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SPEED POST

F. No. 375/49/B/2015-R.A.
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 5/2/18

ORDER NO. 26/18-Cus dated 5-2-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R. P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT	:	Revision Application filed, under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. ASR-Cus/PVR/APP/72-73/15-16 dated 22/06/2015 passed by Commissioner of Customs & Central Excise (Appeals), Chandigarh.
APPLICANT	:	Mr. Kamal Kant, Ludhiana
RESPONDENT:		Commissioner of Customs (P), Amritsar

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ORDER

A Revision Application No. 375/49/B/2015-R.A. dated 05/10/2015 has been filed by Sh. Kamal Kant from Ludhiana (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. ASR-Cus/PVR/APP/72-73/15-16 dated 22.06.2015. whereby the order of the Assistant Commissioner of Customs, confiscating the gold jewellery weighing 1781.43 grams of the value of Rs 43,53,815/ has been upheld.

2. A personal hearing was held on 19.12.2017 and Shri Kamal Kant himself appeared on behalf of the applicant. However, no one appeared for the respondent.

3. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding absolute confiscation of the gold jewellery which were brought by him from Dubai 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 goods on payment of duty, redemption fine and penalty etc.

4. On examination of the Revision Application and the Commissioner (Appeals)'s order it is observed that the Commissioner (Appeals) has upheld the Order-In-Original vide which it was absolute confiscation of gold jewellery on the premise that the goods are prohibited goods and liable for absolute confiscation for importation purpose. However, he has not cited any legal provision under which the import of gold jewellery is expressly prohibited. Instead, he has observed that any goods imported in the baggage beyond what is permitted in the Baggage Rules, 1998 are prohibited goods as defined under section 2 (33) of the Customs Act. But the Government does not agree with his views as prohibition of the goods has to be

notified by the Central Government under section 11 of the Custom Act or any other law and the goods cannot be called as prohibited goods simply because the goods are not covered in the terms "baggage" or are brought by any person in violation of any legal provision or without payment of custom duty. Any goods imported without payment of duty or in violation of any provision of the Customs Act is certainly liable for confiscation under Section 111 of the customs Act, but it cannot be accepted that all goods liable for confiscation are prohibited goods .While there is no dispute in this case that the goods brought by applicant from Dubai are liable for confiscation because he did not follow proper procedure for import thereof in India and attempted to import the goods without payment of custom duties, it is beyond any doubt that the gold jewellery are not prohibited goods under Customs Act or any other law. Even the Courts, Tribunal, Commissioner of Customs (Appeals), Delhi, Chandigarh and J.S (RA) have held in large number of orders that gold is not a prohibited item .Therefore, the Commissioner (Appeals) has taken a different stand by upholding absolute confiscation of gold in this case.

5. Since the goods are not proved to be prohibited goods, the Government allows the applicant to redeem the confiscated goods within 30 days on payment of customs duty, redemption fine of Rs.17,41,526/- and penalty of Rs. 5,50,000/-.

6. Accordingly, the revision application filed by Mr. Kamal Kant is allowed and the Commissioner (Appeals)'s order is modified to the extent as discussed above.

5.2.18

(R. P. SHARMA)
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Mr. Kamal Kant,
R/O Satjot Nagar Dhandra Road Ludhiana (Pb.)

ORDER NO. 26/2018-Cus dated 5-2-2018

Copy to:-

1. The Commissioner of Customs(P), Customs House C.R. Building, The Mall, Amritsar – 143 001.
2. The Commissioner of Customs(Appeals), (P), Customs House C.R. Building, The Mall, Amritsar – 143 001.
3. The Additional Commissioner, Customs(Preventive), Commissionerate – Amritsar.
4. Mr. K.K. Sharma, Advocate, A-115, Ground Floor, Ashoka Enclave – II, Sector – 37, Faridabad – 121 003.
5. P.S. to A.S.
6. Guard File
7. Spare copy

ATTESTED

(Debjit Banerjee)
Sr. Technical Officer