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SPEED POST



F.No. 380/172/B/16-RA & 375/89/B/16-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. 58-59/18-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/D-I/Air/742/2016 dated 6.9.2016, passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : 1) Assistant Commissioner of Customs, IGI Airport, New Delhi
2) Mr. Salamuddin, Nagore

Respondent : 1) Mr. Salamuddin, Nagore
2) Assistant Commissioner of Customs, IGI Airport, New Delhi

ORDER

A Revision Application No.380/172/B/16-RA dated 21.12.16 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/D-I/ Air/742/2016 dated 6.9.2016 passed by the Commissioner of Customs (Appeals), New Delhi, whereby Mr. Salamuddin, a resident of Village Magri-ki-Dhani, Distt. Nagore, has been allowed to redeem the confiscated gold of the value of Rs.900092/- on payment of customs duty, redemption fine of Rs.2.25 lakhs and penalty of Rs.1.35 lakhs. Besides above, Mr. Salamuddin has also filed a revision application No.375/89/B/2016-RA dated 28.11.16 against the same Order-in-Appeal.

2. The Revenue has filed the revision application mainly on the ground that Mr. Salamuddin had attempted to smuggle gold by indigenously concealing the same in his underwear and by not declaring the same under Section 77 of the Customs Act and, therefore, the confiscated gold cannot be allowed to be redeemed by Mr. Salamuddin on payment of fine and custom duties. On the other hand, Mr. Salamuddin has challenged the OIA on the ground that the redemption fine and penalties have been imposed on him on a very higher side.

3. A personal hearing was fixed earlier on 5.3.18 in both the cases and it was attended by Shri Sanjay Kumar, ACO, for the Revenue who reiterated the grounds of revision pleaded in their application. However, no one availed the hearing on that date for Mr. Salamuddin and it was availed on next date on 20.3.18. Shri S.S.Arora, Advocate, appearing for the respondent opposed the Revenue's revision application for the reasons provided in his written submissions dated 20.3.18 and to support his case for reducing the redemption fine and penalty he reiterated the grounds of revision already pleaded in their application.

4. On examination of all case records, the Government observes that the Revenue has challenged the Commissioner (Appeals)'s Order mainly for the reason that the gold brought by Mr. Salamuddin by concealing in his underwear cannot be given back on payment of customs duties and redemption fine and the same should have been absolutely confiscated as was ordered by the Additional Commissioner. While it is not denied by anyone that the gold was brought by Mr. Salamuddin by concealing it in an unusual manner, the Government finds that the Revenue has nowhere alleged that the gold is prohibited goods. It is not held so by the Commissioner (Appeals) also. Therefore, while gold in this case was certainly liable for confiscation for being brought in India in violation of Section 77 and 79 of the Customs Act and other legal provisions, it does not agree with the Revenue's case that the gold should have been absolutely confiscated in this case. Under Section 125 of the Customs Act 1962, it is clearly stipulated that an option to redeem non-prohibited confiscated goods is to be given compulsorily to the claimant of the goods and it is discretionary in respect of prohibited goods. Since gold is undeniably non-prohibited goods and is not held otherwise in OIO also, the Government considers that the Commissioner (Appeals) has rightly allowed the redemption of gold in this case on payment of customs duties, redemption fine and penalty. Therefore, Revenue's revision application is not found maintainable. As regards Mr. Salamuddin's case that redemption fine and penalty have been imposed on higher side, his contention is merely that redemption fine should not be more than the margin of profit. However, the Government does not agree with his contention as the redemption fine is in lieu of value of confiscated goods which is vested with the Government on confiscation of goods and, therefore, value of the confiscated goods is relevant for determination of redemption fine and not the margin of profit. If the above argument of the applicant is accepted, there will not be any redemption fine on confiscated goods when illegally imported without any profit margin and thereby the goods would be released without any fine which is manifestly absurd. Further, the Government has noticed that in this case the redemption fine of Rs.225000/- is just 25%.

of the value of the confiscated gold and penalty of Rs.135000/- is also only 15% of the value of the gold which are absolutely just and fair in the light of prevalent practice whereby normally the redemption fine more than 35% is imposed.

5. In view of the above discussions, the revision applications filed by Revenue as well as Mr. Salamuddin are rejected.

R.P. Sharma
2.4.18

(R.P.Sharma)

Additional Secretary to the Government of India

1. Assistant Commissioner of Customs, IGI Airport, New Delhi
- 2) Mr. Salamuddin, R/o Mangri-ki-Dhani, P.O. Banthari, The. Didwana, Distt-Nagore, Rajasthan-341305

Order No. 58-59/18-Cus dated 2-4-2018

Copy to:

1. Commissioner of Customs, IGI Airport, Terminal-3, New Delhi
2. Commissioner of Customs (Appeals), IGI Airport, Terminal-3, New Delhi
3. Shri S.S.Arora, Advocate,
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

2.4.2018

(Debjit Banerjee)
STO (Revision Application)