



**REGISTERED  
SPEED POST**

**F.Nos. 380/78/B/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

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

Date of Issue..... 21/5/14

ORDER NO. 156/14-Cus DATED 20.05.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED, UNDER SECTION 129 DD OF THE CUSTOMS ACT 1962 AGAINST THE ORDER-IN-APPEAL No.750/13 dated 24.05.2013 passed by Commissioner of Customs (Appeals) Customs House, Chennai

APPLICANT : Commissioner of Customs (Airport), New Custom House, Air Cargo Complex, Meenabakkam Chennai

RESPONDENT : Shri Abdul Lattif Mohammad Kassim, Kariakal  
C/o Shri S. Palanikumar, Advocate

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**ORDER**

This revision application is filed by Commissioner of Customs (Airport), New Custom House, Air Cargo Complex, Meenabakkam Chennai against the order-in-appeal No.750/13 dated 24.05.2013 passed by Commissioner of Customs (Appeals) Customs House, Chennai with respect to order-in-original No.22/12-JC(Air) dated 25.08.12 passed by Joint Commissioner of Customs (Airport) Chennai. Shri Abdul Lattif Mohammad Kassim is the respondent in this case.

2. Briefly stated facts of the case are that the applicant, holder of Indian passport had arrived at the airport, Chennai from abroad on 31.10.2011. While passing through the green channel at the arrival hall of the Chennai International Airport, he was intercepted by the officers of the Air Intelligence Unit of Chennai Customs and questioned as to whether he was carrying gold/contraband either on his person or in his baggage for which the applicant replied in the negative. However, a detailed search of his baggage, in the presence of independent witnesses, resulted in the seizure of 689.5 gms of gold jewellery valued at Rs.17,89,253/-, one 'GRAHAM' chronofighter oversize GMT watch valued at Rs.4,09,100/- and 60 numbers of Martin Shirts valued 9,000/- totally valued at Rs.22,07,353/-.

2.1 It is concluded in the order of original authority that the applicant was an Indian National and also a frequent traveller travelling to Singapore once every month. Also, the applicant in his voluntary statement dated 31.10.2011 interalia stated that an unknown person had given him the watch and the jewellery to be handed over to a person in Chennai for a monetary consideration of Rs.8,000/-. As such the applicant is an ineligible passenger to bring gold into India. Also the applicant had made deliberate attempt to conceal the gold and walk through the green channel to evade Customs duty and the impugned watch was also not declared to the Customs. In the disembarkation card the applicant had not declared the nature, quantity and actual value of the goods.

The impugned gold valued at Rs.17,89,253/- and the impugned watch valued at Rs.4,09,100/- were confiscated by the lower adjudicating authority under section 111(d), (l) and (m) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & Regulation) Act, 1962. The material object, viz., "Martin Shirts' valued at Rs.9,000/- was confiscated under Section 119 of the Customs Act, 1962. Penalty of Rs.2,30,000/- under Section 112(a) of the Customs Act, was also imposed on the applicant.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who allowed the re-export of goods on payment of redemption fine and penalty of Rs.4,50,000/- and Rs.50,000/- respectively.

4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 The Commissioner (Appeals) discussion for granting concession of re-export in spite of passenger acting as a carrier for monetary consideration overlooks the law set by the Hon'ble High Court of Mumbai in UOI vs. Mohamed Aijaj Ahmed in WP No.1901/2003 decided on 23.07.2009 reported in 2009(244) ELT 49 (Bom.) which ironically is relied in part by the Commissioner (Appeals) while stating that

*"as per section 125 ibid, only if owner of the confiscated goods is not known, then the person from whose custody goods was seized could be given option to pay fine, in lieu of confiscation."*

From a thorough reading of the case law it follows that the relevant factor is whether the passenger acted as carrier or not rather than the mere identity of the real owner. Besides in the Mohd. Aijaj case the petition of the UOI was allowed upholding confiscation. This fact of the passenger being a carrier has been ignored and not taken into consideration resulting in granting an unintended benefit to the smuggler passenger.

4.2 It is submitted that in the Shaik Jamal Basha vs. GOI case relied by the Appellate Authority, the question of acting as a carrier is not considered and therefore not reliable in the facts and circumstances of the present case. The orders of the revision authority relied upon by the Commissioner (Appeals) to grant re-export is also not relevant for the same reasons.

4.3 The adjudication authority at Chennai Airport in its order-in-original No. 343/2012 dated 30.06.2011, 32/10 dated 03.05.12, 33/10 dated 03.05.12 and in several other orders has ordered absolute confiscation in carrier cases. The said orders were upheld by Commissioner (Appeals) in orders-in-appeal No. 480/11 dated 29.07.11, 479/11 dated 29.07.11 and 481/11 dated 29.07.11. Finally, the absolute confiscation was also upheld by Government in these cases vide GOI order No.352-354/12 dated 28.08.12. Similarly, Government in its Revision Order No. 401-406/12-Cus dated 11.10.2012 and 407-409/12-Cus dated 12.10.12 pertaining to Chennai cases, has upheld the absolute confiscation of goods brought by carrier passenger.

4.4 Absolute confiscation in such cases is upheld in the judgments of Hon'ble Tribunal order NO. 1980-1995/09 dated 24.12.2009, in the case of G.V. Ramesh and others vs. CC Air Chennai 2010 (252) ELT 212 (T-Mad.).

4.5 The case law referred in the first paragraph of these grounds of appeal viz. Hon'ble High Court of Mumbai in UOI vs. Mohamed Aijaj Ahmed in WP No. 1901/2003 decided on 23.07.2009 reported in 2009(244) ELT 49 (Bom) was also upheld by Hon'ble Supreme Court in its decision reported in 2010 (253) ELT E83(SC).

4.6 It is apprehended that the impugned order-in-appeal if implemented would jeopardize revenue interests irreparably and the likelihood of securing the revenue interests as per original order in the event of its restoration during this revision process would be grim.

4.7 In view of above, it is prayed that the order-in-appeal be set aside, absolute confiscation and penalty be upheld and such an order be passed as deemed fit.

5. A show cause notice was issued to the respondent under Section 129 DD of Customs Act, 1962 to file their counter reply. The respondent vide letter dated 13.12.13 may following submissions :-

5.1 Since the order of the Commissioner of Customs (Appeals) Chennai has been accepted by the Commissioner of Customs (Air), Chennai, my client has deposited the redemption fine sum of Rs.4,50,000/-, personal penalty sum of Rs.50,000/- and ware house and handling charges vide SDO-BR No. 10673 dated 18.07.2013. Once the order of the Appellate Authority having accepted by the Commissioner of Customs (Air), Chennai and received the necessary fees, the authority estopped from filing the revision against their own order of acceptance. Further once the payment of redemption fine and penalty and necessary ware house received the goods are liable to be returned to my client. The act of the applicant is contrary to law and estopped from acting their own decision. Hence, the revision application is liable to be rejected on this point alone. My client further submits that the Hon'ble Revisional Authority Delhi has passed an order in F.No. 373/43/B-Cus RA dated 16.04.2008 Vepari Saleem mat page 3, paragraph 8 stated that however option in re-export under section 125 of the Customs Act 1962 can be given even when goods were not declared for the purpose of section 77 on payment of appropriate fine and penalty. The Customs Act 1962 does not make any distinction between the owner of the goods and the person carrying it. Hence, the Government is not averse to allowing re-export of the confiscated goods.

5.2 The applicant further submits that he is the owner of the goods and hence he 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 goods 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, given 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.

5.3 My client further submits that every case the customs authority in a routine manner recorded the statement as if the passenger brought the gold jewellery belongs to third party. The present case also the officer of customs recorded that the gold is belonging to someone. Hence my client has filed a detailed bail application on the same day before the ACMM EO.I Egmore, wherein categorically stated that he is the owner of the gold and never acted as carrier for third party or monetary consideration and he denied the allegation that the gold is belonging to their party and he claimed the gold that he is the owner of the gold and also denied she never concealed the same. As soon as the officer intercepted at the hand baggage area he shown to the officer that he brought gold jewellery any and he is wearing the same for the past several months. After seeing the same the officer registered the case as if he attempt to smuggle the gold is not sustainable under law. Though he said representation was duty acknowledged by them but no reply at all. But simply glossed over the same while passing the adjudication order.

5.4 My client further submits that he possessed the gold jewellery at the time of interception and the same is visible and it can be seen through naked eye and hence question of mis-declaration or non-declaration would not arise. Further being a foreigner he was not aware of India law.

5.5 My client further submits that he was not aware that it was an offence to bring gold jewellery without proper documents that the gold jewellery belonging to him and he had purchased the gold jewellery out of his own earnings that she requested to pardoned and extended leniency.

5.6 My client further submits that the hon'ble Supreme Court has delivered a judgment on 30.09.2011 in Om Prakash's case vs. UOI wherein it is categorically stated that the main object of the enactment of the said act was the recovery of excise duties and not really to punish for infringement of its provisions. Further held that the offences are compoundable under section 137 of the said Act and summary proceedings under section 138 of Customs Act.

5.7 The Revisional Authority has passed order No. 269/11-Cus dated 05.09.2011 of Mohamed Irsath against order-in-appeal No.515/10 Air dated 19.08.2010 passed by the Commissioner of Customs (Appeals) Chennai-I. The revisional authority set aside the adjudication order and permitted the applicant to re-shipment the goods on payment of lesser redemption fine. Further revisional authority held that even if applicant not declared as required under section 77 of the Customs Act, the re-export can be given.

5.8 The revisional authority has passed order reported in 2011 (270) ELT 447 (GOI) Mukuadam Rafique Ahmed order No. 198/2010-Cus dated 20.05.2010 in F.No. 375/14/B/10-RA-Cus permitted the applicant to re-shipment the goods on payment of lesser redemption fine. Further revisional authority held that even if applicant not declared as required under section 77 of the Customs act, the re-export can be given.

5.9 My client further submits that the Apex Court in the case of Hargovind Dash vs. Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi-judicial authority must exercise discretionary powers in a judicious manner and not in arbitrary manner. As per the provisions of section 125 of the Customs Act, 1962 in case of goods which are prohibited the option of redemption is left to the discretionary power of the authority who is functioning as a quasi-judicial authority and in case of others goods option to allow redemption is mandatory. Considering the facts and the circumstances and various precedent orders passed by the CESTAT / Government of India (order No. 135/2003(GOI) CESTAT 2451/99). The seized gold ornaments should be released on the payment of nominal redemption fine. Further there are no provisions for absolute confiscation of the goods.

5.10 My client further submits that the hon'ble Revisional Authority Delhi has passed an order in F.No. 373/43/B-Cus-RA dated 16.04.2008 Vepari Saleem at page 3, paragraph 8 stated that however option in re-export under section 125 of the Customs Act 1962 can be given even when goods were not declared for the purpose of section 77 on payment of appropriate fine and penalty. The Customs Act 1962 does not make

any distinction between the owner of the goods and the person carrying it. Hence the Government is not averse to allowing re-export of the confiscated goods.

5.11 Since the department having collected the redemption fine and personal penalty and ware house charges, the passenger become the owner of the goods and hence the detention of goods is illegal and the same is liable to be returned.

6. Personal penalty scheduled in this case on 21.03.2014 at Chennai was attended by Shri Palani Kumar, Advocate on behalf of the respondent who reiterated the written submissions made in their written reply dated 13.12.2013. Nobody attended hearing on behalf of the applicant department.

7. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.\

8. On perusal of records, Government observes that in the instant case original authority had ordered absolute confiscation of goods as the respondent passenger was a carrier of gold and imposed personal penalty of Rs.2,30,000/-. However, Commissioner (Appeals) allowed the appeal of respondent passenger Shri Abdul Lattif Mohamad Kassim by way of allowing re-export of said goods on payment of redemption fine of Rs.4,50,000/- and reduced the penalty to Rs.50,000/-. Now, applicant department has challenged impugned order-in-appeal in this revision application on the grounds stated above.

9. Department mainly contended that the respondent passenger was acting as a carrier for monetary consideration and Commissioner (Appeals) has ignored this fact and various judgment cited in the grounds of revision application. On the other hand, the respondent has cited number of judgment whereunder the goods are allowed to be re-exported or to be redeemed for home consumption on payment of redemption fine in lieu of confiscation under section 125 of Customs Act 1962. Respondent has also contended that his request for an opportunity to make proper declaration was not allowed by Customs, that the statement given before Customs was reiterated



subsequently and he claimed the ownership of gold, that section 125 of the Customs Act allows redemption of goods for re-export /home consumption on payment of redemption fine.

10. Government notes that respondent passenger arrived from Singapore at Chennai Airport on 31.10.2011 and while passing through the green channel in the arrival hall intercepted by Customs officers and asked whether he was carrying gold / contraband items in his baggage / person. The passenger replied in negative. The search of his baggage before two independent witnesses resulted in recovery of 689.5 grams of gold jewellery valuing Rs.17,89,253/- , shirts 60 nos. valuing Rs.9,000/- and one GRAHAM Chronofighter oversize GMT watch valuing Rs.4,09,100/- which were seized under the Mahazar for further action under Customs Act 1962.

10.1 The passenger Shri Abdoul Lattif Mohamed Kassime in his voluntary statement dated 31.10.11 recorded before Customs officer under section 108 of Customs Act, he interalia stated that he used to travel once every month to Singapore that on 31.10.11 he was intercepted by Custom officers at green channel and questioned whether he was in possession of any dutiable goods such as gold to which he replied in negative, that an unknown person met him at Singapore Airport and gave him one bag and watch and told him that bag had shirts and gold jewellery that the said person had asked him to handover the said goods to a person in Chennai for which he would be paid Rs.8000/-, that the person in Chennai would contact him on phone, that he was aware that it was an offence to bring dutiable goods without declaration to Customs.

10.2 Government notes that respondent passenger has confessed in his statement that he imported the said gold jewellery and other items for somebody else for a monetary consideration of Rs.8000/-, he acted as carrier of goods and was not the owner of goods, that he did not declare the goods before customs. The recovery of said goods took place before two independent witnesses. So, the contention of respondent that he was not given chance to declare goods is not acceptable. Moreover, the passenger was a frequent traveller and had opted for green channel

custom clearance which is meant for passengers carrying goods within duty free baggage allowance admissible under Baggage Rules 1998.

10.3 In cases where passenger is not the owner of goods<sup>and</sup> has acted as carrier of goods and owner of goods is not known, in following judgments absolute confiscation of goods is upheld.

(i) Government notes that absolute confiscation in such cases is upheld in the judgments of Hon'ble High Court of Madras in the case of CC Air, Chennai Vs. Samynathan Murugesan 2009 (247) ELT 21 (Mad). Hon'ble High Court of Madras in this case has held as under :-

*"Confiscation - Absolute confiscation of goods- 7.075 Kgs Gold ornaments recovered from T.V. Set- Goods were prohibited as petitioner did not belong to category of persons who could bring gold at concessional rate of duty - previous periods where petitioner stayed for longer duration, not relevant for the purpose of Notification No. 31/2003-Cus-Liberalization policy and repeal of Gold control order weighed with the Tribunal -Tribunal ought to have considered whether he could have carried the gold as part of his baggage as an eligible passenger -Goods imported in violation of Import (control) Order, 1955 read with section 3 (i) of Import and Export Control Act, 1947 - Concealment weighed with the Commissioner to order absolute confiscation -Commissioner's order upheld - Section 111 of Customs Act, 1962."*

The said order was upheld by Hon'ble Supreme Court in the order dated 11-01-2010 reported as 2010 (254) ELT A 015 (S.L) dismissing the petition for special leave to Appeal (Civil) No. 22072 of 2009 filed by Samyanathan Murugesan. Supreme Court passed the following order:-

*" Applying the ratio of the judgment in the case of Om Prakash Bhatia II. Commissioner of Customs/ Delhi reported in 2003 (155) ELT 423 (S.C)= 2003 (6) sec 161/ to the facts of the case/ we find that; in the present case/ the assessee did not fulfill the basic eligibility criteria, which makes the imported item a prohibited goods; hence/ we see no reason to interfere with the impugned order. The special leave petition is accordingly dismissed. "*

