

**REGISTERED
SPEED POST**



F.No. 371/59/B/13-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.....31.11.14

Order No. 26 /14-cus dated 31.01.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Order-in-Appeal No.
91/2013-14-Air dated 18-06-2013 passed by the
Commissioner of Customs, (Appeals), Mumbai.

Applicant : Mr. Girdharilal Laxmidas Vaya,
c/o A.M.Sachwani, Advocate,
High Court, Nulwala Building,
Ground Floor,41, Mint Road,
Opp. G.P.O, Fort, Mumbai-400 001

Respondent : Commissioner of Customs,
5th Floor, Avas Corporate Point,
Makhwana Lane, Andheri Kurla Road,
Behind S.M. Centre, Andheri (E),
Mumbai Zone-400059.

ORDER

This revision application is filed by applicant, Mr. Girdharilal Laxmidas Vaya, c/o A.M.Sachwani, Advocate, High Court, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O, Fort, Mumbai, against the Order-in-Appeal No. 91/2013-14-Air dated 18-06-2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-400059 with respect to Order-in-Original No. 66/2012-13 dated 28-01-2013 passed by Addl. Commissioner of Customs CSI Airport, Mumbai.

2. Brief facts of the case are that applicant arrived at CSI Airport Mumbai from aboard. He was intercepted at green channel by the Customs Officers. His baggage/person was subjected to examination/search. As result of personal search gold coins, jewellery and gold bars collectively weight to 218 grams valued at Rs. 6,23,498/- were recovered. The gold imported by the applicant was in trade quantity and commercial in nature. Import of gold in Trade quantity that to undeclared does not constitute a part of bonafide baggage in terms of section 79 of Customs Act, 1962 and violates the provisions of Baggage Rules, 1998, section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provision of section 3 (1) & 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the said goods for reshipment on payment of redemption fine of Rs. 1,10,000/- was given under section 125 of Customs Act, 1962. A penalty of Rs. 55,000/- and Rs. 10,000/- was also imposed on the said passenger under section 112 and 114 AA of Customs Act, 1962 respectively.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who set aside the order of re-export of goods and allowed release of the gold for home consumption on payment of redemption fine and personal penalty imposed by the adjudicating authority.

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 mainly on the following grounds:

4.1 The findings and order passed by the respondent are bad in law, illegal, unjust and unfair.

4.2 The findings and order passed by the respondent are contrary to the law.

4.3 The impugned order reflects a total bias against the applicant on the part of the respondent. The Order-in-Original may be restored.

4.4 The judgments relied upon by the applicant the appeal filed before the respondent are squarely applicable to the case of the applicant.

5. Personal hearing scheduled in this case on 23-12-2013 was attended by Shri N.J. Heera, Advocate on behalf of the applicant who reiterated the grounds of Revision Application. He stated that goods are already released on payment of fine and penalty and requested to reduce fine and penalty.

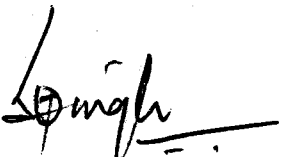
6. On perusal of records, Government observes that the applicant imported gold in commercial quantity through baggage mode and did not declare in terms of section 77 of Customs Act, 1962. Import of gold in trade quantity through baggage that does not constitute bonafide baggage in terms of section 79 of Customs Act, 1962 and violates the provisions of Baggage Rules, 1998, section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provision of section 3 (1) & 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine of Rs. 1,10,000/- for re-export was given to the said passenger under section 125 of Customs Act, 1962. A penalty of Rs. 25,000/- and Rs. 10,000/- was also imposed on the said passenger under section

112 and 114AA of Customs Act, 1962 respectively. In appeal filed by the department Commissioner (Appeals) set aside the order of reshipment and allowed release of impugned gold for home consumption on payment of redemption fine and personal penalty imposed by the adjudicating authority. Now in this revision application the applicant has challenged the Order-in-Appeal passed by Commissioner (Appeals) and pleaded to reduce the fine and penalty.

7. On perusal of records Government notes that the impugned gold was concealed in his person by the applicant which were recovered as a result of personal search. The applicant failed to declare the said gold before customs officers in terms of section 77 of Customs Act, 1962. In his voluntary statement recorded under section 108 of Customs Act, 1962 he had accepted his mistakes of non declaration of gold. It is evident that the impugned gold was attempted to be smuggled into India without payment of duty. Under these circumstances. Commissioner (Appeals) has rightly denied the re-export of goods. The redemption fine and personal penalty imposed under section 112 are reasonable. End of Justice will be met by imposing personal penalty under section 112 hence personal penalty imposed under section 114 AA is set aside. The impugned Order-in-Appeal is modified to this extent.

8. Revision Application is disposed off in above terms.

9. So, ordered.


(D.P. Singh)

Joint Secretary to the Govt. of India

Mr. Girdharilal Laxmidas Vaya,
c/o, A.M.Sachwani, Advocate
High Court, Nulwala Building, Ground Floor,
41, Mint Road, Opp. G.P.O,
Fort, Mumbai-400 001.

ATTESTED

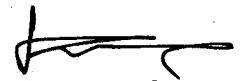
(टी. आर. आर. / T.R. ARTA)
अधीक्षक, आर.ए. / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.,
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi.

Order No. 26/14-Cx dated 31-01-2014

Copy to:

1. Commissioner of Customs, 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
2. The Commissioner of Customs, (Appeals), 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
3. Additional Commissioner of Customs, CSI Airport, Mumbai.
- ~~4. PS to JS(RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)

10-15-1913

10-15-1913

10-15-1913

10-15-1913

10-15-1913

10-15-1913

10-15-1913

10-15-1913

10-15-1913