

**REGISTERED**  
**SPEED POST**



**F.No.373/03/B/13-RA**  
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.....21/3/16.....

**ORDER NO. 15/2016-CUS DATED 23.02.2016** 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 Act, 1962, against the Order-in-Appeal No.  
165/2012/CUS (B) dated 28.09.2012 passed by the  
Commissioner of Customs (Appeal), Bangalore.

Applicant : Mr. Byar Mohammed Asraf, Kerala.

Respondent : Commissioner of Customs, (Airport) Bangalore.

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## **ORDER**

This Revision Application is filed by Mr. Byar Mohammed Asraf, Kerala (hereinafter referred to as the applicant) against the Order-in-Appeal No. 165/2012/CUS (B) dated 28.09.2012 passed by the Commissioner of Customs, (Appeals) Bangalore, with respect to Order-in-Original No. 21/2012-Cus AIU dated 22.03.2012 passed by Joint Commissioner of Customs (Airport) Bangalore.

2. The Superintendent of Customs, Air Intelligence Unit, Bengaluru International Airport, Bengaluru at about 0300 hours of 22nd of April 2010 noticed that a person was moving around in the arrival lounge in a suspicious manner. The Superintendent, having reasonable belief that the person was carrying contraband articles, desired to search the person and his baggage. The person was intercepted and it was found that his name is Shri Bayar Mohammed Asraf, aged 49 years, son of Shri Bayar Andunchi Beary and a resident of H. No. 1656, Badiyar House, PO Beripadave via Uppala, Kasarkod District, Kerala and that he was holder of Indian passport bearing No. Z 1951375 issued on 03.09.2009, and had travelled from Dubai by Emirates Airlines flight No. EK 568. The said passenger was found to be carrying two rexin bags, one bag wrapped with cotton cloth and three plastic covers. The person's baggage searched under proper Mahazar was among other things found to contain goods 164 cartons of Cigarettes, one taka of black burkha cloth. During the personal search of the passenger, it was found that he had concealed two packets wrapped with brown tape around his stomach under the pant belt containing in all 44 gold chains of different types/sizes weighing in total 500 grams approximately. When questioned the passenger informed that he had concealed the above said gold chains in order to avoid Customs Duty. The accused had stayed in Dubai only for two days and he was not eligible to import gold in any form.

2.2 In addition to the gold ornaments, the Superintendent also found one boarding pass in respect of seat No. 33K (flight No. EK 568), electronic ticket for travel from Dubai to Bangalore along with three baggage slips bearing No. EK 482581, EK 482580 and EK 482579 pasted on its back, five photographs of Shri Bayar Mohammed Asraf, one photograph of Shri Bayar Ismail Badiyar (brother of Shri Bayar Mohammed Asraf), Jet Privilege card bearing No. 135528584, two old boarding passes of Kingfisher and Jet Airways, two old e-tickets, one old boarding pass for journey on 18th April 2010, two baggage slips bearing No. EK 489538 and EK 489583, two invoices evidencing foreign currency cash purchase, ten bills purportedly showing purchase of burkha cloth in Dubai, one old e-ticket for travel on 16<sup>th</sup> January 2010, one e-ticket for travel on 30th May, one small note book containing certain personal entries, one Customs declaration form and one Nokia mobile model No. 1202-2 with Airtel SIM bearing No. 9867861422, one belt and one SIM card in respect of mobile No. 050-2787106 (issued in Dubai by Ittasalath service provider).

2.3 The gold chains were seized under Section 110 of Customs Act, 1962. The said Superintendent also informed that the cigarettes totaling 164 cartons were also liable



for seizure as the same had been brought in Commercial quantity in contravention of Baggage Rules and also did not comply with the provisions laid down in the "Cigarettes and other Tobacco products (Packaging and Labeling) Rules, 2008 and were also liable for seizure under Section 110 of the Customs Act, 1962. The total value of the cigarettes @ Rs. 100/- per carton worked out to Rs.16,400/- and the total value of the gold chains @ Rs.1,568/- as per the prevailing market rate worked out to be Rs.7,84,000/-. The said Superintendent seized the Cigarettes by repacking the same in the bags and seized the gold chains along with the wrappers under mahazar proceedings on 22.04.2010.

