

REGISTERED
SPEED POST



F. No. 375/51/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... 9/10/18

ORDER NO. 190/2018-Cus dated 05.10.2018 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.21/AK/CUS/JPR/2016 dated 15.04.2016, passed by the Commissioner of Customs & Central Excise (Appeals), N. C.R. Building, Statue Circle, C-Scheme, Jaipur-302005.

APPLICANT : Salamul Hak, Hanumangarh.

RESPONDENT : Addl. Commissioner of Customs, Jaipur.

ORDER

A Revision Application No. F. No. 375/51/B/2016-R.A. dated 13.07.2016 has been filed by Salamul Hak, R/o Ward No. 12, Chak-31.K, Lakhuwali Head, District, Hanumangarh(Rajasthan)(hereinafter referred to as the applicant) against order No.21/AK/CUS/JPR/2016 dated 15.04.2016, passed by the Commissioner of Customs & Central Excise (Appeals), N.C.R.Building, Statue Circle, C-Scheme, Jaipur-302005 whereby the applicant's appeal is rejected and the Additional Commissioner's order dated 15.04.2016 absolutely confiscating the gold bars weighing 466.40 grms of value at Rs. 13,89,872/- and penalty of Rs.3,50,000/- on applicant is upheld.

2. The Revision application is filed with a request to release the confiscated goods i.e. four Gold Tola Bars weighing 466.40 gms value at Rs. 13,89,872/- and Electric Cooking Plate on payment of duty and fine etc. mainly for the reason that the gold is not prohibited goods.

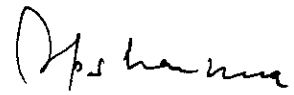
3. A personal hearing was held on 03.08.2018 and was availed by Shri Asmita A. Nayak and Shri Ranjeet N. Ranjan, Advocates, on behalf of the applicant who reiterated the above mentioned grounds of revision already pleaded in their application and mainly emphasized that absolute confiscation of gold is not warranted as gold is not prohibited goods as per 8 decisions detailed in their compilation. 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 Muscat 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 all the confiscated goods.

5. 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 not declared such gold bars and on search these bars were found concealed in Electric Cooking Plate to deceive 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. In the case of Om Prakash Bhatia vs Commissioner of Customs, Delhi also, as reported in 2003(155) ELT 423(SC), the Hon'ble Supreme Court dealt the issue regarding confiscation of textile goods which were attempted to be exported in violation of some legal provisions and the Hon'ble Supreme Court held that the Departmental authorities had power to confiscate such goods and release the same on payment of fine etc. But the Hon'ble Court has nowhere held that such goods are to be confiscated absolutely only. 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 and several other such other cases. Since the gold is not notified as prohibited goods, the Commissioner (Appeals) should have provided an option in this case also 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.6.50 lakhs and penalty of Rs.3.50 lakhs which was earlier imposed by the original Adjudicating Authority and upheld by the Commissioner(Appeals) also. Similarly the Electric cooking plate confiscated under Section 111 of the Customs Act,1962 is also allowed to be redeemed on payment of customs duties and redemption fine of Rs.1000/-.

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


5-10-18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Salamul Hak,
R/o Ward No. 12, Chak-31.K,
Lakhuwali Head,
District- Hanumangarh(Rajasthan)

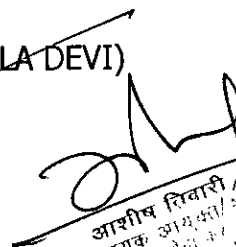
ORDER NO. 190/18 - Cus dated 05/10/2018

Copy to:-

1. The Commissioner of Customs & Central Excise (Appeals), N. C.R. Building, Statue Circle, C-Scheme, Jaipur-302005.
2. The Addl. Commissioner of Customs, N. C.R. Building, Statue Circle, C-Scheme, Jaipur-302005.
3. P.S. to A.S.
4. Shri Asmita A. Nayak, Advocate, D-619, 1st Floor, C.R. Park, Near Market No.2. New Delhi-110019.
5. Guard File

ATTESTED

(NIRMALA DEVI)


आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर / Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi