

REGISTERED

SPEED POST



F. No. 375/52/B/2016-R.A.
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... 27/8/18

ORDER NO 118/18-Cus dated 7-8-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R. P. SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC (A) CUS/D-I/Air/123/2017 dated 11/02/2016, passed by the Commissioner of Customs (Appeals), NCH, Near IGI Airport, New Delhi.

APPLICANT : Faisal Raza Khan

RESPONDENT : Commissioner of Customs, New Delhi

ORDER

A Revision Application No. 375/52/B/2016-R.A. dated 20/07/2016 has been filed by the Mr. Faisal Raza Khan (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. CC (A) CUS/D-I/Air/123/2016 dated 11/02/2016 whereby the order of the Additional Commissioner of Customs, New Delhi, confiscating absolutely gold items weighing 600 grams valued at Rs. 15,90,117/- and imposing a penalty of Rs. 5 lakhs on the applicant has been upheld.

2. The applicant has filed the revision application mainly on the ground that upholding of absolute confiscation of the gold articles by the Commissioner (Appeals) is erroneous as the gold is not prohibited goods and the same should be allowed to be redeemed and the penalty may be set aside.

3. A personal hearing was held on 05.07.2018 and it was attended by Sh. Prasanjit Pathak, Consultant, on behalf of the applicant who reiterated the grounds of revision already pleaded in their revision application. However, no one appeared on behalf of respondent and no request has been received for a personal hearing on any other date also from which it is implied that they are not interested in availing any hearing in the matter.

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 illegally from Sharjah in violation of Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992 and his request is limited to a point that the confiscated gold may be released on payment of redemption fine and penalty.

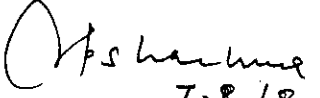
5. Government has examined the matter and it is found that there is no dispute regarding the fact that the applicant had violated the Section 77 of Customs Act, 1962 by not declaring gold bars to the Customs authorities on his arrival at Airport from Sharjah. Accordingly, Commissioner (Appeals) has rightly upheld the order-in-original to the extent of confiscating the gold bars which were brought from Sharjah with the intention to evade custom duty. However, the Commissioner (Appeals) has upheld Additional Commissioner's order of absolute confiscation of gold on the premise that the gold brought by the applicant by concealing in shoes were liable for confiscation under Section 111(i) of the Customs Act, 1962 as per which any dutiable or prohibited goods found concealed in any manner in any package either before or after the un-loading thereof are liable for confiscation. But he has not elaborated as to how the gold bars in this case became prohibited goods by virtue of the said Section 111 which only specifies the types of goods liable for confiscation and does not declare gold as prohibited goods. He has merely placed reliance on Supreme Court's decision in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi [2003(155) ELT 423 (SC)] to support his view. But no reason is given as to how this decision covers the present case. On examination of the said decision it is observed that the issue involved in this case was regarding confiscation of goods exported/attempted to be exported in violation of various legal provisions and allowing of redemption of such goods on payment of fine and penalty. But it is nowhere held in this case that any goods exported or imported in contravention of legal provision will become prohibited goods as is envisaged under Section 11 and Section 111(i) of the Customs Act, 1962 and the goods will be liable for absolute confiscation only. In fact in this case redemption of confiscated goods had been

allowed on payment of fine etc. and it has been upheld by the Apex Court in the above case. Prohibited goods is a distinct class of goods which can be notified by the Central Government only 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 customs duty. Further there is a difference between the prohibited goods and general legal or procedural restrictions imposed under the Customs Act or any other law with regard to importation of goods. While prohibited goods are to be notified with reference to specified goods only which are not allowed to be imported in any circumstance, regulatory restrictions with regard to importation of goods is generally applicable to general goods like goods will not be imported without declaration to the Customs and without payment of duty leviable thereof etc. Such restriction is clearly a general restriction/regulation, but it cannot be stated that the imported goods become prohibited goods if brought in contravention of such restriction. Apparently because such goods when imported in violation of specified legal provisions are also liable for confiscation under Section 111 of the Customs Act, the Apex Court held in the above mentioned case of Om Prakash Bhatia that importation of such goods became prohibited in the event of contravention of legal provisions or conditions. If the goods brought in India in contravention of any legal provision are termed as prohibited goods, as envisaged in Section 125 of Customs Act, then all such goods will become prohibited and other category of non-prohibited goods for which option of redemption is to be provided compulsorily will become redundant. Thus while any goods imported without payment of duty and in violation of any provision of the Customs Act, 1962 are certainly liable for confiscation under Section 111 of the Customs Act, but confiscated goods are not necessarily to be

always prohibited goods. While there is no dispute in this case that the gold bars brought by the applicant from Sharjah are liable for confiscation because he did not follow the proper procedure for import thereof in India and attempted to smuggle it without payment of customs duties, it is beyond any doubt that the gold is not notified as prohibited goods under Customs Act. The Hon'ble Madras High Court, in its decision in the case of T. Elavarasan Vs CC(Airport), Chennai [2011(266)ELT 167(Mad)] has held that gold is not prohibited goods and a mandatory option is available to the owner of the goods to redeem the confiscated gold on payment of fine under Section 125 of Customs Act, 1962. Even the Hon'ble High Court of Andhra Pradesh in the case of Shaikh Jamal Basha Vs GOI [1997(91) ELT 277(AP)] has also held that as per Rule 9 of Baggage Rules, 1979 read with Appendix B, gold in any form other than ornament could be imported on payment of customs duty only and if the same was imported isedly the option to owner of the gold is to be given for redemption of the confiscated gold on payment of fine. In fact the Commissioner (Appeals), Delhi and the Government of India have consistently held the same view in a large number of cases that gold is not prohibited goods as it is not specifically notified by the Government. Therefore, the Commissioner (Appeals) has taken a totally different stand by upholding absolute confiscation of gold in this case. Accordingly the Commissioner (Appeals) should have provided an option to the applicant under Section 125 of the Customs Act, 1962 to redeem the confiscated goods on payment of customs duties, redemption fine and penalty and because it was not done so earlier, the Government now allows the applicant to redeem the confiscated gold ^{within 30 days of this order} on payment of customs duty, fine of Rs. 7 lakhs and penalty of Rs. 5 lakhs which was imposed by the original adjudicating authority and upheld by the

Commissioner (Appeals). The Government considers this penalty quite reasonable and appropriate in the context of the serious nature of offence committed by the applicant by importing gold without declaration and does not merit any reduction.

6. In terms of the above discussion, the order-in-appeal is modified and the revision application is allowed to the above extent.


(R. P. SHARMA) 7-8/18

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Mr. Faisal Raza Khan
S/o Mr. Arif Raza Khan,
Moh Chan Ichan Ram,
Rajwada Road, Rampur, UP.

ORDER NO. 118/18 - Cus dated 7-7-2018

Copy to:-

1. The Commissioner of Customs (Appeals), (P), New Custom House, New Delhi-37
2. P.S. to A.S.
3. Sh. P. Pathak, Consultant, Flat No. 32, Plot No. 09, Sector 18A, Karuna Vihar, Dwarka, New Delhi-110 078.
- ✓ 4. Guard File
5. Spare copy

ATTESTED


7/8/18
(NIRMALA DEVI)
Section Officer