

REGISTERED

SPEED POST



F. No. 375/55/B/2016-R.A.
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... 4/10/18

ORDER NO. 180/2018-Cus dated 3-10-2018 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/297/2016 dated 26.05.2016, passed by the Commissioner (Appeals), New Custom House, New Delhi-37.

APPLICANT : Mohammad Mashkoor, Rampur(U.P).

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

ORDER

A Revision Application No. F. No. 375/55/B/2016-R.A. dated 16.06.2016 has been filed by Mohammad Mashkooor, s/o Matloop Hussain, R/o Mohalla Bhabai Puri, PO and Tehsil Tanda, Rampur(U.P.) (hereinafter referred to as the applicant) against order No.CC(A)Cus/D-I/297/2016 dated 26.05.2016, 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 20.05.2015 absolutely confiscating the gold bars weighing 1294.00 grms of value at Rs. 33,38,197/- and penalty of Rs.8,00,000/- on applicant is upheld.

2. The Revision application is filed with a request to release the confiscated gold bars weighing 1294.00 grms of the value at Rs. 33,38,197/- on payment of duty and fine etc. on the grounds that these are not prohibited goods.

3. A personal hearing was held on 02.08.2018 and was availed by Shri Amit Attri, Advocate, on behalf of the applicant who reiterated the above mentioned grounds of revision already pleaded in their application. 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 bars which were brought by him from Jeddah 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. As regards the main issue regarding maintainability of the absolute confiscation of the gold bars, it is observed that the Commissioner (Appeals) has upheld the Order-In-Original on the premise that the gold is prohibited goods and liable for absolute confiscation. However, he has not cited any legal provision under which the

import of gold is prohibited. Instead, he has observed that the appellant had crossed the green channel without declaring the above said gold in his possession either on the customs declaration form or to the Customs Officer and hence the gold 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. 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. 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. Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding

