

REGISTERED
SPEED POST



F.No. 375/15/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.. 31.01.19

Order No. 257/18-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-106/2017 dated 06.03.2017, passed by the Commissioner of Customs, Near IGI Airport, New Delhi.

Applicant : Mr. Boota Sambhalu, Ferozepur, Punjab.

Respondent : Commissioner of Customs, New Delhi.

ORDER

A Revision Application No. 375/15/B/2017-RA dated 12/05/2017 is filed by Mr. Boota Sambhalu, Ferozepur (hereinafter referred to as the applicant) against the Order in Appeal No. CC(A)CUS/D-I/AIR-106/2017 dated 06.03.2017, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the applicant's appeal against order-in-original dated 05/03/2016, confiscating the gold worth Rs. 24,44,121/- but allowing it to be redeemed on payment of fine of Rs. 3.5 lakhs and penalty of Rs. 2.5 lakhs, has been rejected.

2. The revision application is filed mainly on the ground that the order of the Commissioner (Appeals) is erroneous as the applicant was entitled for concessional rate of duty being an eligible passenger in terms of notification no.12/2012 dated 19/03/2012 and the fine and penalty are excessive and should be reduced.

3. Personal hearing was held on 10.12.2018 and it was availed by Mr. S. S. Arora, Advocate, on behalf of the applicant who reiterated the above 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 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 1000 grams of gold from Hong Kong 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 and their redemption on payment of applicable duty, fine and penalty 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 as his stay abroad was more than six months, customs duty at a concessional rate should be allowed to be charged from him as mandated in notification no. 12/2012. But as is evident from the facts of the case, the applicant had not declared the gold to the Customs authorities at the time of arrival from Hong Kong and rather concealed the two gold bars in his shoes to escape detection of the same to evade duty etc. Thus the

honesty to pay duty by availing the aforesaid Notification is missing on the part of the applicant himself. Therefore, the government fully agrees with the observation of the Commissioner (Appeals) that the applicant cannot claim to be an eligible passenger as per the conditions stipulated in notification no. 12/2012 in the light of his malafide intention and is not entitled for concessional rate of duty. Even the redemption fine of Rs. 3.5 lakhs imposed by the Commissioner (Appeals) appears to be quite just and proper being only 14% of the value of gold attempted to be smuggled. As regards his 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 he arrived at Delhi airport from Hong Kong 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 lakhs as a penalty under Section 112 only.

6. Accordingly, Order-in-Appeal is modified and allowed to the above extent.

(R.P.Sharma)
26.12.18

Additional Secretary to the Government of India

Mrs. Boota Sambhalu, S/o Sh. Gurmej Singh,
Village Mohan ke Uttard, PO Mandi Guru Harsahai,
District Ferozepur, Punjab.

Order No. _____ /18-Cus dated _____ 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)

ATTESTED

(ASHISH TIWARI)
AC (REVISION APPLICATION)

Recd copy of the order for self & party
3
(S.S. Arora) Advocate
31/12/18