

REGISTERED
SPEED POST



F.No. 375/63/B/15-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. 62/18-Cus dated 10-4-2018 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-1/Air/1164/2015 dated 28.08.2015 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Vikas Rathi, Delhi

Respondent : Commissioner of Customs, New Delhi

ORDER

A Revision Application No. 375/63/B/15-RA dated 04.12.15 has been filed by Mr. Vikas Rathi, New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-1/Air/1164/2015 dated 28.08.2015, issued by Commissioner of Customs (Appeals), New Delhi, whereby the applicant has been allowed to redeem the confiscated gold on payment of redemption fine of Rs.50,000/-, custom duties and on payment of penalty of Rs.25,000/-.

2. The revision application is filed mainly on the grounds that the applicant had brought the gold for self use only from Dubai, gold was not concealed, it was declared at the red channel, his actions/omissions are not covered under Section 111(d),(l) and (m) of the Customs Act, 1962, therefore, the gold has been wrongly confiscated and applicant has not contravened any legal provisions so as to attract any penalty. Accordingly, it is requested to set aside the above mentioned Order-in-Appeal and allow the applicant to re-export the confiscated gold.

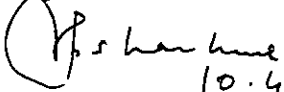
3. A personal hearing was held in this case on 03.04.2018 and Sh. I.C. Joshi, Advocate, and Sh. R.N. Singh, consultant, appeared on behalf of the applicant and reiterated the above discussed grounds of appeal. Sh. Sanjay Kumar, ACO, had earlier appeared for hearing on 12.3.2018 on behalf of the respondent and pleaded that Order-in-Appeal is just and proper.

4. The Government has examined the matter and it is found that the applicant's main case is that his action/omission are not covered under clauses (d), (l) and (m) of Section 111 of Customs Act, 1962 and consequently the gold imported by him is not liable for confiscation and no penalty is attracted under Section 112 of Customs Act, 1962. While it is true that clauses (l) and (m) of Section 111 are not applicable in the present case since the applicant had declared the gold to the customs authority at the time of his arrival. But it is not disputed by the applicant also that he was not eligible passenger to bring gold as part of baggage since he had not stayed abroad for minimum six months period as per the condition no. 35 of Notification

● no. 12/2012 dated 7.3.2012... In fact, the applicant himself has accepted this fact honestly in the revision application. Section 7 of Foreign Trade Development Regulation Act, 1992 unambiguously stipulates that for import or export of any goods, Import Export code number granted by Directorate General of Foreign Trade is mandatory. However, it is not required in some of the cases which are expressly specified by the Central Government by issuing an order and baggage is one of such exceptions. But the baggage has to be bonafide and it covers only household goods and personnel effect as mentioned in Para 2.20 of Foreign Trade Policy 2012-15. Further, the gold in any form other than ornament is mentioned in Annexure-1 to the Baggage Rules and the same is not allowed as part of baggage. Thus, import of the gold by the applicant was not allowed under the Baggage Rules and could be imported after taking import Export code from DGFT only. Consequently, Section 111(d) of the Customs Act, 1962 is clearly attracted in this case in as much as gold was imported by the applicant contrary to the provision imposed under Section 7 of the Foreign Trade Development Regulation, 1992. Applicant has vehemently pleaded that the Section 111 is not applicable as the gold is not a prohibited goods. But this argument is not found relevant in the context of this case as Section 111(d) does not talk about prohibited goods and instead it speaks of "importation of any goods contrary to any prohibition imposed under Customs Act, 1962 or any other law for the time being in force." Apparently, applicant has misunderstood "prohibition imposed under Customs Act, 1962 or any other law" with "prohibited goods." But these terms are totally different and prohibition under Customs Act, 1962 or any other law is with regard to general restriction and regulation for import and export of goods like allowing import of some goods by a specified agency only or the restriction stipulated in above mentioned Section 7 of Foreign Trade Development Regulation as per which the of goods can be imported under allotted IEC code only. Whereas prohibited goods are those goods which are specially prohibited for importation. For Example, the goods like ammunition, indecent material or narcotics drugs etc. which are prohibited under Section 11 of the Customs Act or under any other law. Accordingly, the government is convinced that gold illegally imported by the applicant has been rightly confiscated under section

111(d) of the Customs Act, 1962 and personal penalty under section 112 is correctly imposed. The applicant's request for re-export of the confiscated gold is also not maintainable as this request was not placed before the Commissioner (Appeals) as per order -in-Appeal and even in the revision application no such claim has been made. The Government being the revisionary authority only, the scope of revision application has to be restricted to the correctness of the order in the light of factual and legal background of the case considered by the Commissioner (Appeals) and not beyond it. Since the request of re-export was not made before Commissioner (Appeals) and he did not have any occasion to consider this aspect, this request made before the Government for the first time can not be entertained in the revisionary proceeding. Even otherwise also the request for re-export can be permitted under Section 80 of the Customs Act, 1962 only when the passenger intended to return from India to the foreign country along with detained goods after a short visit to India as a tourist or otherwise. But in the instant case the applicant is an Indian citizen residing in Delhi and had gone to Dubai for a short visit of two months only. Thus he did not return from India to Dubai after a short visit as envisaged in Section 80 of the Customs Act and thereby there is no rationale for re-exporting the gold to Dubai where he or his family is not presently staying.

5. In view of the discussions above, government does not find any fault in the order of Commissioner (Appeals) and revision application is accordingly rejected.


10.4.18
(R.P.Sharma)

Additional Secretary to the Government of India

Mr. Vikas Rathi,
B-120, Mukund Vihar Street No. 3,
Near PNB Karawal Nagar,
Delhi -110094

Order No. 62/18-Cus dated 10-4-2018

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi
4. Shri B.K. Singh, Advocate, GST Consultancy and legal services, D-40, 1st floor(OPP) Union Bank of India, South extension-1, New Delhi 110049.
5. PA to AS(RA)
- ✓ 6. Guard File.
7. Spare Copy

ATTESTED

(Ravi Prakash)
OSD (REVISION APPLICATION)

Nanj
10/4/18

(निर्मला देवी / NIRMALA DEVI)
अनुमति अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of R.
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi