

REGISTERED
SPEED POST



F.No. 375/35/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... 9/11/17

Order No. 45/17-Cus dated 9-11-2017 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-1/Air/215/2015 dated 06.05.2015 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Sunil Kalwahi,

Respondent : Commissioner of Customs, Delhi.

ORDER

Mr. Sunil Kalwani (hereinafter referred to as applicant) has filed a revision application dated 10.08.15 against the Commissioner (Appeals) order No. CC(A)Cus/D-1/Air/215/2015 dated 06.05.2015 whereby his appeal against OIO dated 01.07.14, passed by Additional Commissioner of Customs, IGI Airport, New Delhi has been rejected. The Additional Commissioner had vide his order confiscated the gold chains valued at Rs.12,19,963/- carried by the applicant from Dubai and imposed penalty of Rs.1,25,000/-

2. The revision application has been filed mainly on the following grounds by the applicant:-

- i. The Pax was not travelling alone, he was coming along with his wife and son;
- ii. The Pax is not a carrier;
- iii. The gold is not in the form of any bar or biscuit. It is in the form of made up articles of gold i.e. jewellery
- iv. It was brought for personal purposes and not for profits or for commercial gains;
- v. The jewellery was brought from savings;
- vi. It was declared;
- vii. No concealment and no mis-declaration; no Green Channel violation
- viii. The total weight is within permissible limits.
- ix. Gold does not fall under the category of "Prohibited Goods".
- x. The object of the alleged concealment, i.e., the shoe is not seized.
- xi. The specific shoe(s), i.e., whether in single or both vis-à-vis quantity of alleged recovery of gold jewellery; colour, make, style, size etc., are not specified.
- xii. The discrepancies regarding the checked-in baggages vis-à-vis Panchnama and statement of the Pax and the Disembarkation Slip.

3. The above revision application is filed with a request to allow to redeem the confiscated gold on payment of redemption fine for their consumption or for re-export and to impose nominal penalty on the applicant. Personal hearing in this case was fixed for 12.10.2017 and 06.11.2017 but no one from applicant's side appeared for the personal hearing and no adjournment of the hearing is also sought from which it is implicit that applicant is not interested in personal hearing. Therefore, the case is taken up for decision on the basis of available case records.

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 noticed 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 articles of 467 gms and was inclined to declare the same before the custom authorities 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 given relevant details to establish that he had stayed abroad for more than 6 months as envisaged in notification no. 12/2012-Customs dated 17.03.2012 at the time of his arrival in India on 17.11.2013. On the contrary, the Commissioner (Appeals) in para 4 of his order has categorically stated that he did not stay abroad for more than 6 months and, therefore, is not eligible as passengers to bring any gold article. Thus, no doubt is left in this case to conclude that he was not eligible to bring gold in any form and in the event of importation thereof of 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. However, as regards the applicant contention that gold is not a prohibited goods and, therefore, absolute confiscation of gold as ordered by adjudicating authority and upheld by Commissioner (Appeals) is

erroneous is found legally tenable as the Commissioner (Appeals) has not cited any legal provision under which the import of gold is expressly prohibited. 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 111 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 Dubai 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. In fact the same Commissioner (Appeals), in the case of Mr. Jamil Ahmed, has observed in his order No. CC(A)Cus/D-1/Air/209/2015 dated 22.04.2015 that gold is not prohibited goods and he allowed the passenger to redeem the goods on payment of fine and penalty etc. Further in several other such cases also he has held that gold is not prohibited goods. Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding absolute confiscation of gold in this case. Even the Courts, Tribunal, Commissioner of Customs (Appeals), 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 within 30 days of this order on payment of customs duties as applicable, fine of Rs.4,85,000/- and penalty imposed by the Commissioner (Appeals) ^{which} is found just and proper.

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

(R.P. Sharma)
9-11-17

(R.P.Sharma)

Additional Secretary to the Government of India

Mr. Sunil Kalwani
30A, G T Road,
Kalyan Pur,
Kanpur, UP

ATTESTED

Roy
09/11/17

(Ravi Prakash)
OSD (REVISION APPLICATION)

Order No. 45 /17-Cus dated 9-11-2017

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. Mrs. Vibha Narang, Advocate, B-4/162, basement Safdarjung Enclave, New Delhi - 110021
5. PS to AS(RA)

6. Guard File.

7. Spare Copy