2.4 A statement of Shri Bayar Mohammed Asraf was recorded under Section 108 of the Customs Act, 1962.

2.4.1 In his statement he stated that he is the holder of Indian passport bearing number Z 1951375 issued on 03.09.2009, that he along with his sister's husband (Shri Abdulla Ibrahim) and his brother (Shri Ismail Bayar Badiyar) are having a cloth / readymade garments shop at Nife Road, Dehra Dubai, Dubai for the last 8 years and he visits his native place quite often; that whenever he visits Kerala he brings burkha cloth (around 150 to 200 meters) from Dubai and gets it stitched into readymade burkhas (around 100 Nos.) of different sizes; that he carries them back to Dubai and sells them in their shop; that the money got from this business is used for purchase of burkha cloth as well as for family maintenance; that while going to Dubai he usually boards the flights from Mumbai by travelling from Kasargod to Mumbai by bus or train; that he travels to Dubai very frequently, almost every week and sometimes within a day or two from the date of arrival in India.

2.4.2. Shri Bayer Mohammed Asraf further stated that he had arrived by EK 568 at Bengaluru International Airport at 0231 hrs and was carrying his baggages containing 164 cartons of Cigarettes packed in 6 bags and was also carrying gold concealed on his body (under his belt); that after passing through Immigration and after collecting his baggages from the International baggage claim area, he was moving out of the Customs Area through the Green Channel Gate; that the officers on duty asked him to come inside and go to the red channel for detailed examination of his baggage; that on examination they found 164 cartons of Cigarettes, one taka of black burkha cloth neatly packed in two rexin bags, one bag wrapped with cotton cloth and three plastic covers; that the officers then requested him to come to the Customs Room and conducted a personal search of his body; that he had concealed 44 gold chains in two packets on his body (in stomach area below the belt); that the said officers have removed the packets in front of him and the packets were opened and counted in his presence and they were weighed and found to weigh about 500 grams totally; that apart from this he also had personal clothes; that these gold chains were purchased by him out of his savings from a shop in Dubai (namely Al Jara on Dehra Nife road) and he wanted to conceal the same in his body in order to avoid payment of Customs duty; that the Cigarettes were purchased from a shop in Dubai for 1740 Dirhams; that these gold items were to be sold to different shops at Kasargod to make profit; that these gold items were purchased by him to make profit and have not been given to



him by anybody; that he also understands that concealing of gold is an offence under the provisions of Customs Act; that on his previous visits to India, he used to always depart from Mumbai Airport and he has arrived at Bengaluru International Airport about 10 times in the last two months.

2.5 Shri Bayer Mohammed Asraf was arrested at 1430 hrs. on 22.04.2010 by issuing an Arrest Memo and after explaining the grounds of arrest was produced before the Special Court of Economic Offences at Bangalore and was remanded to judicial custody till 04.05.2010 after which he was granted bail by the Hon'ble Court on 05.05.2010.

2.6 Accordingly, the Joint Commissioner of Customs passed the order vide Order-in-Original No. 21/2012-CUS AIU dated 22.03.2012 and ordered:-

a. Absolute confiscation of the commercial quantity of 164 cartons of Cigarettes, valued at Rs. 16,400/- under Section 111 (d), (i),(l), (m) and ( o) of the Customs Act, 1962.

b. Confiscation of 44 gold chains valued at Rs. 7,84,000/- under Section 111 (d), (i),(l), (m) and ( o) of the Customs Act, 1962 with an option to redeem the goods on payment of redemption fine of Rs. 4,00,000/-. The redemption fine shall be paid in addition to applicable duties in terms of Sub Section (2) of Section 125 of the Customs Act, 1962.

c. Imposed penalty of Rs. 1,50,000/- on Shri Bayer Mohammed Asraf, under Section 112 (a) & (b) (v) of the Customs Act, 1962.

d. Imposed penalty of Rs. 1,00,000/- on Shri Bayer Mohammed Asraf under Section 114 AA of the Customs Act, 1962.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. 165/2012-CUS (B) dated 28.09.2012 upheld the Order-in-Original and rejected the appeal.

