

REGISTERED  
SPEED POST



F.No. 375/57/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...16/11/17

Order No. S O/17-Cus dated 15-11-2017 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.-CG(A)Cus/1960/2015 dated 03.11.2015 passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : Mr. Mohd. Tamim

Respondent : Commissioner of Customs, Delhi.

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**ORDER**

A revision application No.375/57/B/2015-RA dated 9.11.15 is filed by Mr. Mohd Tamim, a resident of Afghanistan (hereinafter referred to as the applicant) against Order-in-Appeal No.CC(A)Cus/1960/2015 dated 03.11.2015, passed by the Commissioner of Customs (Appeals), New Delhi, who has upheld the order of the Additional Commissioner absolutely confiscating the gold weighing 699 gms. valued at Rs.17,30,409/- and imposing penalty of Rs.3,00,000/- on the applicant.

2. The revision application is filed mainly with a request to allow redemption of confiscated gold for the reason that he is an Afghan national, he had purchased the gold from Dubai to take it to Afghanistan for his daughter's marriage, he was not aware about the Custom related Indian Laws, he intended to declare the importation of gold at Delhi Airport but before doing that he was intercepted by the Custom officers and the gold is not a prohibited goods etc. These facts are also confirmed by the Embassy of the Afghanistan in their letter dated 5.11.15 to the Joint Secretary (R.A.).

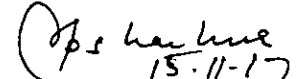
3. A personal hearing was held in this case on 15.11.17 which was attended by the applicant Mr. Mohd. Tamim along with his advocate Mrs. Sangita Bhayana who mainly requested that the applicant may be allowed to redeem the absolutely confiscated gold on payment of suitable redemption fee and penalty as gold is not a prohibited goods and the applicant had not brought it in India for any commercial purpose.

4. On examination of the revision application in the light of Commissioner (Appeals)'s Order, the Government does not have any doubt that the applicant was not eligible to bring gold in India and there is no evidence that this was brought for the purpose of taking it to Afghanistan. The uncontroverted fact in this case remains that he had illegally brought gold at the time of his arrival in India and as a result the same was liable for confiscation under Section 111 of the Customs Act 1962 irrespective of whether he intended to declare its importation or not to the

Custom authorities. Therefore, it is beyond any dispute that the gold brought by the applicant as part of his baggage is liable for confiscation under Section 111 and the applicant is liable for penalty under Section 112 of the Customs Act 1962. However, as regards the applicant's 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. Further Since the applicant is an Afghan national who was apparently not aware about the Indian Laws relating to importation of gold by a

passenger and it is his first case of custom violation, Government feels that a penalty of Rs.2,00,000/- will be sufficient to meet the end of justice in this case. But since the lower authorities have not given option of redemption of confiscated goods, 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.6,00,000/- and penalty of Rs.2,00,000/-.

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

  
15.11.17  
(R.P.Sharma)

Additional Secretary to the Government of India

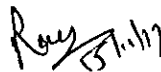
Mr. Mohd Tamim  
C/o Mrs. Sangita Bhayana, Advocate  
Chamber No.707, LCB-3, Delhi High Court,  
New Delhi-110003

Order No. \_\_\_\_\_ /17-Cus dated \_\_\_\_\_ 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. Sangita Bhayana, Advocate, Chamber No.707, LCB-3, Delhi High Court, New Delhi
5. PS to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED



(Ravi Prakash)  
OSD (REVISION APPLICATION)