

REGISTERED
SPEED POST



F. No. 375/04/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.....

Order No. 258 /18-Cus dated 27/12/2018 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.114-115(AK)/CUS/JPR/2016 dated 09.1.2017, passed by the Commissioner of Central Excise & Customs (Appeals), Jaipur

Applicant : Mr. Shamim, Gonda, Delhi

Respondent : Commissioner of Customs, Jaipur

ORDER

A Revision Application No. 375/04/B/2017-R.A. dated 14.02.2017 has been filed by Mr. Shamim, a resident of Gonda, Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No.114-115(AK)/CUS/JPR/2016 dated 09.1.2017, passed by the Commissioner of Central Excise & Customs (Appeals), Jaipur, whereby the penalty of Rs.1.00 lakh imposed on the applicant by the Joint Commissioner, Jaipur, has been upheld and the applicant's appeal filed before the Commissioner (Appeals) has been rejected.

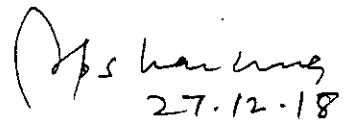
2. The revision application has been filed mainly on the grounds that the applicant was not concerning with the smuggling of gold, even Mr. Mehboob who had brought gold illegally, in his statement dated 17.7.14, has clearly stated that the applicant had just helped in completing some of the formalities in regard to his visit to the foreign country as he is an educated friend from his childhood, he had never stated that the gold belonged to the applicant in any manner and, therefore, the OIA upholding penalty on the applicant is completely erroneous.

3. A personal hearing was held in this case on 30.11.2018 and Shri S.S.Arora, Advocate, appeared for the hearing on behalf of the applicant and reiterated the above narrated grounds of revision which are already pleaded in their revision application also. However, no one appeared for the respondent and no request for any other date of hearing was also received from which it is implied that the respondent is not interested in availing personal hearing in this case.

4. The Government has examined the matter and it is observed that the case against the applicant is entirely based on a statement of Mr. Mehboob on 25.5.14 wherein he claimed that he was lured by the applicant to bring gold from Dubai for consideration of air tickets and stay arrangements etc. offered by him. But no other corroborative evidence has been adduced in this case to support the version of Mr. Mehboob. The applicant's residence was also searched on 7.8.14 and nothing incriminating was recovered from his house as per the OIO itself. The applicant also never admitted that he was associated with the importation of gold in any manner and instead it was claimed by the applicant in their defence before the original

adjudicating authority that even Mr. Mehboob in his subsequent statement recorded on 17.7.14 unambiguously stated that he never stated that the gold belonged to Mr. Shamim and being an educated friend from his childhood he had just helped him in completing the formalities for his visit to Dubai which is not rebutted anywhere in the OIA. As per Section 112(b) a penalty can be imposed on a person if he/she acquires possession of imported goods or is in any way concerned in carrying, removing, depositing, keeping, concealing, selling or purchasing of such goods which he/she knows or has reason to believe are liable to confiscation under Section 111. But the applicant's involvement in any of such activities has not been alleged in the lower authorities orders and the same cannot be established in the light of above narrated facts. Hence, the applicant's case is not covered under Section 112(b) of the Customs Act and this view is supported by Supreme Court's decision in the case of Commissioner of Customs and Central Excise, Meerut Vs. Pawan Kumar Gupta, 2011(271)ELT10(SC), relied upon by the applicant during the personal Hearing. Accordingly, the OIA to the extent of upholding penalty on the applicant is not legally maintainable.

5. In view of the above discussions, the above mentioned OIA is set aside and the revision application is allowed.


27.12.18
(R.P.Sharma)

Additional Secretary to the Government of India

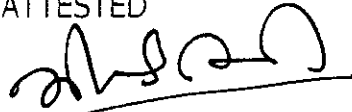
Mr. Shamim Ahmed
S/o Shri Saleemuddin,
R/o House No.1/129, Mata Wali Gali,
Rajput Mohalla, Gonda
Delhi-110053

ORDER NO. 258/18 Cus dated 27/12/2018

Copy to:-

1. Commissioner of Customs, Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-302005
2. Commissioner of Customs, Central Excise Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-302005
3. The Joint Commissioner of Customs, New Central Revenue Building, Statue Circle, Jaipur-302005
4. Shri S.S.Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi-110029
5. P.A. to AS (RA)
6. Guard File
7. Spare copy

ATTESTED



(Ashish Tiwari)

Assistant Commissioner