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 That the mahazar states that the applicant was moving around in the arrival lounge in a suspicious manner and appeared to carry some contraband. That the factual position was that the applicant had approached the Customs officer on duty in the arrival lounge to declare the goods brought by him and had requested the officer to fill up the Customs declaration form. That the applicant had neither entered the green channel nor concealed any goods/ information from the Customs officers. That the applicant was not given an opportunity to make a true declaration of the goods brought by him and was apprehended by the officers before he could enter the red channel for payment of appropriate duties of Customs. That this fact is evident from the Customs declaration form signed by the applicant, which is in the custody of the



department. That the allegation that the applicant intended to evade payment of Customs duty does not stand the test of law.

4.2 That the Customs declaration form prescribed by the department does not carry any specific column/row/space, where the passengers can declare details of the goods brought by them. That the form requires the passenger to declare the name, flight number, number of hand baggage, number of checked-in baggage, and value of goods imported, whether they are carrying any plants or animals and signature. That the applicant had brought cigarettes for personal consumption and old gold ornaments (polished) and wanted to declare the same in the Customs declaration form, in the absence of any specific place in the form where he could declare the above said goods; he had approached the Customs officer on duty, to help him in making a true declaration. That despite the lacuna in the Customs declaration form, the applicant was arrested and his goods were seized, without giving him an opportunity to make the necessary declaration under Section 77 of Customs Act, 1962.

4.3 That it was alleged that the applicant had concealed two packets wrapped with brown tape around his stomach below the pant belt and the belt has also been seized. That no garment (like underwear/banian) has been seized by the Customs officers, which was allegedly used to conceal the gold ornaments. That no person can pass through airport security in Dubai by concealing any metallic object on his body. That it is only the figment of imagination of the Customs investigating officers that the gold ornaments were concealed on the body of the applicant using a belt. That the facts have been distorted by the Customs investigation officers only to make the applicant a culprit in the eyes of law.

4.4 That the applicant has thoroughly co-operated with the Customs officers on the date of his arrival in Bengaluru International Airport as well as thereafter during the investigation. That the applicant has protested the injustice meted out to him in spite of justifiable reason for bringing the cigarettes and gold ornaments. That the Customs officers have seized the goods brought by him and made him to sign various papers, the contents of which, he could not understand and have arrested him for alleged offences which were not committed by him at any point of time.

4.5 That the passport of the applicant was seized under mahazar dated 22.04.2010 in spite of unequivocal judgment by the Hon'ble Supreme Court of India in the case of Suresh Nanda vs Central Bureau of Investigation (2008) 3 SCC 674, Gian Singh vs State of Rajasthan 2000 (1) Crimes 25 (SC) and Hon'ble High Court of Karnataka in the case of Brijesh Singh and Another vs State of Karnataka and others, ILR 2002 KAR 1427, that passport cannot be seized by Customs officers. That the applicant was prevented from carrying out his legitimate business in Dubai on the ground that his presence was required for investigation but not even once during the last six months, the applicant has been summoned by the investigating officers. That all the evidence relied in the Show Cause Notice viz., mahazar and statement were recorded on



22.04.2010 and no additional evidence has been adduced by the investigation to prove the case against the applicant.

4.6 That in spite of long investigation for about six months, including a search of the residence of the applicant, the investigating officers could not gather any documentary evidence to prove the charges invested against him. That there is not even a piece of paper as an evidence to prove that the cigarettes brought by the applicant were for sale/for any other commercial purposes and the gold ornaments are new ornaments purchased abroad. That the applicant was induced with letting him off if he signs all the documents shown to him and therefore the applicant under the above said inducement as well as threat/duress had signed the various papers shown to him, he being an illiterate, he could not understand a single word of the documents shown to him and using such documents to prove the alleged offence committed by him would amount to travesty of justice.

