

REGISTERED  
SPEED POST



F.No. 372/14/B/2017-RA  
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...11/12/18

Order No. 215/18-Cus dated 6-12-2018 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 Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(Airport)/AA/94/2017 dated 08.07.2016, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Mr. Qamar Haider, Kolkata

Respondent : Commissioner of Customs, Kolkata

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**ORDER**

A Revision Application No. F. No. 372/14/B/2017-R.A. dated 13.06.2017 has been filed by Mr. Qamar Haider, s/o Sh. Mohammad Ali, R/o 6 Ram Lochan Mullick street, 1st floor, PO- Bada Bazar, Kolkata- 700073 (hereinafter referred to as the applicant) against the Order No. KOL/CUS(Airport)/AA/94/2017 dated 08.07.2016, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the applicant's appeal is dismissed and the Assistant Commissioner's order dated 08.12.2015 confiscating 1 cut piece of gold bar weighing 152.40 grams of the value of Rs.4,34,340/- and imposing penalty of Rs.50,000/- on the applicant is 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 fixed on 13.09.18. However, the advocate of the applicant, vide his letter dated 03.09.2018, requested to decide the case as per available records as he did not want to avail any personal hearing in this case. Hence this case is taken up for a decision.

4. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the gold pieces which were 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. Government has examined the matter and it is found that there is no dispute regarding the fact that the applicant had violated the Section 77 of Customs Act,

1962 by not declaring 1 cut piece of gold bar to the Customs authorities on his arrival at Airport from Bangkok. Accordingly, the Commissioner (Appeals) has rightly upheld the order-in-original to the extent of confiscating the gold bar which was brought from Bangkok with the intention to evade custom duty. However, the Commissioner (Appeals) has upheld the Assistant Commissioner's order of absolute confiscation of cut piece of gold bar on the premise that the applicant was not eligible person to import gold on concessional rate of duty under notification No.3/2012-cus dated 16/01/2012. But the Government is not impressed with this reason as notification No. 3/2012-cus dated 16/01/2012, issued under section 25 of the custom Act, is only an exemption notification and it does not stipulate anywhere that gold is a prohibited goods. The applicant also never claimed concessional rate of duty under the said notification in respect of gold brought by him and thus notification 3/2012-Cus is not relevant at all in 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 only means that free allowance and exemption from duty is not allowed on such goods. The Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi, 2003(155)ELT423(S.C) has held in

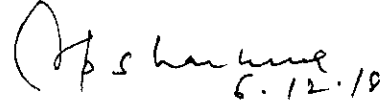
reference to Section 2(33), 11 and 113(d) of the Customs Act, 1962 that prohibition of importation or exportation can be subject to certain prescribed condition to be fulfilled before or after clearance of goods and if conditions are not fulfilled it may render the goods as prohibited goods. The said 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 has been established nor a case of any prescribed condition not fulfilled by the respondent has been made out in the Order-in Appeal because of which the gold brought by the applicant 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. The Commissioner (Appeals) has heavily relied upon the High Court's decision in the case of Commissioner of Customs V/s Samynathan Murugesan, [2009 (247) E.L.T. 21(Mad.)] wherein 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 was rightly confiscated absolutely by the Commissioner in view of the concealment adopted by the appellant to bring in the gold. 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 is prohibited. Instead the Government has noticed that the Notification No. 31/2003-Cus provided concessional rate of duty of customs on fulfilment 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 subsequently the Apex court's conclusion in the case of Samynathan Murugesan[2010 (254) E.L.T. A15(S.C.)] that the gold ornaments are prohibited goods is not actually founded on Notification No. 31/2003-Cus or any other legal provision. 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 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. The Hon'ble High Court of Bombay in the case of Union of India Vs Dhanak M Ramji [2003(248) ELT 128 (Bom.)] and the Apex Court in the case of Sapna Sanjiv Kohli Vs Commissioner of Customs, Mumbai [2010(253) ELT A52 (SC)] has also held that gold is not prohibited goods and accordingly the gold jewellery was allowed to be redeemed on payment of fine and duties. Notification 3/2012-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. The applicant certainly violated Section 77 of the Customs Act by not declaring the gold

immediately when he landed on the Airport and for that the gold has been confiscated by the original adjudicating. But as the gold is not proved to be prohibited goods by the commissioner (appeals) its absolute confiscation is not justifiable under section 125 of the customs Act as per which it is mandatory for the adjudicating officer to give an option for redemption of non-prohibited goods. Even the original adjudicating authorities and the Commissioner (Appeals) in Delhi customs have held in several cases that gold is not prohibited goods and accordingly they released the confiscated gold on payment of fine etc. For example, the Additional Commissioner of Customs, Delhi in his order no. 91/2015 dated 19/08/2015 in the case of Rabia Khatoon confiscated the gold but allowed the passenger to redeem the gold on payment of redemption fine and penalty and the Commissioner (Appeals) has maintained this view in the orders-in-appeal nos. CC(A)/Cus/D-I/Air/126/2016 dated 2/3/16 in the case of Nadira Ahaidi, CC(A)CUS/D-I/AIR/629/2016 dated 14.07.2016 in the case of Mohd. Khalid Siddiqui and CC(A)CUS/D-I/AIR/823/2016 dated 3/10/16 in the case of Vinay Gupta. As per records available with this section no appeal/revision application was filed by the concerning Commissioner against these orders. Accordingly the Commissioner (Appeals) Kolkata, also 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 and because it was not done so earlier the Government now allows the applicant to redeem the confiscated gold on payment of customs duty, fine of Rs.1.75 lakhs and penalty of Rs. 50,000/- which was imposed by the original adjudicating authority and upheld by the Commissioner (Appeals). The Government considers this penalty quite reasonable and appropriate

in the context of the serious nature of offence committed by the applicant by importing gold without declaration and does not merit any reduction.

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



(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

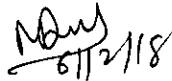
Mr. Qamar Haider,  
s/o Sh. Mohammad Ali,  
R/o 6 Ram Lochan Mullick street, 1st floor, PO- Bada Bazar,  
Kolkata- 700073

ORDER NO. 215/2018 Cus dated 6-12-2018

Copy to:-

1. The Commissioner of Customs (Airport), NSCBI Airport, Kolkata-700052.
2. The Commissioner of Customs (Appeals), 15/1, Strand Road, Kolkata.
3. The Assistant Commissioner of Customs, Air Intelligence Unit, NSCBI Airport, Kolkata-700052.
4. Mr. Qamar Haider, C/o Sh. Punam Chand Jain, 64, Burtolla Street, Kolkata- 700007.
5. P.S. to A.S.
- ✓ 6. Guard File

ATTESTED



(NIRMALA DEVI)  
Section Officer