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SPEED POST



F.No. 380/14/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 4/4/18

Order No. 49/18-Cus dated 2-4-2018 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/Air/15/2015 dated 21.1.2015 passed by the Commissioner of Customs (Appeals), IGI Airport, New Delhi

Applicant : Commissioner of Custom, New Delhi

Respondent : Ms. Neelam Kumari, Delhi

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**ORDER**

A Revision Application No.380/14/B/15-RA dated 20.4.15 is filed by the Assistant Commissioner of Customs, IGI Airport, New Delhi, (hereinafter referred to as the applicant) against the Order-In-Appeal No.CC(A)Cus/Air/15/2015 dated 21.1.2015, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the respondent, Ms Neelam Kumari, a resident of Delhi, has been allowed to re-export confiscated gold weighing 236 gms. of the value of Rs.606017/- on payment of redemption fine of Rs.2.20 lakhs and personal penalty of Rs.60000/-.

2. The brief facts of the case are that Ms Neelam Kumari on arrival from Dubai was intercepted at the green channel of IGI Airport on 10.5.14 and four gold bangles were recovered from her. The Additional Commissioner of Customs confiscated the gold items absolutely and personal penalty of Rs.60000/- was imposed on Ms Neelam Kumari vide his Order dated 26.6.14. However, on an appeal of Ms Neelam Kumari, the Commissioner (Appeals), vide above mentioned OIA, has modified the OIO by allowing Ms Neelam Kumari to re-export the confiscated gold on payment of fine of Rs.2.20 lakhs and penalty of Rs.60000/-. Being aggrieved, the Revenue has filed the present revision application against the OIA.

3. The revision application has been filed mainly on the ground that the Commissioner (Appeals) has committed an error by allowing the respondent to re-export the confiscated gold items which were brought in India in gross violation of the provisions of Customs Act with ulterior motive and such re-export is not permissible under Section 80 of the Customs Act.

4. Personal hearing was fixed on 9.3.18 in this case and it was availed by Shri Sanjay Kumar, ACO, on behalf of the applicant and he reiterated the ground of revision already pleaded in the revision application. However, the respondent, Ms Neelam

Kumari did not avail the said hearing and no request for any other hearing is also received from which it is implied that she is not interested in availing personal hearing. Hence, the Revenue's revision application is taken up for decision without offering any other hearing to the respondent.

4. On examination of all the relevant case records and especially the Orders of the lower authorities, the Government does not have any doubt that the gold items were brought by the respondent with malicious intention to evade custom duties and, therefore, these gold items are undisputedly liable for confiscation as held by the Additional Commissioner of Customs in his Order. Confiscation of the gold is upheld by the Commissioner (Appeals) also and the Government agrees with his Order to the extent that the gold items could not be confiscated absolutely as the gold is not the prohibited goods. However, the Government finds that the re-export of the confiscated gold allowed by the Commissioner (Appeals) is not supported by Section 80 of the Customs Act or any other legal provision and hence not backed by any sound reasoning. Under Section 80 re-export of the detained imported goods can be permitted only at the request of the passenger while he or she is returning from India to the foreign country and thereby it is explicit that returning of the PAX to the foreign country along with detained goods after a short visit to India as a tourist or otherwise is a crucial condition for re-export of such goods. But in the instant case, the respondent had gone to Dubai only for a short visit and there is no clue that she was either a citizen of Dubai or working there on long term basis. On the contrary the respondent is an Indian citizen and resided permanently in Delhi. Therefore, no statutory backing for re-exporting the gold to Dubai is forthcoming from the OIA. Otherwise also the re-export of the goods does not sound to be rational in this case as the respondent had brought the gold items with intention to evade custom duty and on being caught she requested for re-export of goods again to avoid payment of customs duty only. Thus its approval by the Commissioner (Appeals) clearly amounts to allowing the respondent to evade customs duty for no bonafide cause. Considering these facts, the Government agrees with the Revenue's contention that the Commissioner (Appeals) has committed

an error by allowing the re-export of the confiscated gold. Accordingly, the Government set aside the OIA and allows the respondent, Ms Neelam Kumari, to redeem the confiscated gold on payment of custom duties and payment of fine of Rs.2.20 lakhs and penalty of R.60000/- as already imposed by the Commissioner (Appeals).

5. In view of the above discussions, the Revenue's revision application is allowed.

*(Signature)*  
2-4-18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Customs  
IGI Airport Terminal-3,  
New Delhi-110037

Order No. 49/18-Cus dated 2-4-2018

Copy to:

1. Ms Neelam Kumari, Site-II, Flat No.120, Vikas Puri, New Delhi
2. Commissioner of Customs (Appeals), New Custom House, New Delhi
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

*(Signature)*  
2.4.2018

(Debjit Banerjee)  
STO (Revision Application)