4.7 That in addition to cigarettes and gold ornaments, the Customs officer have also seized one boarding pass in respect of seat No. 33K (flight No. EK 568), electronic ticket for travel from Dubai to Bangalore along with three baggage slips bearing No. EK 482581, EK 482580 and EK 482579 pasted on its backs, five photographs of the applicant, one photograph of Shri Bayar Ismail Badiyar (brother of Shri Bayer Mohammed Asraf), jet privilege card bearing No. 135528584, two old boarding passes of Kingfisher and Jet airways on two old e tickets, one old boarding pass of Kingfisher and Jet airways, one old boarding pass for journey on 18th April two baggage slips bearing No. EK 489538 and EK 489583 two invoices evidencing foreign currency, cash purchase, ten bills, purportedly showing purchase of burkha cloth in Dubai, one old e ticket for travel on 16<sup>th</sup> January 2010, one e ticket for traveling on 30th May, one small note book containing certain personal entries. That one Customs declaration form, one belt and one Nokia Mobile model No. 1202 with Airtel Sim bearing No. 9867861422 and one sim card in respect of mobile No. 050/2787106 issued in Dubai by ittasalth service provider which are neither being relied in the Show Cause Notice nor proposed for confiscation in the notice or Order-in-Original.

4.8 That the order of the adjudicating authority is not sustainable in confiscation of the goods, imposing fine and penalty on the following reasons:

4.8.1 That the adjudicating authority in Para 21 of Order-in-Original has come to a wrong conclusion that the applicant had not questioned the import of cigarettes in commercial quantity and the gold ornaments and their seizure by the Customs officers.

4.8.2 That the adjudicating authority in Para 23 of Order-in-Original has traveled beyond the Show Cause Notice in as much as the case registered against the applicant in the past have been relied upon and have come to a wrong conclusion that the applicant is a frequent offender, without giving an opportunity to the applicant to defend himself. That the adjudicating authority cannot be relied upon the case of



Thiruvananthapuram International Airport and Mangalore International Airport against the applicant as both are not the subject matter of the Show Cause Notice dated 14.10.2010. That the applicant has changed his cigarette brand to Marlboro instead of Gudag Garam. That the actual position was that the cigarettes brought by the applicant were meant for his personal consumption and not for sale. That the provisions of cigarettes and other tobacco products (packing and labeling) Rules, 2008, are not applicable in the present case. That the applicant was under the bonafide belief that he could carry 200 cartons of cigarettes within the value limit of Rs.25,000/- being the free allowance. That as import of cigarettes is not prohibited by law, the quantity of cigarettes brought in excess of allowance needs to be charged to Customs duty at applicable rates. That the law does not define what commercial quantity of cigarettes is to be brought. That when the cigarettes have been brought by the applicant only for personal consumption and not for sale, the adjudicating authority cannot assume that the quantity brought by him is in commercial quantity and is meant for sale. That the investigation department has not produced any evidence before the adjudicating authority to prove that the cigarettes brought by the applicant were in fact for sale and not for personal consumption. That the cigarettes brought by the applicant does not hit the Board's circular No.29/2000-Cus issued vide file No.495/19/99-Cus VI dt. 11.02.2000 and free allowance has to be allowed to the applicant, which is well within the free allowance allowed to him. That the applicant should have been allowed to clear the cigarettes brought by him on the payment of appropriate duty on the value declared by him.

4.8.3 That the provisions of Cigarettes and other Tobacco Products (Packing and Labeling) Rules 2008 requiring every package of cigarettes manufactured or sold in India to have a statutory warning as specified in the schedule are not applicable to the cigarettes bought by the applicant in Dubai. That assuming that the provisions of the above said rules were applicable, the Customs Officer on duty should have detained the cigarettes and should have directed the applicant to affix the pictorial warning stickers, which are readily available in India and unavailable in Dubai on all cartons of cigarettes before their release on payment of appropriate duty if any. That the officers have seized the entire quantity of goods without even giving him an opportunity to pay applicable duty or affix the pictorial warning stickers, in total violation of the provisions of the law/violation of natural justice.