(ii) Hon'ble High Court of Madras in their judgment dated 02-03-2012 in WP No. 21086/2002 in the case of Aiyakannu Vs JC Customs reported on 2012-110L- 806-HC-MAD-Cus has also held as under:-

*" Petitioner being a foreign (Sri Lankan) national is not entitled to import gold in terms of clause 3 of Foreign Trade (Exemption from application of Rules in certain cases) order 1993/ as it will apply to the passenger of Indian origin- attempt to smuggle 10 gold bars with Foreign markings wrapped in carbon paper by concealing in baggage justifies the order of absolute confiscation. "*

(iii) 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).

(iv) The adjudicating authority of Chennai Airport in its Order-in-Original No. 312/2001 dated 08-06-2011, 496/2011 dated 07-10-2011, 1142/2010 dated 16.10.2010 16-10-2010, 307/2011 dated 08-06-2011, 310/2011 dated 08-06-2011 and 311/2011 dated 08-06-2011 and had ordered absolute confiscation in concealment cases. The said orders were upheld by Commissioner (Appeals) in Order-in-Appeal No. 108/2012 dated 29-02-2012, 71/2012 dated 09-02-2012, 646/2011 dated 14-09-2011, 393/2011 dated 28-09-2011, 696/2011 dated 28-09-2011 and 669/2011 dated 28-09-2011. Finally absolute confiscation was also upheld by Government of India in these cases vide GOI Order No. 361- 366/12-Cus dated 06-09-2012.

10.4 Respondent has contended that he has retracted his statement subsequently and claimed that he is the owner of goods. In this regard, Government observes that statement recorded before Customs Officer is a valid evidence and subsequent retraction is an afterthought as applicant has not produced any evidence in support of his contention that his statement was recorded under pressure or coercion. Hon'ble Supreme Court has held in the case of Surjeet Singh Chabbra vs. UOI 1997 (84) ELT 646(SC) that statement made before Customs officer though retracted within 6 days, is

an admission and binding since Customs officers are not police officers under section 108 of Customs Act 1962.

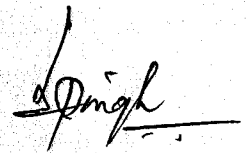
So, the statement given before Customs on 31.10.11 is an admissible evidence under law. Subsequent retraction is an attempt to avoid absolute confiscation of goods. Government further notes that in view of above said judgments, the case laws cited by respondent are not squarely applicable in this case.

11. Government notes that Commissioner (appeals) has neither given any finding whether applicant is a carrier or not, nor considered the judgments cited above in para 10.3. Commissioner (Appeals) has proceeded on a wrong presumption that passenger is the owner of goods which resulted in miscarriage of justice. As such the case is required to be remanded back for fresh consideration.

12. Government therefore sets aside the impugned order-in-appeal and remands the case back to Commissioner (Appeals) for fresh consideration in the light of above observations. A reasonable opportunity of hearing will be afforded to the parties concerned.

13. The revision application is allowed in terms of above.

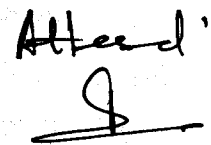
14. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

Commissioner of Customs (Airport),  
New Custom House, Air Cargo Complex,  
Meenabakkam Airport  
Chennai



Assistant Commissioner  
Joint Secretary (Revision Application)  
C.F.E.C.-O.S.D. (Revision Application)  
वित्त मंत्रालय (संशोधन विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
मंत्र दिवसी / New Delhi

Order No. 156/14-Cus Dated 20.05.2014

Copy to:

1. The Commissioner of Customs (Appeals), 60, Rajaji Salai, Customs House, Chennai – 600 001.
2. Joint Commissioner of Customs (Airport), New Custom House, Air Cargo Complex, Meenabakkam Airport, Chennai
3. Shri Abdul Lattif Mohammad Kassim, C/o Shri S. Palanikumar, Advocate, 10, Sunkuram Street, II Floor, Chennai – 600 001.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(B.P. Sharma)  
OSD(Revision Application)