

REGISTERED
SPEED POST



F.No. 375/23/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..7/9/18..

Order No. 142/18-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)Cus/D-1/Air/100/2016 dated 08.02.2016, passed by the Commissioner of Customs, (Appeals), IGI Airport, New Delhi.

Applicant : Mr. Mohd Jawait
C/o D.S. Chadha, Advocate

Respondent : Commissioner of Customs, NCH New Delhi

ORDER

A Revision Application No. 375/23/B/16-RA dated 13.05.2016 is filed by Shri Mohd. Jawait (hereinafter referred to as the applicant) against the Order No. CC(A)Cus/D-1/Air/100/2016 dated 08.02.2016, issued by the Commissioner of Customs (Appeals), New Delhi, whereby the Order-in-Original No. 79/2015 dated 26.02.2015, of the Additional Commissioner of Customs, confiscating the gold kadas valued at Rs. 29,78,730/- and imposing Penalty of Rs. 7,00,000/- on the applicant, was upheld.

2. The revision application is filed mainly on the grounds that the applicant is a foreign national not knowing the Indian Customs Laws, the gold was not concealed by him and the gold is not prohibited and, therefore, upholding of absolute confiscation of gold is not warranted in this case.

3. A personal hearing was held in this case on 26.06.2018 and Smt. P.K. Chadha, Advocate, appeared on behalf of the applicant who reiterated the grounds of revision already pleaded in the revision application and placed reliance on O-I-A No. [CC(A)Cus/D-1/Air/126/2016 dated 22.02.2016] to make out her case that goods should be allowed to be redeemed on payment of fine etc. However, no one appeared for the respondent and no request for any other date of hearing was also received from which it is implied that the respondent is not interested in availing the personal hearing.

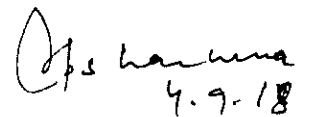
4. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the goods which were brought by him illegally from Bangkok in violation of Customs Act and the Foreign Trade (Development and Regulation) Act 1992 and his request is limited to a point that the confiscated gold may either be released on payment of redemption fine and penalty or allowed to be re-exported. Regarding the request to allow re-export, it is noticed that the applicant has not adduced any convincing reason for allowing the reexport of the confiscated goods. On the contrary it is evident from the facts of the case that the gold articles were brought for commercial purpose only, these were not

declared to the Customs officers with the intention to evade Custom duty and above all the applicant is not a citizen of Thailand from where the gold articles were brought. Thus, the applicant's case is not covered under section 80 of the Customs Act and the applicant does not have any legitimate basis for re-exporting the goods to Thailand where he is not even residing.

5. As regards redemption of the confiscated goods, there is no dispute that the applicant had violated Section 77 of Customs Act, 1962 by not declaring gold kadas to the Custom authorities on his arrival at the airport from Bangkok and consequently this case is squarely covered under section 111(d) of the customs Act. Accordingly, Commissioner (Appeals) has rightly upheld the Order-In-Original to the extent of confiscating the gold kadas which were brought from Bangkok with the intention to evade custom duty. However, the Commissioner (Appeals) has upheld Additional Commissioner's order of absolute confiscation of gold on the premise that the gold had become prohibited when it was sought to be smuggled in. But, he has not cited any legal provision under which the import of gold is expressly prohibited and has merely stated that goods had become prohibited due to the methods adopted by him for smuggling the goods. While the Government is fully convinced that unusual method of smuggling is a relevant factor for determining the quantum of fine and penalty, it does not agree with the Commissioner (Appeals) that the gold had become prohibited just because of the method of smuggling adopted by the applicant even when the gold is not notified as prohibited goods under section 11 of the Customs Act or any other law such as Foreign Trade (Development and Regulation) Act, 1992. Prohibited goods is a distinct class of goods which can be notified by the Central Government only and the goods cannot be and do not become prohibited goods simply because it was brought by any person in violation of any legal provision or without payment of custom duty. Any goods imported without payment of duty and in violation of any provision of the Customs Act is certainly liable for confiscation under Section 111 of the Customs Act, but confiscated goods are not necessarily to be always prohibited goods. While there is no dispute in this case that the gold brought by the applicant from Bangkok is liable for confiscation because he did not follow the proper

procedure for import thereof in India and attempted to smuggle it without payment of custom duties, it is beyond any doubt that the gold is not a prohibited item under Customs Act. The Hon'ble Madras High Court, in its decision in the case of T. Elavarasan Vs CC(Airport), Chennai, 2011(266)E.L.T.167(Mad.), has held that gold is not a prohibited goods and a mandatory option is available to the owner of the goods to redeem the confiscated gold on payment of fine under section 125 of Customs Act, 1962. Even the Hon'ble High Court of Andhra Pradesh in the case of Shaikh Jamal Basha Vs GOI, 1997(91)E.L.T.277(A.P), has also held that as per Rule 9 of Baggage, Rules, 1979 read with Appendix-B, gold in any form other than ornament could be imported on payment of customs duty only and if the same was imported unauthorisedly the option to owner of the gold is to be given for redemption of the confiscated gold on payment of fine. In fact, the Commissioner (Appeals), Delhi, and the Government of India have consistently held the same view in a large number of cases that gold is not prohibited goods as it is not specifically notified by the Government. One of such Orders of the Commissioner (Appeals), Delhi, is cited by the applicant itself during the personal hearing. Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding absolute confiscation of gold in this case. Accordingly, the Commissioner (Appeals) should have provided an option to the applicant under section 125 of the Customs Act, 1962 to redeem the confiscated goods on payment of custom 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 duty, fine of Rs. 14,00,000/- and penalty of Rs. 7,00,000/.

6. Accordingly, the revision application is disposed of and the Commissioner (Appeals)'s order is modified in above terms.


4.9.18
(R.P.Sharma)

Additional Secretary to the Government of India

Mr. Mohd. Jawait,
92 GF, Block V,
Eros Garden Faridabad 121009

Order No. 142/18-Cus dated 4-9-2018

Copy to:

1. The Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi.
3. The Assistant Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
4. Mr. D.S. Chadha & Prabjyoti K. Chadha, Advocates, 92, GF Block V Eros Garden Faridabad- 121009.
5. PA to AS(RA)
- ✓ 6. Guard File.
7. Spare Copy

ATTESTED

RP
4/9/18
(Ravi Prakash)

OSD (REVISION APPLICATION)