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**F.No.373/99/B/12-RA-Cus**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 25/6/15

**Order No. 15/2015- Cus dated 22.06.2015** of the Government of India, passed by Smt. Rimjhim Prasad, Joint Secretary to the Government of India, under section 129 DD of the Customs Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs, against the Order-in-Appeal No. 1261/2012 dated 30.10.2012 passed by Commissioner of Customs (Appeal), Chennai

Applicant : Mr. Thangarasu Elayababu

Respondent : Commissioner of Customs, (Airport) Chennai,

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## ORDER

This revision application is filed by Sh. Thangarasu Elayababu,( here in after referred to as the applicant) against the Order-in-Appeal No. 1261/2012 dated 30.10.2012 passed by Commissioner of Customs, (Appeals) Chennai, with respect to Order-in-Original No. O.S. No.171/2012-AIR dated 10.03.2012 passed by Additional Commissioner of Customs,(Airport) Chennai.

2. Brief facts of the case are that the applicant, an Indian Passport holder arrived at Chennai Airport from Singapore on 10.03.2012 and was intercepted while he was passing through the green channel on suspicion that he might be carrying gold or some other contraband. When questioned by officers whether he has any gold or any other contraband either in his baggage or on his person, the passenger answered in the negative. However, a search of his person resulted in the recovery of small packet containing assorted gold jewellery totally weighing 107 grams valued at Rs.2,80,233/- from the waist pocket of his trousers. In his voluntary statement dated 11.3.12 he admitted the offence and stated that for monetary consideration he received gold jewellery from one Mr. Umayan in Singapore who had asked him to keep it hidden in his trousers and without declaring or payment of duty to the customs, to deliver the same to one Mr. Khader at Chennai Airport. Since the applicant had attempted to smuggle the gold jewellery without declaring to Customs and to evade Customs duty, the same was confiscated absolutely by the lower adjudicating authority under Section 111 (d),(l) and (m) of the Customs Act, 1962 read with Section 3 (3) of the Foreign Trade (D&R) Act, 1992. Penalty of Rs.25,000/- was imposed on the applicant under Section 112(a) of the Customs Act, 1962.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who upheld absolute confiscation of the assorted gold jewellery of which he was the carrier not owner and reduced the personal penalty to Rs.5,000/-. The Commissioner (Appeals) also rejected the request of the applicant for re-export.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

4.2 That applicant went to Singapore on 09.12.2009 and returned to India on 10.03.2012. The applicant came to India after stay of two and half years. Therefore, the applicant is an eligible passenger and hence he can bring gold up to 10 Kgs.

4.3. The applicant further submits that he is an eligible passenger and he is not a frequent visitor. Only contention of the department is that he tried to pass through the green channel. The applicant further submits that he never tried to go out the green channel but officers recorded remarks that he tried to cross the green channel, even assuming without declaring the gold in the Red Channel in order to evade Custom Duty. It is an admitted fact that he did not go out the green channel and there is every possibility to change his mind to declare the gold and pay the appropriate duty cannot be denied. Further, it is an admitted fact that he is an eligible passenger there is no necessity to pass through the green channel without making declaration and he also possess the require money for payment of duty. Though the applicant told the officers that he possessed foreign currency but the officers failed to hear the same and record while registering the case. Thus it is clearly shows that the officers trying to cook the case as the applicant brought the gold on behalf of third party.

4.4 That according to notification no. 31/2003-Cus- dated 01.03.2003 Gold bars, other than tolas bars and ornaments rate of duty is Rs. 100 per 10 grams.

4.5 That as per the condition of the Central government liberalized policy, he stayed abroad more than required period and he is eligible to bring 10 Kg of gold on payment. In the context of Exim Policy gold falls under restricted list and is not a prohibited item and hence the absolute confiscation of gold is unwarranted. Therefore the Government may ordered to redeem the gold under section 125 (a) of the Customs Act, 1962 on payment of applicable customs duty.

4.6 That under Section 125 of the Customs Act when confiscation of any good is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody been such goods have seized.

4.7 That the officers recovered 107 grams of Gold jewellery and the officers assessed the value of the gold as Rs. 2,80,233/- Further officers recorded the statement from him by using third degree method and hence applicant is hereby retracting his confessional statement given before the officers. This is the first case registered against him under the said Act; he is not a frequent visitor or trader, No previous offence, and he is not a die-hard smuggler and he has no bad antecedent. The applicant further submits that he is the owner of the gold and he is claiming gold.