4.8.4 That the adjudicating authority in Para 24 of Order-in-Original has come to a wrong conclusion that the applicant has imported gold ornaments and is not eligible for Notification No.78/2009. That in the case of gold ornaments, the applicant has taken his family gold ornaments from India during his previous visit to Dubai for polishing. That the gold ornaments seized by the Customs officials are neither new nor imported by the applicant for sale. That the applicant knew several persons in Dubai whom he could trust and who could excellently polish the gold ornaments he had carried the same during his previous visit to Dubai. That he had got the gold ornaments polished in Dubai and was returning with the same during his current visit



to India. That due to security restrictions in Dubai Airport he had kept all the gold ornaments in his baggage and was not carrying on his body as alleged by the investigating officer's in the mahazar dated 22.04.2010. That on arriving in Bengaluru International Airport he had promptly approached the Customs officer on duty for help in declaring the same. That the Customs officers without having any valid reason or seeking explanation have seized the gold ornaments and have proposed confiscations of the same.

4.8.5 That gold ornaments brought by him were his own/his family's old ornaments which were brought back after polishing. That the investigation have not produced any evidence in the form of invoice/bill/payment details to prove that the ornaments brought by the applicant were new gold ornaments and were purchased by him in particular shop in Dubai or any other foreign country. That it is on the department to prove that the gold ornaments were purchased by the applicant abroad and had imported the same in violations of the Customs provisions, which has not been proved by the investigation.

4.8.6 That the applicant satisfies all the conditions mentioned in Baggage Rules. That the applicant is a permanent resident of Dubai since from 2008. That the residence permit is still valid, it can be safely assumed that the applicant has not stayed out of Dubai for more than six months in the past (ignoring the short visits, if any). That the applicant is eligible to bring up to 10 kg of gold, on payment of appropriate duty. That the quantum of gold brought by the applicant is only 500 grams. That the gold ornaments brought by the applicant were raw ornaments, he was eligible to bring the same, as per the above said provisions of the Baggage Rules. That he should have been allowed to import the same on payment of appropriate duty, that the officers chose to arrest him and proposed for confiscation of gold, which is totally arbitrary and illegal under the Baggage Rules.

4.8.7 That the declaration form requires the passenger to declare the name, flight number, number of hand baggage, number of checked-in-baggage, value of goods imported, whether they are carrying any plants or animals and signature. That the applicant had brought cigarettes for personal consumption and old gold ornaments (polished) and wanted to declare the same in the Customs declaration form. That in the absence of any specific place in the form where he could declare the above said goods; he had approached the Customs officer on duty, to help him in making a true declaration. That being the lacuna in the Customs Declaration form, the applicant was arrested and his goods were seized, without giving him an opportunity to make the necessary declaration under Section 77 of Customs Act, 1962.

4.8.8 That the adjudicating authority in Para 25 of Order-in-Original has also come to a wrong conclusion that the mahazar in this case is witnessed by independent witness and disputing the same after lapse of considerable time is an afterthought action. That the actual position was that the applicant was permitted to cross examine the independent witnesses of the mahazar dated 22.04.2010 through his counsel



commonly for both the case vide O.R. NO. 2/2010 and O.R. No.3/2010 as the independent witness was common, on 26.04.2011 at about 11.40 A.M.

4.8.9 That the gold seizure was under the custody of the department and they could have tested the gold from their gold valuer, as to whether the said gold was old gold or new. That the adjudicating authority has totally ignored his submissions and confirmed the demand made as per the Show Cause Notice Dated 14.10.2010.

4.8.10 That his statement had been obtained out of coercion, threat and inducement and hence his statement should not be relied upon.

5. Personal hearing in this case was scheduled on 04.08.2015, 03.09.2015 and 18.09.2015. None attended the hearing nor sought postponement.

