

REGISTERED
SPEED POST



F.No. 375/79/B/2016-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. 14/9/18

Order No. 163/18-Cus dated 11-9-2018 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-I/Air/614/2016 dated 08.07.2016, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Charanjit, Punjab

Respondent : Commissioner of Customs, New Delhi

ORDER

A Revision Application No. F. No. 375/79/B/2016-R.A. dated 13.10.2016 has been filed by Mr. Charanjit Singh, R/o village Shekhupur Bagh, PO Jadia, District Nawanshahr, Punjab (hereinafter referred to as the applicant) against order No. No.CC(A)Cus/D-I/Air/614/2016 dated 08.07.2016, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the applicant's appeal is dismissed and the Additional Commissioner's order dated 08.07.2016 confiscating the 20 pieces of gold weighing 1166.40 grams of the value of Rs.29,59,910/- and penalty of Rs.3,00,000/- on applicant was upheld.

2. The Revision application is filed mainly on the ground that the order of the Commissioner (Appeals) with regard to absolute confiscation of the gold is not legally proper as gold is not prohibited goods and a prayer is made for release of the same on payment of duty and fine etc.

3. A personal hearing was first fixed on 16.07.2018, but it was not availed by the applicant and rather vide his letter dated 16.07.2018 he requested for additional 3 weeks times for the reason that he intended to change his advocate. Accordingly, the next hearing was scheduled on 13.08.2018. But this hearing also remained un-attended and no reason for non-availment of hearing was also informed. Further, no request for any another date of hearing is also received from the applicant as well as respondent from which it is implied that they are not interested in availing personal hearing in this matter. Accordingly the case is taken up for disposal on the basis of records available.

4. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the gold pieces 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 the confiscated goods.

5. As regards the main issue regarding maintainability of the confiscation of the gold pieces, it is observed that the Commissioner (Appeals) has upheld the Order-In-Original on the premise that the gold pieces are prohibited goods and liable for confiscation. However, he has not cited any legal provision under which the import of gold pieces are prohibited. Instead, he has observed that the appellant attempted to clear the goods clandestinely by hiding the gold bars in hollow portion of handles of stroller bag to to evade the customs duty, 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. 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. 11.50 lakhs and penalty of Rs.3 lakhs which was earlier imposed by the original Adjudicating Authority and upheld by the Commissioner(Appeals) also.

6. In terms of the above discussion, the order-in-appeal is modified and the revision application is allowed to the above extent.

(Signature)
10-9-18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Charanjit Singh,
R/o village Shekhupur Bagh
PO Jadia District Nawanshahr
Punjab

ORDER NO.163/18-Cus dated 11-9-2018

Copy to:-

1. The Commissioner of Customs, IGI Airport, New Delhi-37
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-37
3. The Addl. Commissioner of Customs, IGI Airport, Terminal-III, New Delhi-37.
4. P.S. to A.S.
5. Dr. Dinesh Rattan Bhardwaj, Solicitor & Advocate-on-record, Supreme Court, B2B-210, Janakpuri, New Delhi- 110058.
6. Guard File

(निर्मल अग्रवाल)
अनुपाल अधिकारी (राजस्व विभाग)
वित्त मंत्रालय (Ministry of Finance)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

ATTESTED

(Signature)
10/9/18