4.8. The applicant also relied upon the following case laws/revision orders:-

- T.Elavarsan Vs Commissioner of Customs (Airport), Chennai 2011(266)ELT 167(Mad)
- K. Krishankumari Vs Commissioner of Customs (Airport), Chennai 2008(229)ELT 222(Mad)
- Hargovind Dash Vs Collector of Customs 1995 (61)ELT 277 (AP)
- Yakub Ibrahim Yusuf Vs Commissioner of Customs, Mumbai 2011 (263) ELT 685 (Tri. Mumbai)
- Shabir Ahmed Abdul Rehman Vs Union of India 2009 (235) ELT 402 (Bom)
- Government of India's Revisionary Orders No. 198/2010-Cus dated 20.05.2010, 899/2005 dated 30.05.2006, 212-221/07 dated 27.04.2007.

4.9 The applicant further submits that a plain reading of Section (2) of Section 125 of Customs Act, 1962 shows that an option has to be given to the owner of the goods or where the owner is not known the person from whose possession or custody such goods have been seized. Undoubtfully the gold has been seized from the possession of

the applicant. Therefore, the aforesaid contention of the department is not sustainable. Thus it is clearly proved that option under Section 125 is mandatory. The applicant is the owner of the goods and hence the applicant is claiming the same. Further, he has not smuggled the goods on behalf of third party. But the officers recorded the statement as if he smuggled the gold for third party, is not correct. The applicant further submits that under Section 125 of the Customs Act, when even confiscation of any good is authorized by this act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody been such goods have seized.

4.10 Under the above circumstances of the case the applicant prayed that this revision authority may be pleased to set aside the impugned order dated 30.10.2012 and order to release the gold on concessional rate of duty or to permit him to re-export the gold and also reduce the personal penalty sum of Rs.5,000/-.

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5. Personal hearing in this case held on 13.03.15 was attended by Shri S. Palanikumar, authorized advocate on behalf of the applicant, who reiterated the grounds of revision application. He stressed that there was no attempt of ingenious concealment, the applicant was a bonafide traveler and is entitled to import gold as baggage which is not a prohibited item. Also while Section 77 of the Customs Act, 1962 requires the passenger to make the declaration, Section 125 of the Customs Act, 1962 permits release of goods to either owner or passenger.

6. Government has carefully gone through the relevant case records available in case files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the applicant had brought assorted gold jewellery which was not declared to the customs under Section 77 of the Customs Act, 1962 and passed through the Green Channel. Further, under the statement given to the Customs officers under Section 108 of the Customs Act 1962 he admitted that the impugned goods were given to him by Mr. Umayan in Singapore to

be delivered to Mr. Khader in Chennai and he had been directed to keep it hidden in his trousers without declaring to customs. Hence, the applicant has admitted to smuggle the goods without declaring the same to customs with the intent to avoid payment of customs duty on the same. The impugned goods were also brought in trade quantity by the applicant. The goods, therefore, did not qualify to be treated as bonafide baggage as per Section 79 of the Customs Act, 1962 read with Para 2.20 of the EXIM Policy as in force. The same were confiscated absolutely by the original authority under Section 111(d),(l) & (m) of the Customs Act, 1962 and personal penalty of Rs.25,000/- was imposed on the applicant under Section 112 (a) *ibid*. The Commissioner(Appeals) also upheld the original order and also rejected the applicants request for allowing re export of the impugned goods. Now the applicant has filed this revision application on grounds mentioned in para 4 above.

8. Government observes that the applicant has contended that he was eligible for the import of gold; that the absolute confiscation of gold was not warranted as it is allowed under the EXIM Policy; that the confessional statement given by him was rendered under duress and was being retracted; that he may be allowed to redeem the goods on payment of duty, the gold be released to him on concessional rates or its re-export permitted; and that the personal penalty may be reduced.

