F.No. 375/17/B/17-RA

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F.No. 375/17/B/17-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110066

Date of Issue 4.1.19.

Order No. 242/18-Cus dated 26/12/2018 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.CC(A)Cus/D-1/Air/101/2017 dated 01.03.2017, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Sonia Arora

Respondent : Commissioner of Customs (Airport & General), New Delhi

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ORDER

A Revision Application No. 375/16/B/17-RA dated 05.06.2017 has been filed by Mrs. Sonia Arora (hereinafter referred to as the applicant) against the Order No. CC(A)Cus/D-1/Air/101/2017 dated 01.03.2017, issued by the Commissioner of Customs (Appeals), New Delhi, whereby the Order-in-Original No. 100/Adj/2015 dated 25.08.2015 of the Additional Commissioner of Customs, IGI Airport, New Delhi, absolutely confiscating the gold bars of value of Rs. 20,16,805/- and imposing penalty of Rs. 3,00,000/-, has been upheld.

2. The revision application is filed mainly on the grounds that she had brought the gold bars for self use only, gold is not prohibited goods and, therefore, the Commissioner(Appeals) has passed wrong order by upholding the Order-in-Original confiscating gold absolutely.

3. A personal hearing was held in this case on 10.12.2018 and Sh. Chetan Kumar and Sh. S.N. Panda, Advocate, appeared on behalf of the applicant and they reiterated the above grounds of revision already pleaded in the revision application. However, no one appeared for the respondent and no request for any other date of hearing was also received.

4. 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 gold bars to the Custom authorities on his arrival at Airport from Hongkong. Accordingly, Commissioner (Appeals) has rightly upheld the Order-In-Original to the extent of confiscating the gold bars which were brought from Hongkong with the intention to evade custom duty. However, the Commissioner (Appeals) has upheld Additional Commissioner's order of absolute confiscation of gold on the premise that the gold brought by the applicant had become prohibited when it was sought to be smuggled in by hiding the same in an unusual manner.

But he has not cited any legal provision under which the import of gold is expressly prohibited and has only stated that the applicant was not an eligible passenger to bring any quantity of gold as per Notification No. 12/2012-Cus (N.T.) dated 17.03.2012 and thus an option for redemption of confiscated gold could not be given. But Government find that the said Notification is only a general exemption notification for several goods and gold is one of many goods in respect of which concessional rate of duty is provided on fulfilment of condition Number 35. Thus, under this Notification eligibility of the passenger is relevant only for determining the admissibility of concessional rate of duty and not for deciding the eligibility to import or not to import gold. While the Government is fully convinced that unusual method of concealment of gold is a very relevant factor for determining the quantum of fine and penalty, it does not agree with the Commissioner (Appeals) that the gold had become prohibited only because of its hiding in the pant even when the gold is not notified as prohibited goods under Section 11 of the Customs Act, 1962 or any other law. Prohibited goods is a distinct class of goods which can be notified by the Central Government only and the goods cannot be called as prohibited goods simply because it was brought by any person in violation of any legal provision or without payment of custom duty. Further there is a difference between the prohibited goods and general legal or procedural restrictions imposed under the Customs Act or any other law with regard to importation of goods. While prohibited goods are to be notified with reference to specified goods only which are either not allowed at all or allowed to be imported on specified conditions only, regulatory restrictions with regard to importation of goods is generally applicable irrespective of the individual case like goods will not be imported without declaration to the Customs and without payment of duty leviable thereof etc. Such restriction is clearly a general restriction/regulation, but it cannot be stated that the imported goods become prohibited goods if brought in contravention of such restriction. Apparently because such goods when imported in violation of specified legal provisions are also liable for confiscation under Section 111 of the Customs Act, 1962, the Apex Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi, 2003(155)ELT423(S.C) has held that importation of such goods became prohibited in the event of

contravention of legal provisions or conditions. If the goods brought in India in contravention of any legal provision are termed as prohibited goods, as envisaged in Section 125 of Customs Act, then all such goods will become prohibited and other category of non-prohibited goods for which option of redemption is to be provided compulsorily will become redundant. Thus while any goods imported without payment of duty and in violation of any provision of the Customs Act is also certainly liable for confiscation under Section 111 of the Customs Act, but confiscated goods is not necessarily to be always prohibited goods. While there is no dispute in this case that the gold brought by the applicant from Hongkong is liable for confiscation because she did not follow the proper procedure for import thereof in India and attempted to smuggle it without payment of custom duties, it is beyond any doubt that the gold is not a prohibited item under Customs Act. Further the Hon'ble Madras High Court, in its 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. Hon'ble High Court of Bombay in the case of Union of India vs Dhank M Ramji, 2009(248)ELT 127 (BOM.) and the Apex court in the case of Sapna Sanjiv Kohli, 2010(253)ELT A52(SC), have also held that gold is not prohibited goods. In fact the Commissioner (Appeals), Delhi and the Government of India have consistently held the same view in a large number of cases that gold is not prohibited goods as it is not specifically notified by the Government. For example, the Commissioner (Appeals) in his Order-in-Appeal no. CC(A)Cus/D-I/Air/629/2016 dated 4.07.2016 in the case of Mohd. Khalid Siddique has clearly held that gold is not prohibited as it is not notified by the Government as prohibited goods. Therefore, the Commissioner (Appeals) has taken a totally different stand by

upholding absolute confiscation of gold in this case. Accordingly the Commissioner (Appeals) should have provide an option to the applicant under Section 125 of the Customs Act 1962 to redeem the confiscated goods on payment of custom 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. 8,00,000/- and penalty of Rs. 3,00,000/- as already imposed by the Additional Commissioner within 30 days from the date of issue of this order.

5. Accordingly, the revision application is disposed and the Commissioner (Appeals)'s order is modified in above terms.

24.12.18

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

Mrs. Sonia Arora,
11/31, Subhash Nagar,
New Delhi 110027

Order No. 242/18-Cus dated 26/12/2018

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi-110037
4. M/s A V and Company, A-402, New Kanchanjunga CGHS ltd, Plot No. 1, Sector 23, Dwarka, New Delhi 110075
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(Nirmla Devi)
Section Officer (REVISION APPLICATION)