

REGISTERED

SPEED POST



F. No. 375/40/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.....

ORDER NO. 33/18-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-CUSTM-PVR-APP-118/15-16 dated 16.07.2015 passed by Commissioner (Appeals), Chandigarh.

APPLICANT : Mr. Rajnish Kumar, Ambala

RESPONDENT : Commissioner of Customs, Preventive, Amritsar.

ORDER

A Revision Application No. 375/40/B/2015-R.A. dated 25.08.2015 has been filed by Mr. Rajnish Kumar, H.No. 19, Village Kheri, Manakpur, Narayan Garh, Ambala (hereinafter referred to as the applicant) against order No. ASR-CUSTOM-PVR-APP-118/15-16 dated 16.07.2015 passed by the Commissioner of Customs (Appeals)'s, Chandigarh-I, whereby the applicant's appeal is rejected and the Additional Commissioner's order dated 24.02.2015 absolutely confiscating the gold of the value of Rs. 17,30,250/- and LED TV of the value of Rs. 1,20,000/- (under which the gold jewellery were concealed) and imposing penalty of Rs. 75,000/- on applicant is upheld. The Revision application is filed mainly with a request to set aside the Commissioner (Appeals)'s order dated 18.02.2015 and release the confiscated goods i.e. LCD 55" brand Sony and Gold weighing 576.750 gm. on payment of duty and fine etc.

2. A personal hearing was fixed on 24.11.2017 and 18.12.2017. But neither the applicant nor the respondent attended the same. Further, they have not even requested for any other date of hearing from which it is implied that they are not interested in availing personal hearing. Hence, this case is taken up for decision on the basis of revision application and other records available in file.

3. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the gold which were brought by him from Dubai in violation of Customs Act and Foreign Trade Policy

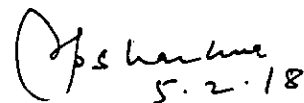
(FTP), 2009-14 and his request is limited to the point that he should be allowed to redeem the confiscated goods.

4. Adverting to the main issue regarding maintainability of the absolute confiscation of the gold jewellery, it is observed that the Commissioner (Appeals) has upheld the Order-In-Original on the premise that the gold is prohibited goods and liable for absolute confiscation. However, he has not cited any legal provision under which the import of gold 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 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 is 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. However, concealment of gold in TV is certainly a very relevant fact for imposition of fine and penalty.

5. Since the gold is 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. 6,92,100/- on gold , 48000/- on LED TV and penalty of Rs. 5,00,000/.

6. Accordingly, the revision application filed by Mr. Rajnish Kumar 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. Rajnish Kumar,
H.No. 19, Village Kheri Manakpur,
Narayan Garh, Ambala

ORDER NO. 33/18-Cus dated 5-2-2018

Copy to:-

1. The Commissioner of Customs, (Preventive), Amritsar.
2. The Commissioner of Customs(Appeals), Chandigarh.
3. The Additional Commissioner of Customs, Preventive, Amritsar.
4. Sh. Rajvinder Singh, & G.S. Majhail, A-105, Distt. Court, Amritsar
5. P.S. to A.S.
6. Spare Copy
- ✓ 7. Guard File