9. As regards absolute confiscation of the impugned goods ordered by the lower authority, Government finds that the same is in order keeping in view the conduct of the applicant in not declaring the impugned goods and attempting to pass through the green channel. It is fact on record that even when questioned by officers whether he has any gold or contraband items, he answered in the negative. Had the applicant desired to import the gold as an eligible passenger, he ought to have approached the customs and made the requisite declaration. Further, as is clear from his statement in this case, the applicant is not the owner of the goods and has acted as a carrier of the goods purely on monetary consideration. Government also notes that Hon'ble High Court of Bombay in its judgment dated 23-07-2009 in the case of UOI Vs Mohammed Aijaj Ahmed (WP No.1901/2003) reported as 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT ordering to allow redemption of gold and upheld the absolute confiscation of gold ordered by Commissioner of Customs. In this case the gold did not

belong to passenger Mr. Mohammed Aijaj Ahamed who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reports as 2010 (253) ELT E83 (SC). Government notes the case laws cited by the applicant in this regard are not applicable to the instant case.

10. In view of the position explained above, Government finds no infirmity in the impugned Order-in-Appeal as far as absolute confiscation of the impugned goods is concerned and finds no reason for interference.

11. The applicant has also requested to permit re-export of impugned goods. Government finds that the provision for re-export of baggage is available under Section 80 of the Customs Act, 1962. However, this Section is applicable only to cases of bonafide baggage declared to customs, which the applicant failed to do, thus the applicant is not eligible for re-export of impugned goods. Also being an Indian National, this is nothing but an attempt by the applicant to avoid the burden of duty. In similar circumstances, Central Government has denied re-export of goods in the case of Hemal K Shah 2012(275)ELT 266 (GOI). Further, the Apex Court in the case of CC Kolkata Vs Grand Prime Ltd 2003 (155) ELT 417 (SC) has supported the view that the goods which are liable for confiscation cannot be allowed to be re-exported. The case laws cited by the applicant in this regard are not relevant to the present case. Hence the Government is of the view that the request of the applicant for re-export of goods is not legal and proper and cannot be allowed.

12. Further, the claim regarding retraction by the applicant of his admission of guilt in the statement before the Customs officers on ground of duress is not borne out in as much as the passenger had admitted to pass the green channel without declaring the impugned goods. Had the passenger desired to import the gold on payment of duty, he merely had to declare it before the customs authorities under Section 77 of the Customs Act which he failed to do. Besides the retraction is clearly an afterthought as the applicant did not raise the allegations regarding duress and never retracted his statement before the original authority, before whom he has on the other hand reiterated the submissions already made in his statement earlier. Moreover, the

applicant has not produced any evidence in support of his plea that the statement was recorded under duress.

12.1 In this regard, Government also notes that the statement recorded before the Customs officers is valid evidence. Hon'ble Supreme Court has held in the case of Surjit Singh Chhabra Vs. Union of India 97(84) ELT 646 (SC) that statement made before customs officers though retracted within six days is an admission and binding since Customs officers are not police officers under Section 108 of Customs Act 1962. A similar view has been taken by the Apex Court in Naresh J. Sukhawani Vs Union of India 1996(83) ELT 258(SC) holding that statement before a Customs Officer under Section 108 of the Customs Act 1962 is a material piece of evidence. So the statement given before Customs is valid evidence and subsequent retraction is only an afterthought in an attempt to get goods released on payment of fine.

13. As regards pleading of applicant to reduce penalty, Government finds that Commissioner (Appeals) has already taken a very lenient view on the ground that this is the first offence of the applicant and considerably reduced the personal penalty from Rs.25000/- to Rs.5000/- . As such there is no need to reduce the amount further and Government finds no reason for interference.

14. In view of above circumstances, Government finds no infirmity with the impugned Order-in-Appeal and, therefore, upholds the same.

15. Revision application is thus rejected being devoid of merit.

16. So, ordered.

  
(RIMJHIM PRASAD)  
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

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**GOI Order No. 15/2015- Cus dated 22.06.2015**

Copy to:

1. The Commissioner of Customs (Airport & Air cargo) , Integrated Air Export Complex, Meenambakkam, Chennai.-600027
2. The Commissioner of Customs (Appeal), Customs House, Chennai-600001.
3. The Additional Commissioner of Customs (Airport & Air cargo) , Integrated Air Export Complex, Meenambakkam, Chennai.-600027
4. Guard File.
5. PA to JS (RA)
6. Spare Copy

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ATTESTED

  
(Shaukat Ali)  
Under Secretary (Revision Application)