6. Government has carefully gone through the relevant case records available in case file & 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 as personal baggage Cigarettes bearing the marking Filter Kretek Cigarettes, Gudang Garam International made under authority of PT: Gudang Garam Tbk, Kediri, Indonesia, 44 gold chains total weighing 500 grams and burkha cloth (around 150 to 200 meters) which were 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 after passing through immigration and after collecting his baggage from the International baggage claim area, he was moving out of the Customs Area through the Green Channel Gate; that the officers on duty asked him to come inside and go to the red channel for detailed examination of his baggage; that on examination they found 164 cartons of Cigarettes, one taka of black burkha cloth neatly packed in two rexin bags, one bag wrapped with cotton cloth and three plastic covers; that the officers then requested him to come to the Customs Room and conducted a personal search of his body; that he had concealed 44 gold chains in two packets on his body (in stomach area below the pant belt); that the said officers have removed the packets in front of him and the packets were opened and counted in his presence and they were weighed and found to weigh about 500 grams totally; that apart from this he also had personal clothes; that these gold chains were purchased by him out of his savings from a shop in Dubai (namely Al Jara on Dehra Nife road) and he wanted to conceal the same in his body in order to avoid payment of Customs duty; that the Cigarettes were purchased from a shop in Dubai for 1740 Dirhams; that these gold items were to be sold to different shops at Kasargod to make profit; that these gold items were purchased by him to make profit and have not been given to him by anybody; that he also understands that concealing of gold is an offence under the provisions of Customs Act; that on his previous visits to India, he used to always depart from Mumbai Airport and he has arrived at Bengaluru International Airport about 10 times in the last two months. 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 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 Joint Commissioner of Customs passed the order vide Order-in-Original No. 21/2012-CUS AIU dated 22.03.2012 and ordered absolute confiscation of the commercial quantity of 164 cartons of Cigarettes, valued at Rs. 16,400/- under Section 111 (d), (i),(l), (m) and ( o) of the Customs Act, 1962, confiscation of 44 gold chains valued at Rs. 7,84,000/- under Section 111 (d), (i),(l), (m) and ( o) of the Customs Act, 1962 with an option to redeem the goods on payment of redemption fine of Rs. 4,00,000/-, payment of applicable duties in terms of sub section (2) of Section 125 of the Customs Act, 1962 and imposed penalty of Rs. 1,50,000/- on Shri Bayar Mohammed Asraf, under Section 112 (a) & (b) (v) of the Customs Act, 1962 and imposed penalty of Rs. 1,00,000/- on Shri Bayar Mohammed Asraf under Section 114 AA of the Customs Act, 1962. Commissioner (Appeals) vide Order-in-Appeal No. 165/2012-CUS (B) dated 28.09.2012 upheld the Order-in-Original and rejected the appeal of the applicant. Now the applicant has filed this revision application on grounds mentioned in para 4 above.

8. Government observes that it is an uncontested fact that the impugned goods were not declared to the Customs under Section 77 of the Customs Act, 1962 and the passenger passed through the green channel. At the outset Government notes that the applicant in his statement dated 22.04.2010 has admitted that he was moving out with the impugned goods part of which were concealed through the green channel without declaring the same to the Customs and were recovered from him only upon examination of his baggage and his personal search; that he was avoiding payment of Customs duty and the items were to be sold to different shops at Kasargod to make profit.

8.1. 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. Further, Government notes that the applicant had been made to understand the statement and was signed in the language known to him and the same has been signed by him for the same as understood. Therefore, the contention of applicant that he could not understand the contents of the paper signed, cannot be held correct.

8.2. 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.

9. Government observes that on personal search 44 gold chains concealed in two packets wrapped with brown tape around his stomach under the pant belt were recovered. It is an uncontested fact that the goods were not declared to the Customs under Section 77 of the Act and the passenger passed through the green channel. Neither was the applicant entitled to import the impugned gold under Rule 6 of the Baggage Rules as he did not fulfill the conditions of Notification 12/2012-Cus dated 17.03.2012 as clearly brought out in the orders of the lower authorities.

9.1. The applicant was therefore not eligible to import gold and that too undeclared in a substantial quantity, the same cannot be treated as *bona fide* baggage in terms of Section 79 of the Act *ibid*. The said gold is imported in violation of Foreign Trade Policy, provisions of Sections 77,79,11 of Customs Act, 1962; para 2.20 of Exim Policy of 2009-14 and provisions of Section 3(3) and 11(1) of Foreign Trade ( Development & Regulation) Act,1992. The same would appropriately constitute "prohibited goods" liable to confiscation under Section 111(d) of the Customs Act,1962.

