

REGISTERED

SPEED POST



F. No. 375/81/B/2016-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....

ORDER NO.176/18 - Cus dated 14-9-2018 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/600/2016 dated 22.06.2016, passed by the Commissioner (Appeals), New Custom House, New Delhi-37.

APPLICANT : Mr. Pawan Kumar Nahar, Chandigarh.

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

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## ORDER

A Revision Application No. F. No. 375/81/B/2016-R.A. dated 13.10.2016 has been filed by Mr. Pawan Kumar Nahar, R/o 183/2, Sector-45-A, Chandigarh-160036 (hereinafter referred to as the applicant) against order No. CC(A)Cus/D-I/Air/600/2016 dated 22.06.2016, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi-37 whereby the applicant's appeal is dismissed and the Additional Commissioner's order dated 27.05.2015 confiscating the gold kada weighing 500 grams of the value of Rs.12,99,837/- 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.

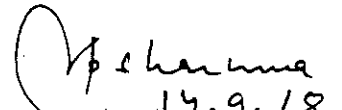
3. A personal hearing was held on 25.07.2018 and it was availed by Sh. D.S.Chadha, Advocate, on behalf of the applicant who reiterated the grounds of revision already pleaded in their application. He also placed reliance on ADC's Order-in-Original No. 01/PPG/VA/ADC/IGIA/2016 dated 04.11.2016 in the case of ~~Sh.~~ Taufiq Sabzi Frosh where the gold was released on Redemption Fine etc. despite it had been hidden in underwear garments. 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. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the gold kada which was brought by him from Bangkok 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 kada, it is observed that the Commissioner (Appeals) has upheld the Order-In-Original on the premise that the gold kada is prohibited goods and liable for confiscation. However, he has not cited any legal provision under which the import of gold kada is prohibited. Instead, he has observed that the appellant attempted to clear the goods clandestinely by wearing the same on his right leg to hoodwink the Customs Officers, 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 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. The order of the Addl. Commissioner mentioned in Para 3 above is another instance where gold was released on fine etc. even when it was brought by

hiding in the under wear. 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.6 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.

  
14.9.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

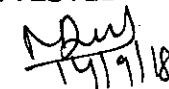
Mr. Pawan Kumar Nahar,  
R/o 183/2, Sector-45-A,  
Chandigarh-160036

ORDER NO.176/18 - Cus dated 14.9.2018

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. D.S.Chadha, 92, G.F. Block-V, Eros Garden, Suraj Kund Road, Faridabad-121009.
5. Guard File

ATTESTED

  
14/9/18  
(NIRMALA DEVI)  
Section Officer