

REGISTERED
SPEED POST



F.No. 375/11/B/2017-RA
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 ~~25~~ 31/01/18
d/c

Order No. 253/18-Cus dated 26/12 2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Ex Officio 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-I/AIR/133/2017 dated 20.03.2017, passed by the Commissioner of Customs, Near IGI Airport, New Delhi.

Applicant : Mrs. Shobha Shambhu Khira, Mumbai.

Respondent : Commissioner of Customs, New Delhi.

ORDER

A Revision Application No. 375/11/B/2017-RA dated 17/04/2017 is filed by Mrs. Shobha Shambhu Khira, Mumbai (hereinafter referred to as the applicant) against the Order in Appeal No. CC(A)CUS/D-I/AIR/133/2017 dated 20.03.2017, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the applicant's appeal against order-in-original dated 12/05/2016 absolutely confiscating the goods imported by the applicant has been rejected.

2. The revision application is filed mainly on the ground that the order of the Commissioner (Appeals) is erroneous as value of the goods is taken wrongly from the internet and absolute confiscation is not allowed under Section 125 of the Customs Act, 1962.
3. Personal hearing was held on 07.12.2018 and it was attended by Mr. S. S. Arora, Advocate, on behalf of the applicant who reiterated the grounds of revision already pleaded in their revision application. However, no one appeared on behalf of respondent and no request was received for a personal hearing on any other date also from which it is implied that the respondent is not interested in availing hearing in the matter.
4. The government has examined the matter and it is observed that it is not in dispute that the applicant had brought the various items from Dubai as mentioned in the Order-in-Appeal with the intention to evade the customs duty in contravention of Section 77 of the Customs Act, 1962 and other legal provisions. Accordingly, the confiscation of these items has been upheld by the Commissioner of Customs (Appeal). The applicant also does not have any problem with regard to confiscation of goods but has pleaded that the confiscated goods should be released to her on payment of duty and fine etc. The government finds merit in this argument to some extent but it cannot be accepted in relation to 2000 pcs of Gutkha pouches which have been banned in State of Delhi with effect from 11/09/2012 vide Delhi Government's notification no 1(3)/DO-I/2012/5185-5203 apart from the fact that these pouches did not bear the statutory warning as is observed in the Order-in-Original and Order-in-Appeal. As regards other goods, the Commissioner (Appeals)

has held all the goods as prohibited on the premise that these do not constitute bonafide baggage and the applicant was not an eligible passenger. Reliance is also placed on the Supreme Court's decision in the case of Mr. Om Prakash Bhatia Vs Commissioner of Customs, Delhi, [2003(155) ELT 423(SC)]. While the government does not have any doubt that the goods brought by the applicant with the sole intention to evade customs duties cannot be termed as bonafide baggage and Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 is contravened by bringing goods/gold without obtaining Import Export Code from the DGFT to render the goods/gold liable to confiscation, it does not agree with the Commissioner(Appeals)'s view that the goods/gold become prohibited merely for the reason that the applicant was not eligible passenger under Notification No. 12/2012-Cus dated 17.03.2012. In fact, Notification No. 12/2012-Cus dated 17.03.2012 is a General Exemption Notification under which concessional rate of duty is provided for gold along with other several goods on fulfilment of conditions specified therein. Thus this notification is relevant only where the concessional rate of duty is claimed by the passenger, but it has no bearing for the purpose of determining whether the goods are prohibited goods or not. Prohibited goods are notified under Section 11 of the Customs Act or the Foreign Trade (Development and Regulation) Act, 1992, etc. But no such notification has been mentioned either in the Order-in-Original or Order-in-Appeal whereby the gold has been notified as prohibited goods. The Commissioner (Appeals) has also not explained as to how the above mentioned decision of the Hon'ble Supreme Court cover the present case as in the case of Om Prakash Bhatia vs Commissioner of Customs, Delhi, 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. The Government finds that 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 they were brought by any person in violation of any

legal provision or without payment of customs duty. Further there is a difference between the prohibited goods and general regulatory 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 like goods will not be imported without declaration to the Customs Authorities 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, the Apex Court held in the above mentioned case of Om Prakash Bhatia that importation of such goods became prohibited in the event of contravention of legal provisions or conditions which are liable for confiscation. If all the goods brought in India in contravention of any legal provision are termed as prohibited goods as envisaged in Section 11, Section 111(i) and 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 under Section 125 of the Customs Act will become redundant. Thus while the Government does not have any doubt that the goods imported in violation of any provision of the Customs Act, 1962 or any other Act are also certainly liable for confiscation under Section 111 of the Customs Act, confiscated goods are not necessarily to be always prohibited goods. Accordingly there is no dispute in this case that the goods brought by the applicant from Dubai are liable for confiscation because she did not follow the proper procedure for import thereof in India. But at the same time, the fact cannot be overlooked that these goods are not notified as prohibited goods under Customs Act. The Hon'ble Madras High Court, in its decision in the case of T. Elavarasan Vs CC(Airport), Chennai [2011(266)ELT 167(Mad)] has also 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) ELT 277(AP)] 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 [2009(248)ELT 127(Bom.)] and the Apex Court in the case of Sapna Sanjiv Kohli Vs. Commissioner of Customs, Mumbai [2010(253)ELT A52(SC)] have also held that gold is not prohibited goods. In addition, the Commissioner (Appeals), Delhi and the Government of India 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. In view of this discussion, the government considers the goods, other than Gutkha, imported by the applicant including 68.43 grams of gold items are squarely covered by these judicial pronouncements. Accordingly, the Commissioner (Appeals) should have provided an option 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 duty and redemption fine of Rs. 5 lakhs. As regards their other contention that Section 114 AA is not applicable to their case and penalty should be reduced accordingly, the government finds merit in this argument as Section 114 AA is applicable only where there is making or signing or using a false declaration or statement etc. which is not the case in the present proceeding. On the contrary, the departmental case is that the applicant did not declare the goods while she arrived at Delhi airport from Dubai for which the penalty is attracted under Section 112 of the Customs Act only. Therefore, the penalty under Section 112 is only imposable in this case and accordingly the combined penalty of Rs. 3 lakhs imposed under Sections 112 and 114 AA is reduced to Rs. 2.5 lakhs as a penalty under Section 112 only. However, their contention with regard to over valuation of the goods is not found acceptable as no such argument was ever raised before the Commissioner (Appeals) and no evidence to establish lower valuation of

the goods is produced along with the revision application or even during personal hearing.

6. Accordingly, the revision application is partially allowed.

R.P. Sharma
26.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

Mrs. Shobha Shambhu Khira,
38/11, Manali Building, Evershine, Malad (West),
Mumbai, Maharashtra.

Order No. 253/18-Cus dated 26/12/2018

Copy to:

1. The Commissioner of Customs, New Customs House, New Delhi-37
2. The Commissioner of Customs (Appeals), New Customs House, New Delhi-37
3. The Additional Commissioner, Customs, IGI, Airport, New Delhi-37
4. Mr. S. S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi-29.
5. PA to AS(RA)
6. Guard File.

ATTESTED

(ASHISH TIWARI)
AC (REVISION APPLICATION)

*Received copy of the order
for self & party*

SSA

*(S.S. Arora) Adv
3/1/2019.*