F.No. 380/94/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 31.10.18

Order No. 192 /18-Cus dated 05-10-2018 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 Customs Act, 1962.

Subject	:	Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. Kol/Cus/App/017/2016 dated 04.02.2016, passed by the Commissioner of Customs (Appeals), Kolkata
Applicant	:	Commissioner of Customs, Kolkata
Respondent	:	Mr. Raman Kumar Saini

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ORDER

A Revision Application No. 380/94/B/2016-R.A dated 12.05.2016 is filed by the Commissioner of Customs, Kolkata (herein after referred to as the applicant) against the Order-In-Appeal No. Kol/Cus/App/017/2016 dated 04.02.2016, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the respondent, Mr. Raman Kumar Saini, has been given an option to redeem the confiscated gold ornaments brought from Bangkok on payment of Custom duty, redemption fine of Rs.75000/- and personal penalty of Rs.25000/-.

2. The Revision Application has been filed mainly on the grounds that since the respondent was not entitled to import gold in India in terms of Notification No. 12/2012-Cus dated 17.03.2012 (Condition 35) read with Baggage Rules, 1998, the gold ornaments brought by the respondent from Bangkok were prohibited goods, he had tried to smuggle the gold ornaments by not declaring the same to the custom officers on his arrival at Kolkata Airport and accordingly the gold ornaments were liable for absolute confiscation.

3. Personal hearing was held on 23.04.2018 and it was availed by the respondent in person who pleaded that the revision application should be rejected and Order-In-Appeals be upheld. No one appeared from the applicant side

4. Government has examined the matter and it is found that there is no dispute regarding the fact that the respondent had violated the Section 77 of Customs Act, 1962 by not declaring gold ornaments to the Custom authorities. Accordingly, Commissioner (Appeals) has rightly upheld the Order-In-Original to the extent of confiscating the gold items which were brought from Bangkok with the intention to evade custom duty. However, he has given an option to respondent to redeem the confiscated gold articles on payment of duty and fine by considering the fact that the respondent had visited the foreign country for the first time and he was not a carrier for any other person. The applicant has challenged the order of Commissioner (Appeals) on the ground that gold is prohibited goods because respondent was not an eligible passenger to bring any quantity of gold as per Notification number 12/2012-Cus dated 17.03.2012 and thus an option for redemption of confiscated gold is not permissible. But the government is not impressed by this ground of revision for the reasons that Notification no. 12/2012 -Cus is only an exemption notification and it does not stipulate anywhere that gold is a prohibited goods and the eligibility of the respondent for the concessional rate of duty given in respect of gold under the said notification is not an issue at all in this case as the respondent never claimed it. Moreover, Notification No. 12/2012-Cus does not cover gold ornaments for the purpose of any exemption and it is given in respect of primary gold like gold bars only. Thus, Notification No. 12/2012-Cus is not relevant at all in the present case. The relevant provision in the context of

prohibited goods is Section 11 of the Customs Act and it is not the case of the applicant that the gold has been notified as prohibited goods either absolutely or subject to some conditions. No other legal provision is also mentioned in the Revision Application by which import of the gold has been prohibited. Even Baggage Rules do not prohibit the importation of gold and its purpose is only to extend the facility of exemption from duty by way of providing free allowances in respect of bonafide baggage goods which are generally household goods and the goods of personal use by a passenger. Therefore, non-coverage of any goods under Baggage Rules such as gold ornaments only means that free allowance and exemption from duty is not allowed on such goods. Amounts of free allowances and list of goods covered in the ambit of baggage is changed from time to time by the Government. For example the limit of free allowance under Baggage Rule, 2016 is increased to Rs. 50,000/- and gold ornament are excluded from Annexure-1 to enable a passenger to import gold ornaments as baggage which was not allowed earlier under the Baggage Rules, 1998. This change in the subsequent Rules of 2016 clearly indicates that gold ornaments are not prohibited goods. The Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi, 2003(155)ELT423(S.C) has held in reference to Section 2(33), 11 and 113(d) of the Customs Act, 1962 that prohibition of importation or exportation can be subject to certain prescribed condition to be fulfilled before or after clearance of goods and if conditions are not fulfilled it may render the goods as prohibited goods. The said case was

