONDENT : Commissioner of Customs, Terminal-3, IGI Airport, New Delhi.

ORDER

A Revision Application No. F. No. 375/17/B/2016-R.A. dated 12.04.2016 has been filed by Mr. Shemmer Cheniyarakkal, R/o Hajara Manzil, P.O. Neerveli Koothuparamba, District. Kannur, Kerala-670701 (hereinafter referred to as the applicant) against order No.CC(A)Cus/D-I/Air/2436/2015 dated 18.12.2015, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi-37 whereby the applicant's appeal is rejected and the Additional Commissioner's order dated 17.03.2015 absolutely confiscating the gold plate coated white of the value of Rs. 39,74,990/- weighing 1563 gms, LED TV of Sony Bravia 33 inch CX 35 (in which the gold plate coated white were concealed) and penalty of Rs.4,00,000/- on applicant was upheld.

2. The Revision application is filed with a request to release the confiscated goods i.e. LED TV of "Sony Bravia" brand and gold plate coated white weighing 1563 gms. on payment of duty and fine etc. on the grounds that these are not prohibited goods.

3. A personal hearing was fixed on 25.06.2018 & thereafter on 17/07/18. Sh. N.P.Rakeesh Panicker, Advocate, availed the hearing on behalf of the applicant who reiterated the above mentioned grounds of revision already pleaded in their application. He also pleaded that applicant is a very poor and does not have any tainted record in past and accordingly a lenient view may be taken. However, no one appeared for the respondent and no request for any other date of hearing was also received from which it implied that the respondent is not interested in availing personal hearing.

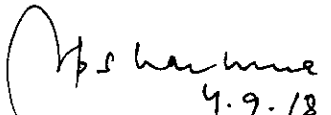
4. The Government has examined the matter and it is found that the Revision Application was filed after the delay of 11 days and the reason for the same is stated to be that applicant had earlier filed an appeal before CESTAT under the bonafide belief that CESTAT was the second Appellate Authority in this matter. However, it was returned to the applicant by the Registry of CESTAT vide it's letter dated 31.03.2016.

Apparently the said reason is genuine. Accordingly accepting the applicant's request, the delay of 11 days is condoned and the Revision Application is taken up decision on merit.

5. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the gold plate coated white and LED TV of Sony Bravia 33 inch CX 35 (under which the gold plate coated white were concealed) which were brought by him from Dubai 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 all the confiscated goods. As regards the main issue regarding maintainability of the absolute confiscation of the gold plate coated white, it is observed that the Commissioner (Appeals) has upheld the Order-In-Original on the premise that the gold plate coated white are prohibited goods and liable for absolute confiscation. However, he has not cited any legal provision under which the import of gold plate coated white is prohibited. Instead, he has observed that the appellant attempted to smuggle out the goods by concealing the same in the LED TV hence the goods so brought is prohibitory goods as there is clear violation of the statutory provisions for the normal import of gold. 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 term "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 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 is 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. For example, the same Commissioner (Appeals), in his Order-in-Appeal No. CC(A)Cus/D-I/Air/629/2016 dated 14.07.2016 in the case of Mohd. Khalid Siddique, has categorically held that gold is not prohibited goods. Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding absolute confiscation of gold in this case. Since the gold is not notified as prohibited goods, the Commissioner (Appeals) should have provided an option to the applicant under Section 125 of the Customs Act, 1962 to redeem the confiscated gold on payment of customs duties, redemption fine and penalty and because it was not done so earlier, the Government now allows the applicant to redeem the confiscated gold within 30 days of this order on payment of customs duties, Redemption fine of Rs. 17 lakhs and penalty of Rs.4 lakhs which was earlier imposed by the original Adjudicating Authority and upheld by the Commissioner(Appeals) also. Similarly the LED TV confiscated under Section 111 of the Customs Act,1962 is also allowed to be redeemed on payment of customs duties and redemption fine of Rs.25,000/-.

6. In terms of the above discussion, the order-in-appeal 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. Shemmer Cheniyarakkal,
R/o Hajara Manzil,
P.O. Neerveli Koothuparamba,
District. Kannur, Kerala-670701

ORDER NO. 140/18-Cus dated 4-9-2018

Copy to:-

1. The Commissioner of Customs (Appeals), New Custom House, New Delhi-37
2. The Addl. Commissioner of Customs, IGI Airport, Terminal-III, New Delhi-37.
3. P.S. to A.S.
4. Mr. N.P.Rakeesh Panicker, B-4/242, Basement, Safdarjung Enclave, New Delhi-110029.
5. Guard File

ATTESTED

N Devi
4/9/18

(NIRMALA DEVI)
Section Officer