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F.No. 375/53/B/15-RA
F.No. 380/39/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 9/1/18

Order No. 16-17/18-Cus dated 5-1-2018 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 Customs Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.ASR-CUSTOM-PRV-APP/130/15 dated 04.08.2015 passed by the Commissioner of Central and Customs (Appeals), Chandigarh

Applicant : Smt. Gurpreet Kaur

Respondent : Commissioner of Customs, (Preventive), Amritsar

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ORDER

Smt. Gurpreet Kaur (hereinafter referred to as applicant) has filed a revision application No. 375/53/B/15-RA dated 03.11.2015 against the Commissioner (Appeals)'s Order No. ASR-CUSTOM-PRV-APP/130/15 dated 04.08.2015 whereby her appeal against OIO dated 11.02.15, passed by Additional Commissioner of Customs, has been rejected. The Additional Commissioner had vide his order confiscated the gold articles valued at Rs. 41,48,035/- carried by the applicant from Dubai and imposed penalty of Rs. 15,00,000/-. However, the Commissioner (Appeals), vide his above mentioned order in appeal reduced the penalty to Rs. 3,50,000/-. The Department is also not happy with this order and has filed revision application No. 380/39/B/15-RA dated 23.09.2015.

2. The revision application has been filed by the applicant with a request to allow to redeem the confiscated gold article on payment of redemption fine for their consumption and to impose nominal penalty on the applicant for the reason that the applicant had not concealed the gold, the applicant herself had declared the gold to the Baggage Officer and the import of gold is not prohibited. Whereas the department has challenged the reduction of penalty by Commissioner (Appeals) on the ground that the applicant is a carrier of gold articles.

3. Personal hearing in this case was offered on 22.11.17 and in response Sh. K.K. Sharma, Advocate, on behalf of Smt. Gurpreet Kaur, appeared for personal hearing and reiterated the grounds of revision already stated in their application. However, no one from department appeared for personal hearing from which it is implicit that they are not interested in availing personal hearing.

4. From the revision application of the applicant it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the goods which were brought by her from Dubai in violation of Customs Act and Foreign Trade (Development and Regulation) Act and her request is limited to a point that the gold confiscated by customs should be allowed to be redeemed on payment of custom duties, redemption fine and penalty.

5. On examination of the Commissioner (Appeals)'s order, it is observed that he has ordered for confiscation of gold on the premise that the gold is a prohibited goods 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 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 Customs Act or any other Law and the goods cannot be called as 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 are also liable for confiscation under Section 111 of the Customs Act, but confiscated goods is not necessarily to be always prohibited goods. While there is no dispute in this case that the gold brought by the applicant from Dubai is liable for confiscation because she 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. Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding absolute confiscation of gold in this case. Even the Courts, Tribunal, Commissioner of Customs (Appeals), Delhi, Chandigarh and J.S.(RA) have held gold as non-prohibited goods in a large number of other orders. Therefore, the original adjudicating authority and thereafter the Commissioner (Appeals) were under legal obligation under Section 125 of the Customs Act 1962 to provide an option to the applicant to redeem the confiscated goods on payment of custom duties, redemption fine and penalty. But since they have not given any such option, the Government allows the applicant to redeem the confiscated gold on payment of customs duties as applicable, fine of Rs. 18,00,000 and the penalty imposed by the Commissioner (Appeals). As regards the department's appeal it is noticed by the Government that the department has not adduced any strong reason for the enhancement of penalty on applicant and considering the facts and circumstances of the case the penalty imposed by the Commissioner (Appeals) is found just and proper.

6. Accordingly the revision application filed by Smt. Gurpreet Kaur is allowed, the Commissioner (Appeals)'s order is modified to the extent as discussed above and the Department's revision application is rejected.

5.1.18

(R.P.Sharma)
Additional Secretary to the Government of India

Mr. Gurpreet Kaur
B-74, Pradhan Enclave, Burari,
New Delhi

ATTESTED

05/1/18

(Ravi Prakash)
OSD (REVISION APPLICATION)

Order No. 16-17/18-Cus dated 5-1-2018

Copy to:

1. Commissioner of Customs, New (Preventive), Customs House, C.R.Building, The Mall, Amritsar-143001
2. The Commissioner of Customs & Central Excise (Appeals), Plot No.19, Sector-17C, Chandigarh (UT)
3. Deputy Commissioner of Customs, LCS Attari Rail Attari Distt. Amritsar
4. Sh. K.K. Sharma, Advocate, A-115, Ground Floor, Ashoka Enclave, Part-II, Sector 37 , Faridabad, Haryana 121003
5. PS to AS(RA)
6. Guard File.
7. Spare Copy