

REGISTERED
SPEED POST



F.No. 375/45/B/2015-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... 5/1/18...

ORDER NO. 15/2018 -CUS dated 5-1-2018 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/385/2015 dated 03.06.2015 passed
by the Commissioner of Custom (Appeals), NCH,
New Delhi

APPLICANT : Mr. Abdul Wahab,

RESPONDENT : Commissioner of Customs, New Delhi.

ORDER

A Revision Application No.375/45/B/2015-R.A.Cx dated 10/09/2015 is filed by Mr. Abdul Wahab, resident of Bhatkal, Karnataka (hereinafter referred to as the applicant) against the Order in Appeal No.CC(A)Cus/385/2015 dt. 03.06.2015, passed by the Commissioner of Customs (Appeal), Delhi who has modified the order of the Additional Commissioner Customs by allowing the applicant to re-export the confiscated gold weighing 1.900 kgs of the value of Rs. 38,78,949/- on payment of fine of Rs. 10 lakh and Penalty of Rs. 3,80,000/-.

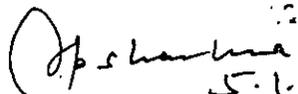
2. A personal hearing was offered on 19/12/2017 and it was attended by Sh. Sanjay Kumar A.C.O on behalf of the respondent who opposed the revision application for the reasons discussed in the Order in Appeal. However, the applicant did not appear for the personal hearing and has not even requested for any other date of hearing from which it is implied that he is not interested in availing personal hearing. Hence, this case is taken up for decision on the basis of revision application and other relevant records.

3. From the order of the Additional Commissioner and the Order-in-Appeal of the Commissioner, the Government finds that the Additional Commissioner had absolutely confiscated the imported gold weighing 1.900 kgs and imposed penalty of Rs. 4 lakhs on the applicant. However, taking a lenient view on the basis of honest declaration by the applicant regarding importation of the gold at the red channel, the Commissioner (Appeal) has allowed the applicant to re-export the gold on payment of fine of rupees 10 lakh and penalty of rupees 3,80,000/-. But the applicant is still aggrieved and has filed the revision application stating that the fine and penalties are heavy and harsh. The applicant has not given any concrete basis to support his revision application for modification of the Commissioner (Appeals)'s order and has merely stated that the Commissioner (Appeals) has not considered the facts and the grounds raised by them before him. Whereas, the Government finds from the revision application that the applicant imported the gold for earning good margin of profit as mentioned in grounds of appeal at Serial no. (E). Thus, it is manifest that the applicant imported the gold for commercial purpose. Further it is nowhere stated or even claimed by applicant that he was eligible for importing the gold as baggage under Baggage Rules 1998. The Commissioner (Appeals) has categorically observed in Para 5 of his order that the applicant is not an eligible passenger as per condition 35 of Notfn. 12/2012 dated 17 March 2012 as the stay of the applicant was lesser than 6 months. Therefore, the imported gold was certainly liable for confiscation even when the applicant had reported at the red channel and intended to pay the customs duty. Further the Commissioner (Appeal) has been fair enough to hold that gold is not prohibited goods and, therefore,

allowed the applicant to re-export the confiscated gold on payment of redemption fine which is just about 25% of the value of the gold. Otherwise also, the Government has noticed, the prevalent practice in the Customs Department is to allow the redemption of confiscated goods on payment of fine @ of more than 35% of the value of the goods.

Therefore, the fine of Rs. 10 lakh in this case sounds just and proper and the Commissioner (Appeal) has expressly stated that he has taken a lenient view while imposing the Redemption fine. As regards penalty, considering the overall facts and circumstances of the case and especially the applicant's honesty in reporting the import of gold at the red channel and his clear intention to pay customs duty on the imported gold, the Government reduces the penalty from 3,80,000/- to Rupees 2,50,000/-

4. Accordingly, the order of the Commissioner (Appeal) is modified and the Revision Application is allowed to the above extent.


5.1.18
(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

✓ Mr. Abdul Wahab,
Askeri Manzil, Sultan Street,
Bhatkal, Karnataka.

ORDER NO. 15/2018-CUS dated 5-1-2018

Copy to:-

- ✓ 1. The Commissioner of Customs, (P), IGI Airport, Terminal -3, New Delhi - 110 037.
- ✓ 2. The Commissioner of Customs(Appeals), New Customs House, Near IGI Airport, New Delhi.
- ✓ 3. The Additional Commissioner of Customs, Terminal - 3, IGI Airport, New Delhi.
- ✓ 4. Mr. Amit attri, Advocate, Chamber No. 952, Patiala House Court, New Delhi, Delhi - 110 003.
5. PS to AS(RA)
6. Guard File.
- ✓ 7. Spare copy

ATTESTED

(Debjit Banerjee)
Sr. Technical Officer (RA)