9.2. Further, Government notes that the applicant's contention that the ornaments seized were carried to Dubai for polishing is not acceptable. The applicant has failed to provide any evidence on record that the gold was carried by him from India. Moreover the onus to prove that the goods are not smuggled under Section 123 of the Customs Act, 1962 lies on the applicant and not the department as claimed by the applicant.

9.3. Government finds no merit in the plea of the applicant that it is difficult to conceal valuable goods like gold below the pant belt. It is a fact on record that during the search, it was found that the applicant had concealed two packets wrapped with brown tape around his stomach under the pant belt which on examination, were found to contain in all 44 gold chains of different types/sizes, totaling weighing 500 grams. Also, in his statement recorded under Section 108 he admitted that he had concealed the above said gold chains in order to avoid Customs Duty.

9.4. Therefore, Government holds that the impugned gold chains have been rightly order for confiscation under provisions of Section 111(d), (i), (l), (m) and (o) of the Customs Act, 1962.



10. Government further observes that the applicant had brought as personal baggage 164 cartons of Cigarettes bearing the marking Filter Kretek Cigarettes, Gudang Garam International made under authority of PT: Gudang Garam Tbk, Kediri, Indonesia which he failed to declare to Customs under Section 77 and walked through green channel. None of the Cigarette cartons contained any statutory pictorial health warning which is required in India under the Tobacco Cigarettes Rules, 2008. Further, the applicant in his statement recorded under Section 108 of the Customs Act, had categorically stated that the Cigarettes were purchased from a shop in Dubai for 1740 Dirhams. It is also an unrefuted fact that the applicant is a frequent traveler and has been penalized in the past for bringing cigarettes in commercial quantity. Therefore, Government observes that ordering of absolute confiscation of the said goods by the original authority under Section 111 (d), (i), (l), (m) and (o) of the Customs Act, 1962 has been rightly upheld by the appellate authority.

11. Government observes that one of the contention of the applicant is that there is no column in the declaration form for declaration of gold and cigarettes. This is incorrect in as much as the declaration form has the column for declaring dutiable goods and the applicant cigarettes and the gold brought in by knew that the impugned goods had to be declared but has not declared it purposely with the intention of evading duty. This plea also holds no ground in view of the fact on record that the applicant is a frequent traveller. Government also observes that the applicant's averment on cross examination of witness does not cut any ice to prove his innocence.

12. Government further finds that in view of the facts and circumstances of the case penalty under the relevant provisions of Section 112 and 114 of the Act ibid has been rightly imposed on the applicant for the offence committed. The quantum of penalty is reasonable and commensurate to the nature of the offence.

13. In view of the above facts and overall circumstances, Government finds no reason to interfere with the impugned Order-in-Appeal and upholds the same.

14. Revision Application is rejected being devoid of merits.

15. So ordered.



( **RIMJHIM PRASAD** )

Joint Secretary to the Government of India

Shri Byar Mohammed Asraf  
S/o Late Shri Bayar Andunchi Beary  
H.No. Beripadave Via Uppala  
Kasaragod District, Kerala.

ATTESTED



**ORDER NO. 15/2016-CUS DATED 23.02.2016**

Copy to:

1. The Commissioner of Customs, Central Building, Queen's Road, P.B. No.5400, Bangalore-560001
2. The Commissioner of Customs (Appeal), Central Building, Queen's Road, P.B. No.5400, Bangalore-560001
3. The Joint Commissioner of Customs, Air Export Intelligence Unit, Bangalore International Airport, Devanahalli, Bangalore-560300
4. Mr. Bijali Shamendra Singh, Advocate, Singh & Singh Associates, No.95/9, 1<sup>st</sup> Floor, 24<sup>th</sup> Cross, Cubbonpet Main Road Bangalore-560002
5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED

(Shaukat Ali)  
Under Secretary (RA)