

REGISTERED
SPEED POST



F.No. 375/18/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..15/12/17

Order No. 53/17-Cus dated 14-12-2017 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-PRV-APP-218/14-15 dated 22.10.2014 passed by the Commissioner of Customs, Chandigarh

Applicant : Mr. Shoukat Lal Mandhwani

Respondent : Commissioner of Customs, (Preventive), Amritsar

ORDER

Mr. Shaukat Lal Mandhwani (hereinafter referred to as applicant), a Pakistani national, has filed a revision application No. 375/18/B/15-RA dated 09.03.15 against the Commissioner (Appeals)'s order No. ASR/CUSTOM/PRV/APP/218/15 dated 08.01.2015 whereby his appeal against OIO dated 14.04.14, passed by Deputy Commissioner of Customs, Attari Road, has been rejected who had confiscated the gold pieces and gold articles valued at Rs. 4,84,709/- carried by the applicant from Pakistan from Atari Border and imposed penalty of Rs 20,000/-

2. The revision application has been filed by the applicant with a request to allow to redeem the confiscated gold on payment of redemption fine for re-export or to pass any other order modifying the order of Commissioner of Customs (Appeals) and to impose nominal penalty on the applicant for the reason that the applicant had not concealed the gold, the applicant himself had declared the gold to the Baggage Officer and the import of gold is not prohibited.

3. Personal hearing in this case was offered on 15.11.17. But the advocate of the applicant expressed his inability to attend the hearing on this date and requested for other date for hearing. Accepting his request next hearing was fixed on 07.12.2017. But neither the applicant appeared for personal hearing in the matter nor any request for any other personal hearing for any genuine reason was made from which it is implied that the applicant is not interested in availing hearing in this case. Therefore, this case is taken up for decision on the basis of available records.

4. 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 him from Pakistan in violation of Customs Act and Foreign Trade (Development and Regulation) Act and his request is limited to a point that the gold confiscated by customs should be allowed for re-export on payment of redemption fine and penalty or central Government may pass any other order modifying the order passed by Commissioner of Customs (Appeals).

5. 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 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 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. In fact the Commissioner (Appeals), Chandigarh in the case of Mr. Farook Ahmed, has observed in his order No. ASR/Custm/PVR/APP/318/2015 dated 03.03.2015 that gold is not prohibited goods and he allowed the passenger to redeem the goods on payment of fine and penalty etc. 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), Delhi, 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 and re-export of the same on payment of fine of Rs. 2,00,000/- and penalty of Rs. 30000/- already imposed on the applicant.

6. Accordingly, the revision application filed by Mr. Shaukat Lal Mandhwani is allowed and the Commissioner (Appeals)'s order is modified to the extent as discussed above.

R.P. Sharma
14.12.17

(R.P.Sharma)

Additional Secretary to the Government of India

Mr. Shaukat Lal Mandhwani,
A-192, Jai Jagat Colony Indore, M.P.

ATTESTED

Ravi
14/12/17

(Ravi Prakash)

OSD (REVISION APPLICATION)

Order No. 53/17-Cus dated 14/12-2017

Copy to:

1. Commissioner of Customs, New (Preventive), Customs House, C.R. Building, The Mall, Amritsar-143001
2. The Commissioner of Customs & Central Excise (Appeals), Plot No.19, Sector-17C, Chandigarh (UT)
3. Deputy Commissioner of Customs, LCS Attari Rail Attari Distt. Amritsar
4. Sh. D.P. Sharma, Advocate, Chamber No. 24-B, District Courts, Amritsar 143001.
5. PS to AS(RA)
6. Guard File.
7. Spare Copy