decided in the context of over invoicing of exported readymade garments. But in the instant case neither a case of absolute prohibition of imported gold ornaments has been established nor a case of any prescribed condition not fulfilled by the respondent has been made out in the revision application because of which the gold ornaments brought by the respondent can be termed as prohibited goods as defined in Section 2 (33) of the Customs Act, 1962 as enunciated by the Supreme Court in the above referred case. Thus, except citing two decisions of the Supreme Court, no concrete basis has been revealed in the revision application to consider the gold ornament as prohibited goods in this case. The applicant has heavily relied upon the Supreme Court's decision in the case of Samynathan Murugesan V/s Commissioner of Customs, [2010 (254) E.L.T. A15(S.C.)] wherein, relying upon the above referred decision of Supreme Court in the case of Om Prakash Bhatia, it is held that since the appellant did not fulfill the basic eligibility criteria under Notification No. 31/2003 - Cus, the gold brought by the appellant were prohibited goods. But it is not elaborated as to how the non-eligibility of a passenger under Notification No. 31/2003-Cus would mean that the gold ornaments are prohibited. Instead the Government has noticed that the Notification No. 31/2003-Cus provided concessional rate of duty of customs on fulfillment of specified conditions and did not prohibit the importation of gold by specifying any condition. Therefore, the impact of non-availability of exemption from customs duty on account of not being eligible was only that the person would

be liable to pay customs duty at tariff rate. But despite of the fact that the said notification No. 31/2003-Cus did not declare the gold as prohibited goods, it has been held that the imported gold became prohibited goods in the event of the concerned passenger was found not eligible to import the gold under Notification No. 31/2003-Cus. Thus, Hon'ble Madras High Court's and apex court's conclusion in the case of Samynathan Murugesan that the gold ornaments are prohibited goods is not actually founded on Notification No. 31/2003-Cus or any other legal provision. Therefore, the decision in the case of Samynathan Murugesan is apparently per incuriam and hence it cannot be followed as a precedent. Further, the Hon'ble Madras High Court, in its later decision in the case of T. Elavarasan Vs CC(Airport), Chennai, 2011(266)E.L.T.167(Mad.), has held that gold is not a 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)E.L.T.277(A.P), has also held that as per Rule 9 of Baggage, Rules, 1979 read with Appendix-B, gold in any form other than ornament 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. Notification 12/2012-Cus also, which is relevant in the present case, does not prohibit the importation of goods in any manner and it only specifies the eligibility criteria

only for the purpose of exemption from Custom duty in respect of the imported goods which is not the issue in the present proceeding. Moreover, in the case of Samynathan Murugesan the appellant had brought 7.075 Kgs of gold ornaments for commercial purpose by ingenious concealments in T.V and had not declared the same in spite of repeated inquiries made by the Custom Authorities at the airport. Whereas in the present case the respondent has brought the gold ornaments weighing 91.10 gms only by wearing them on his neck and finger, no ingenious concealment is established and he had declared them to the Custom Officer immediately when he was confronted by the Custom Officers with a question whether he was carrying dutiable goods in his baggage or in him person. Thus the factual matrix of the two cases are substantially different and gravity of the present case is also far lesser than the case of Samynathan Murugesan. The respondent certainly violated Section 77 of the Customs Act by not declaring the gold ornaments immediately when he landed on Airport and for that the confiscation thereof has already been upheld by the Commissioner (Appeals). But as the gold is not proved to be prohibited goods by the applicant, the option given by the Commissioner (Appeals) to the respondent to redeem the gold on payment of duty of Customs & fine cannot be faulted. Above all, even for prohibited goods also the adjudicating officer has been given discretion under Section 125 of the Customs Act to give an option for redemption of confiscated goods on payment of fine and the same has been exercised by Commissioner (Appeals) in this case. So even if it is

assumed that gold is prohibited goods as claimed by the applicant, then also the Commissioner (Appeals), being an adjudicating officer in this case, had discretion to allow the redemption of goods and the same was been exercised by him. Moreover, there is no allegation that the Commissioner (Appeals) has exercised his discretion in wrongful manner. Therefore, the government does not find any fault in the order passed by the Commissioner (Appeals).

5. Accordingly, the Revision Application filed by the revenue is rejected.

(R.P.Sharma) 5.10.18
Additional Secretary to the Government of India

Commissioner of Customs (Airport)
NSCBI Airport,
Kolkata – 700052

Order No. 192/18-Cus dt- 05-10-2018

Copy to:-

1. Mr. Raman Kumar Saini, H.No. X-349, Chand Sarai,Outside Jundla Gate, Karnal. 132001
2. The Commissioner (Appeals), Customs House, Strand Road, Kolkata 700001
3. The Joint Commissioner of Customs, NSCBI Airport, Kolkata 7000052
4. PS to JS (Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED

05/10/18
(Ravi Prakash)
OSD (RA)