

REGISTERED  
SPEED POST



F.No. 375/21/B/15-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHICAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.. 7/11/17

Order No. 34/17-Cus dated 02-11-2017 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.ASR-CUSTOM-PVR-APP/333/2014-15 dated 31.03.2015 passed by the Commissioner of Customs (Appeals), Chandigarh

Applicant : Smt. Baljit Kaur, Gurdaspur, Punjab

Respondent : Commissioner of Customs, Chandigarh

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**ORDER**

A Revision Application No. 375/21/B/15-RA dated 19.05.2015 has been filed by Smt. Baljit Kaur, Gurdaspur, Punjab (hereinafter referred to as the applicant) against the Order No. ASR-CUSTOM-PVR-APP/333/2014-15 dated 31.03.2015 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 gold weighing 519.45 gms. valued at Rs.15,37,566/- which she had brought from Birmingham to donate for religious purposes. When she arrived at Amritsar airport she declared the gold to customs officers and did not conceal the same. It is further contended that her statement was recorded in English and not read out in her native language. 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. A personal hearing was held on 12.10.17 and Shri Ravinder Wadhawan, Advocate, appeared on behalf of the applicant. However, no one appeared for the respondent. Shri Ravinder Wadhawan furnished written submissions reiterating the grounds of the RA.

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 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 he 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. Commissioner (Appeal), Chandigarh, in the case of Mr. Farook Ahmed, has held in his Order No.ASR-CUSTOM-PVR-APP/318/2015 dt. 03.03.2015 that gold is not prohibited goods and he allowed the Pax to redeem the goods on payment of fine and penalty. 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.5,50,000 and penalty of Rs.1,50,000, *within 30 days of this Order.*

5. Accordingly, the revision application filed by Smt. Baljit Kaur is allowed and the Commissioner (Appeals)'s order is modified to the extent as discussed above.

  
(R.P.Sharma)

Additional Secretary to the Government of India

Smt. Baljit Kaur  
Guru Nanak Nagar Qadri Mohalla  
Ward No. 9, Gurdaspur Punjab

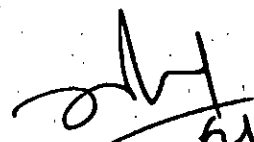
Order No. 34/17-Cus dated 02-11-2017.

Copy to:

1. Commissioner of Customs (P), Customs House, C.R. Building, The Mall, Amritsar-143 001
2. Commissioner of Customs (Appeals), Chandigarh, C.R. Building, Plot No.19, Sector-17C, Chandigarh-160017
3. Additional Commissioner of Customs (P), Commissionerate, Amritsar
4. Mr. Ravinder Wadhawan, Advocate, House No. 70, 2<sup>nd</sup> Floor Ramprastha Green Vaishaly Sector-7, Ghaziabad, U.P.
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(~~Debjit Banerjee~~)  
STO (REVISION APPLICATION)

  
Superintendent / अधीक्षक  
Customs & Central Excise  
केन्द्रीय उत्पाद एवम् सीमा शुल्क  
New Delhi / नई दिल्ली