

REGISTERED
SPEED POST



F.No. 375/34/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... 3/11/17

Order No. 32/17-Cus dated 01-11-2017 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.
CC(A)Cus/D-I/Air/219/2015 dated 12.05.2015 passed by
the Commissioner of Customs (Appeals), NCH New Delhi.

Applicant : Mr. Simrat Singh

Respondent : Commissioner of Customs, New Delhi.

ORDER

A Revision Application No. 375/34/B/15-RA dated 13.08.15 has been filed by Mr. Simrat Singh, Pitampura, New Delhi(hereinafter referred to as the applicant) against the Order-In-Appeal No. CC(A)Cus/D-I/Air/219/2015 dated 12.05.2015, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the applicant has been allowed to redeem the confiscated gold of the value of Rs. 7,45,348/- on payments of redemption fine of Rs. 3,30,000/-, Customs duties and penalty of Rs. 75,000/-.

2. The Revision Application has been filed mainly on the following grounds:
- (i) The gold was seized and a case is booked only on the basis of a detention receipt no. 66767 dt. 25.06.2017.
 - (ii) The Applicant requested to for re-export of the seized gold.
 - (iii) There is no punchnama.
 - (iv) No notice was given under section 102 of Customs Act 1962.
 - (v) The segregation of red and green channel bifurcating the area of the hall is for administrative convenience of customs authorities only and Baggage Rules 1998 or Customs Act 1962 do not refer to anything as green channel.
 - (vi) Principle of natural justice has been violated by ignoring the request for a proper show cause notice and by resorting to personal hearing which the applicant had to attend per force.
 - (vii) The department has not produced any evidence that the gold was concealed or that the passenger shrank from declaring the gold to the customs officers.
 - (viii) The weight of gold brought from abroad was within permissible limits and that eligible passenger could carry gold upto 1 kg. within the baggage provisions.
 - (ix) Filling information in disembarkation slip is not mandatory under Customs Act 1962 or any other law.
 - (x) Gold is not prohibited goods.

3. Personal Hearing in this case was fixed on 12.10.2017 and it was attended by Sh. Sanjeev Kumar, Consultant, on behalf of the applicant who reiterated the grounds of revisions already made in their revision application


~~4. On examination of the revision application in the light of~~
Commissioner(Appeals)'s Order and the Order-in-Original in this case, it is observed by the government that apart from several other grounds of revision as mentioned above, the applicant has mainly emphasised on a point that he was eligible to import the gold bars of 300 gm and was inclined to declare the same before the caustom authorites at the time of his arrival, but he was not allowed to do the same. However, on examination of his entire revision application, it is noticed that he has not cited any legal provision under which he could import the gold bars alongwith him as a passanger. On the contrary it is found that he was not eligible to bring any kind of gold, including jewellery, under Baggage Rule, 1998, read with notification No. 31/2003 and notification No. 3/12 dt. 16.01.2012, as he had not stayed in Dubai for more than 6 months. Therefore, he was not eligible to bring gold in any form and in the event of importation thereof the same was liable for seizure & confiscation

under Section 111 of the Customs Act, 1962 irrespective of whether he had declared or not declared the gold to the Custom authorities. Importation of gold by him in violation of Baggage Rules, above mentioned notifications, provisions of Custom Act and Foreign Trade(D & R) Act 1992 is not in dispute in this case at all. Therefore, several lacunae pointed out in the revision application as enumerated above are not much helpful as these cannot alter the ultimate truth that the gold bars brought by him illegally are liable for confiscation under the Customs Act. As regards their contention that gold is not prohibited goods, it is also found to be completely irrelevant as the Commissioner(Appeals) himself has already held that the gold is not a prohibited goods and after having held so only he has allowed the applicant to redeem the confiscated gold bars on payment of appropriate duty of Customs, redemption fine and penalty as mentioned in para 1. Regarding their other argument that he had requested the Commissioner(Appeals) to allow him to reexport the confiscated gold, no evidence has been adduced by the applicant alongwith the revision application or otherwise to support their claim. The Commissioner(Appeals)'s

order also does not mention any such request from applicant's side. Therefore, their plea regarding reexport of gold is considered as a fresh request only at this stage and it cannot be entertained as it is only a revisionary proceeding with reference to the earlier proceeding and Commissioner(Appeals)'s order cannot be modified on the basis of a new fact raised before the revisionary authority.

5. However, considering the overall facts and circumstances of the case, the Government reduces the redemption fine from Rs. 3,30,000/- to Rs. 3,00,000/- and penalty from Rs. 75,000/- to Rs. 50,000/- in this case for redemption of confiscated gold within 30 days of this order.

6. Accordingly, the Commissioner(Appeals)'s order is modified and revision application is allowed in above terms.


1. 11. 17

(R. P. Sharma)

Additional Secretary to the Government of India


Mr. Simrat Singh
MD-38, 1st Floor Pitampura
New Delhi-110034

Order No. 32/17-Cus dated 0/-/11-2017

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, New Delhi.
3. Additional Commissioner of Customs, IGI Airport Terminal-3, New Delhi.
4. Mrs. Vibha Narang, Advocate, B4/162, Basement Safdarjung Enclave New Delhi-110021
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED


1.11.2017

(Debjit Banerjee)
STO(REVISION APPLICATION)
