

REGISTERED  
SPEED POST



F.No. 375/02/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... 13/10/17

Order No. 13/17-Cus dated 10-10-2017 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:ASR-CUSTOM-PVR-APP/236/2015 dated 27.11.2015 passed by the Commissioner of Customs (Appeals), Chandigarh

Applicant : Mrs. Fatema Aslam Kochona, Godhra, Gujarat

Respondent : Commissioner of Customs, Chandigarh

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**ORDER**

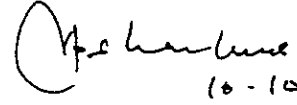
A Revision Application No. 375/02/B/15-RA dated 19.01.15 has been filed by Mrs. Fatema Aslam Kochona, Godhra, Gujarat (hereinafter referred to as the applicant) against the Order No. ASR-CUSTOM-PVR-APP/236/2015 dated 27.11.2015 issued by the Commissioner of Customs (Appeals), Chandigarh, whereby the applicant's appeal has been rejected.

2. The revision application is filed mainly on the ground that the applicant had been gifted gold weighing 116.6 gms. valued at Rs.2,88,002/- while she had gone to Pakistan to see her relatives and the same was brought by her for her own use in India and not for any commercial purpose. When she arrived at Attari Rail she had kept the gold in her shirt pocket worn by her, not concealing the same in her baggage or elsewhere, and the import of gold is not prohibited. It is further contended that her statement was not recorded by any gazetted officer and no panchnama was also prepared on the spot. Therefore, the order of Commissioner (Appeals) is not proper and it is prayed that she may be allowed to redeem the gold in terms of Section 125 of the Customs Act or re-export on payment of redemption fine and a reasonable penalty may be imposed on her for any mistake committed by her. A personal hearing was held on 10.10.17 and Shri S.S.Arora, Advocate, appeared on behalf of the applicant. However, no one appeared for the respondent. Shri Arora reiterated the above discussed grounds of appeal and requested for allowing the revision application.

3. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the goods which were brought by her from Pakistan in violation of Customs Act and Foreign Trade (Development and Regulation) Act and her request is limited to a point that the gold confiscated by customs should be allowed to be redeemed on payment of custom duties, redemption fine and penalty.

4. On examination of the Commissioner (Appeals)'s order, it is observed that he has ordered for confiscation of gold on the premise that the gold is a prohibited goods for importation purpose. 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 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 Customs Act or any other Law and the goods cannot be called as prohibited goods simply because it was brought by any person in violation of any legal provision or without payment of custom duty. Any goods imported without payment of duty and in violation of any provision of the Customs Act are also liable for confiscation under Section 11 of the Customs Act, but confiscated goods is not necessarily to be always prohibited goods. While there is no dispute in this case that the gold brought by the applicant from Pakistan is liable for confiscation because she did not follow the proper procedure for import thereof in India and attempted to smuggle it without payment of custom duties, it is beyond any doubt that the gold is not a prohibited item under Customs Act. Even the Courts, Tribunal, Commissioner of Customs (Appeals), Delhi, Chandigarh and J.S.(RA) have held gold as non-prohibited goods in a large number of orders. Therefore, the original adjudicating authority and thereafter the Commissioner (Appeals) were under legal obligation under Section 125 of the Customs Act 1962 to provide an option to the applicant to redeem the confiscated goods on payment of custom duties, redemption fine and penalty. But since they have not given any such option, the Government allows the applicant to redeem the confiscated gold on payment of customs duties as applicable, fine of Rs.1,15,000/- and penalty of Rs.40,000/-.

5. Accordingly, the revision application filed by Mrs. Fatema Aslam Kochona is allowed and the Commissioner (Appeals)'s order is modified to the extent as discussed above.

  
10-10-17

(R.P.Sharma)

Additional Secretary to the Government of India

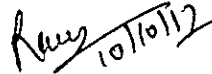
Mrs. Fatema Aslam Kochona  
Surti Yusuf Abdulrahim Mithekhan Mohala  
Juna Kasaiwala, Godhra-389-001  
Distt. Panchmahal, Gujarat

Order No. 13 /17-Cus dated 10-10-2017

Copy to:

1. Commissioner of Customs, Land Customs Station, Attari Amritsar-143008
2. Commissioner of Customs (Appeals), Plot No.19, Sector-17C, Chandigarh
3. Deputy Commissioner of Customs, L.C.S. Attari Rail, Attari Distt., Amritsar
4. Shri Shri S.S.Arora, Advocate, S.S.Arora & Associates, B.1/71, Safdarjung Enclave, New Delhi-110029
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

  
10/10/17

(Ravi Prakash)

OSD (REVISION APPLICATION)