

REGISTERED  
SPEED POST



F.No. 380/16/B/15-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 15/3/18

Order No. 40/18-Cus dated 13-3-2018 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.CC(A)Cus/239/2015 dated 9.3.2015 passed by the Commissioner of Customs (Appeals), New Custom House, Near IGI Airport New Delhi

Applicant : Commissioner of Customs (Preventive), New Custom House, Near IGI Airport, New Delhi

Respondent : Mr. Ahmed Mujjaba Khaleefa, Karnataka

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**ORDER**

A Revision Application No.380/16/B/15-RA dated 15.6.15 is filed by the Assistant Commissioner of Customs (Preventive), New Custom House, New Delhi, (hereinafter referred to as the applicant) against the Order-In-Appeal No.CC(A)Cus/239/2015 dated 9.3.2015, passed by the Commissioner of Customs (Appeals), New Delhi, whereby Mr. Ahmed Mujjaba Khaleefa's appeal has been allowed and the Order-in-Original issued by the Additional Commissioner of Customs has been set aside.

2. The brief facts leading to the present revision application are that the officers of Directorate of Revenue Intelligence (DRI) intercepted the respondent in a compartment of a train at Hazrat Nizamuddin Railway Station on 1.2.13 and four packets containing studded and un-studded gold jewellery, weighing 2015 gms. of the value of Rs.4755400/-, were recovered from him. The case was adjudicated by the Additional Commissioner of Customs and the gold jewellery along with bags and packets used for carrying/concealing the seized goods were absolutely confiscated and penalty of Rs.25.00 lakhs was imposed on the respondent. Being aggrieved, the respondent filed an appeal before the Commissioner (Appeals) and it was allowed vide above mentioned OIA dated 9.3.15. However, this Order has not been found acceptable by the Revenue and consequently the revision application has been filed by the applicant before the Government.

3. A personal hearing was fixed in this case on 9.3.18 and it was attended by Shri A.S.Hasija, Consultant, for the respondent and he opposed the revision application for the reasons given in their reply dated 9.3.18 which was produced during the personal hearing. However, no one appeared for the applicant on the said date and no request for any other date of hearing is also received from which it is implied that the applicant is not interested in availing personal hearing. Hence, the revision application is taken up for decision on the basis of available case records.

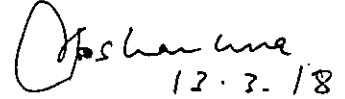
4. On examination of the revision application, the Government has observed at the outset that the revision application is not found complete in as much as Statement of Facts and Grounds of Appeal are not found enclosed along with the revision application even when these are claimed to have been enclosed in the revision application. Only the Review Order issued by a Committee of the Commissioners authorising the Assistant Commissioner of Customs to file an appeal before the Government is found enclosed with the Form CA 8. The respondent has also raised their preliminary objection for this reason and has pleaded that revision application is not proper and maintainable. Government agrees that authorisation alone cannot be considered as Statement of Facts and Grounds of Appeal for the revision application and hence, the revision application filed in Form CA 8 is liable for rejection on this ground alone.

5. Besides above, even when the Grounds of Appeal as mentioned in the Committee's Review Order dated 11.6.15 are considered as Grounds of revision for the revision application, then also it is noticed by the Government that the main ground of appeal is that seized gold jewellery recovered from the respondent are notified goods and for that the burden of proving that these were not smuggled is on the respondent as per Section 123 of the Customs Act. On the other hand, the respondent has contested the revision application of the Revenue on several grounds such as the case is relating to town seizure, it is not a baggage matter for which revision application cannot be filed with the Government, there is no evidence that the jewellery was smuggled by him from Dubai, he had purchased jewellery in India only, the jewellery do not have foreign marking and burden to prove that applicant has smuggled the jewellery has not been discharged in this case. The primary issue whether gold jewellery were smuggled from Dubai by the respondent has already been discussed in detail by the Commissioner (Appeals) in his Order and he has concluded that the Revenue's case is entirely based on one statement of the respondent and the circumstantial evidence in the form of railway ticket, flight ticket from Dubai to New Delhi on 1.2.13 and there is no direct evidence to corroborate the respondent's statement given that he had carried the gold jewellery from Dubai.

The Commissioner (Appeals) has also strengthened his above view on the basis of vital facts such as the gold jewellery did not bear any foreign marking, the respondent had submitted the copies of invoices/bills for purchase of jewellery from India, the seizure was effected out of airport at railway station and the burden to prove smuggling of the gold jewellery by the respondent has not been discharged by the Revenue in this case. On mere reading of the revision application, it is evident that except emphasizing on a point that gold is a specified goods under Section 123 of the Customs Act and, therefore, the burden is on the respondent to prove that he had not smuggled the gold jewellery, no other ground has been advanced and above mentioned reasons given by the Commissioner (Appeals) in his Order that jewellery did not bear any foreign marking and the applicant submitted purchase invoice/bill in respect of the gold jewellery have not been touched at all in the revision application. Above all, it is undisputed that the gold jewellery was recovered from the respondent while he was at railway station in a train and no direct evidence is adduced that gold jewellery was brought as baggage by the respondent from Dubai. Thus while importation of the gold jewellery from a foreign country itself is doubtful in this case, the issue regarding coverage of gold under Section 123 of the Customs Act is of no relevance as this Section is applicable only in respect of smuggled goods which are only illegally imported and not all gold jewellery which are locally available also. Thus, the initial onus to prove that the goods are imported one is undoubtedly on the Revenue and it has not been proved at first place that the gold items were brought from Dubai only. Above all, the Revenue has not made out a case that the gold jewellery was brought by the respondent as baggage from Dubai. Therefore, there is a lot of substance in the respondent's argument that the Government does not have jurisdiction to deal with the present revision application of the Revenue under Section 129DD read with 1<sup>st</sup> proviso to Sub-Section (1) of Section 129A of the Customs Act as per which the revision application can be filed before the Government only if the OIA relates to any goods imported or exported as baggage, any goods loaded in a conveyance for importation which are not un-loaded in India and the payment of drawback. But, the OIA relating to town seizure of any goods is not specified under the above

stated legal provisions. Therefore, without going into the issue whether gold is covered under Section 123 of the Customs Act and onus to prove smuggling of gold in this case is on the applicant, the Government is of the clear view that it does not have jurisdiction to deal with the present revision application which is definitely not relating to the goods imported as baggage by the respondent.

6. In view of the above discussions, the revision application filed by the Revenue is rejected.

  
12.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

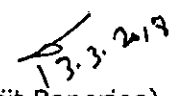
Commissioner of Customs (Preventive)  
New Customs House, Near IGI Airport,  
New Delhi

Order No. 40/18-Cus dated 13-3-2018

Copy to:

1. Mr. Ahmed Mujjaba Khaleefa, R/o Mustafa Manzil, 610, Main Road, Nawayath Colony Bhatakai North Kanara, Karnataka-581320
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Additional Commissioner of Customs (Preventive), New Custom House, Near IGI Airport, New Delhi-110037
4. Assistant Commissioner of Customs (Preventive), New Custom House, Near IGI Airport, New Delhi-110037
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

  
13.3.2018  
(Debjit Banerjee)  
STO (Revision Application)