REGISTERED

SPEED POST

F.No. 375/ 67/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.....

Order No. 175/2018-Cus dated 14-9-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India under section 35EE of the Central excise Act, 1944/ 129DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under section 35EE of the Central excise Act, 1944/ 129DD OF THE CUSTOMS ACT, 1962 against the Order-in-Appeal No. CC(A) Cus/ D-I/ Air/ 152/ 2016 dated 17.03.2016, passed by the Commissioner of Customs (Appeals), NCH, New Delhi-110037.

Applicant : Sh. Surender Singh.

Respondent : Commissioner of Customs, NCH, New Delhi.

ORDER

A Revision Application F.No. 375/ 67/ B/ 2016- RA dated 05.09.2016 has been filed by Sh. Surender Singh (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No CC(A) Cus/ D-I/ Air/ 152/ 2016 dated 17.03.2016 whereby the order of the Additional Commissioner of Customs, IGI Airport, T-3, New Delhi, confiscating absolutely gold bars weighing 1000 grams valued at Rs. 24,93,160/- and imposing a penalty of Rs. 5 lakhs on the applicant has been upheld.

2. The applicant has filed the Revision Application mainly on the ground that upholding of absolute confiscation of the gold bars by the Commissioner (Appeals) is erroneous as the gold is not prohibited goods and the same should be allowed to be redeemed on payment of redemption fine and reasonable penalty.

3. Personal Hearing in this case was granted to the applicant twice on 12.07.2018 and 02.08.2018. But the applicant did not appear for the hearing on both the dates and no request was received for any other date of hearing for any genuine reason from which it is implied that the applicant is not interested in availing the hearing. Hence, the Revision Application is taken up for a decision on the basis of available case records.

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 Dubai 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 confiscated gold may be released on payment of redemption fine and penalty.

5. As regards confiscation of gold chains, it is observed by the Government that the Commissioner (Appeals) has upheld Additional Commissioner's order of absolute confiscation of gold on the premise that the gold brought by the applicant had become prohibited when it was sought to be smuggled in by hiding the same in his right-side pocket of jeans pant. But he has not cited any legal provision under which the import of gold is expressly prohibited and has only stated that the applicant was not an eligible passenger to bring any quantity of gold as per Notification No. 12/2012-Cus (N.T.) dated 17.03.2012 and hence an option for redemption of confiscated gold could not be given. Whereas the Government has found that the said Notification is only a general exemption notification and gold is one of many goods in respect of which concessional rate of duty is provided on fulfilment of condition Number 35. Thus, under this Notification eligibility of the passenger is

relevant only for determining the admissibility of concessional rate of duty and not for deciding the eligibility to import or not to import gold. The exemption from customs duty was never the issue in this case and it could not be extended because the applicant did not declare the importation of gold at all and rather used his right-side pocket of jeans pant for hiding gold bars with clear intention to evade customs duty. While the Government is fully convinced that unusual method of concealment of gold is a very relevant factor for determining the quantum of fine and penalty, it does not agree with the Commissioner (Appeals) that the gold had become prohibited only because of its unusual concealment even when the gold is not notified as prohibited goods under Section 11 of the Customs Act, 1962 or any other law. Prohibited goods is a distinct class of goods which can be notified by the Central Government only 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 customs duty. Further there is a difference between the prohibited goods and general regulatory restrictions imposed under the Customs Act or any other law with regard to importation of goods. While prohibited goods are to be notified with reference to specified goods only which are not allowed to be imported or allowed on specific conditions, regulatory restrictions with regard to

importation of goods is generally applicable to general goods like goods will not be imported without declaration to the Customs and without payment of duty leviable thereof etc. Such restriction is clearly a general restriction/regulation, but it cannot be stated that the imported goods become prohibited goods if brought in contravention of such restriction. The lower authorities have merely placed reliance on Supreme Court's decisions in the cases of Om Prakash Bhatia Vs Commissioner of Customs, Delhi [2003(155) ELT 423 (SC)] and Sheikh Mohd. Omer Vs Collector of Customs, Calcutta [1983(13) ELT 1439(SC)], to support its view. But no reason is given as to how these decisions cover the present case. On examination of the decision in the case of Om Prakash Bhatia it is observed that the issue involved in this case was regarding confiscation of goods exported/ attempted to be exported in violation of various legal provisions and allowing of redemption of such goods on payment of fine and penalty. But it is nowhere held in this case that any goods exported or imported in contravention of legal provision will become prohibited goods as is envisaged under Section 11, Section 111 (i) and Section 125 of the Customs Act, 1962 and the goods will be liable for absolute confiscation only. In fact, in this case redemption of confiscated goods had been allowed on payment of fine etc. and it has been upheld by the Apex Court. The issue in the case of Sheikh Mohd.

Omer was also totally different and dealt with the import of live animal for which importation was prohibited under Import Control Order, 1955. Apparently because such goods when imported in violation of specified legal provisions are also liable for confiscation under Section 111 of the Customs Act, the Apex Court held in the afore mentioned case of Om Prakash Bhatia that importation of such goods became prohibited in the event of contravention of legal provisions or conditions. But it is nowhere held that the goods become prohibited goods in such cases. If all goods brought in India in contravention of any legal provision are termed as prohibited goods as envisaged in Section 11, Section 111 (i) and Section 125 of Customs Act, then all such goods will become prohibited and other category of non-prohibited goods for which option of redemption is to be provided compulsorily will become redundant. Thus, while the goods imported without payment of duty and in violation of any provision of the Customs Act, 1962 are certainly liable for confiscation under Section 111 of the Customs Act, confiscated goods are not necessarily to be always prohibited goods. Accordingly, while there is no dispute in this case that the gold bars brought by the applicant from Dubai are liable for confiscation because he did not follow the proper procedure for import thereof in India and attempted to smuggle it without payment of customs duties, it is beyond any doubt

that the gold is not notified as prohibited goods under Customs Act. The Hon'ble Madras High Court, in its decision in the case of T. Elavarasan Vs CC(Airport), Chennai [2011(266)ELT 167(Mad)] has held that gold is not 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) ELT 277(AP)] has also held that as per Rule 9 of Baggage Rules, 1979 read with Appendix B, gold in any form other than ornaments 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. For example, the 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 clearly held that gold is not prohibited as it is not notified by the government as prohibited goods. Subsequently Commissioner of Customs (Appeals), New Delhi maintained the same view in his Order-in-Appeal no. CC (A) Cus/ 823/ 2016 dated 03.10.2016

in the case of Mr. Vinay Gupta. 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 customs duties, redemption fine and penalty.

6. In view of the above discussions, the Government allows the applicant to redeem the confiscated gold within 30 days of this order on payment of customs duty, fine of Rs. 11 lakhs and penalty of Rs. 5 lakhs which was originally imposed by the Additional Commissioner of Customs, IGI Airport, T-3, New Delhi and upheld by the Commissioner of Customs (Appeals), NCH, New Delhi.

7. In terms of the above discussion, the order-in-appeal is modified and the Revision Applications is allowed to the above extent.

14.9.18

(R.P.Sharma)

Additional Secretary to the Government of India

Sh. Surinder Singh
S/o Sh. Tara Singh,
R/o VPO Thalouh,
Distt-Ropar, Punjab.

ATTESTED

14/9

(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No.175/18-Cus dated 14-9-18

Copy to:

1. Commissioner of Customs, NCH, New Delhi-110037.
2. Commissioner of Customs (Appeals), NCH, New Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, T-3, New Delhi.
4. PS to AS(RA)
5. Guard File.