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SPEED POST



**F.No.373/32/B/13-RA-CUS**

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION)

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

Date of Issue. 03/03/16.....

**ORDER NO. 26/2016-CUS DATED 03.03.2016** 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. C.Cus No.1480/2012 dated 19.12.2012 passed by Commissioner of Customs (Appeal), Chennai.

Applicant : Mr. Haja Mohideen Abdul Jaleel

Respondent : Commissioner of Customs, (Import & General) Chennai

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## **ORDER**

This Revision Application is filed by Shri Haja Mohideen Abdul Jaleel (hereinafter referred to as Applicant) against the Order-in-Appeal No. C.Cus No. 1480/2012 dated 19.12.2012 passed by Commissioner of Customs, (Appeals) Chennai, with respect to Order-in-Original No. 03/2012 dated 08.02.2012 passed by Addl. Commissioner of Customs, Airport, Chennai.

2. Brief facts of the case are that the on 26.09.2011, officers of the Air Intelligence Unit of Customs, Chennai Airport intercepted a passenger by name Shri Haja Mohideen Abdul Jaleel, holder of Indian Passport number Z1744593 dated 17.06.2008 who had arrived from Singapore by Air India Flight No. AI 359 dated 26.09.2011 while he was proceeding through the Green Channel in the Arrival Hall of the Anna International Airport after he had cleared the immigration and collected his baggage from conveyor belt (consisting of four pieces of checked-in baggage bearing Air India Baggage Tag Nos. 2118140, 218141, 218142 and 218143 and one hand baggage). The passenger was questioned whether he was in possession of gold, silver or electronic goods for which he replied that he was carrying only one Sony 32" Television. Not satisfied with the reply of the passenger and also as the passenger was found to be quite nervous, the Officer brought him along with his baggage to the AIU room for detailed examination of his baggage and search of his person in the presence of the witnesses. Before commencement of examination of his baggage, the Officer once again questioned the applicant in the presence of witnesses whether he was in possession of any gold or other electronic goods for which he replied that he was not in possession of any gold and that he was carrying only one Sony 32" Television. Thereafter, the officer opened and examined the checked-in baggage of applicant one-by-one in the presence of the witnesses and in the presence of applicant. The baggage was found to contain his personal clothes, foodstuff and the following electronic goods as detailed below:

Sl.No.	Item Description	Quantity	CIF Value (in Rs)
1	Sony LED TV 32" KD EX 52	1	26,000/-
2.	Sony Digital Still Camera DSC H 70 (with accessories)	2	16,700/-
3.	Westar Ladies Wrist Watches	2	4,611/-
4.	Seiko Gents Wrist Watch	1	12,449/-
	<b>Total</b>		<b>59,760/-</b>

Then, the officer examined the hand baggage of the applicant in the presence of witnesses and was found to contain his personal clothes and toiletries only. The officer then informed the applicant that he would have to search his person and enquired whether he would prefer to have it done before a Magistrate or a Gazetted Officer, to which he opted for the latter and the search of his person was conducted in the presence of the witnesses and the Superintendent

of Customs. During the search, two gold bars each weighing 100 grams and with foreign markings and one gold coin weighing 17 grams with foreign markings were recovered from the internal pocket of the trouser worn by the applicant. Shri B. Mohall Acharl, a Government of India certified goldsmith tested the two gold bars and one gold coin by acid and touchstone method in their presence and in the presence of the applicant and certified that the gold to be of 24 carat. As the applicant did not declare that he was carrying gold and also he did not have or produce any document to show legal import of the gold and he had attempted to smuggle the said gold into the country by concealing the same on his person, the two gold bars and one gold coin totally weighing 127grams and totally valued at Rs.5,74,725/- (Rs. Five Lakhs Seventy Four Thousand Seven Hundred and Twenty Five Only) (IMV) were seized under a Mahazar in the presence of witness and in the presence of the applicant for action under the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. The above listed electronic goods valued at Rs.59,760/- were also seized under the same Mahazar for the action under the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. The light beige 'D-Code' trouser worn by the applicant which was used for concealing the gold was also seized as material object. The travel documents of the applicant namely e-ticket no.0982870615617, Air India Boarding Puss, Air India Baggage Tags Bearing Nos. 218140, 218141, 218142 and 218143 , the corresponding claim tags and the Customs Declaration Card were also seized under the same Mahazar for further action under Customs Act, 1962.

2.1. The applicant in his voluntary statement dated 27.09.2011 given before the Customs officers at the Anna International Airport immediately after seizure, after narrating his personal details, interalia had stated that he is a B.A. History Graduate; that he can read, write and speak Tamil and English; that he is the holder of Indian Passport No. Z1744593 dated. 17.06.2008; that he is a Real Estate Broker in Ambattu and earns Rs 40,000/- per month; that apart from doing real estate business he also goes, to Singapore once in a month to meet his customers; that while coming back from Singapore he buys TV, Camera, Watches etc. and sells them in the local market; that this year he had gone 6 times to Singapore; that on 27.09.2011 he had arrived at the Chennai Airport from Singapore by Air India AI359 ; that he collected his baggage tagged in his name bearing baggage tag no. SQ218148, SQ 218141, SQ 218142 and SQ 218143 and was attempting to pass through the green channel wherein he was intercepted by the Customs Officer; that he then went on to narrate the sequence of events which led to the seizure of two gold bars and one gold coin valued at Rs. 5,74,725/- and electronic goods valued at Rs.59,760/-; that when he went to Singapore on 17.09.2011he borrowed 12000 SGD from his friend Shri Habib and purchased 217 grams of gold biscuits from M/s G.J. Goldsmith; that he purchased TV and electronic goods from the balance money; that in order to earn more profit he decided to pass through green channel without paying Customs duty; that he is aware that smuggling is an offence but to get more profit he attempted to pass through the green channel; that he has PAN Card NO. ADRPA3659 F and he has an account in Corporation Bank; that he has 3020 sqft land in M.M.D.A. Colony purchased through MMDA; that this is his first offence and requested for leniency.

2.3. The applicant in his further statement dated 27.09.2011 stated that he is residing in a rented house; that he is not living with his wife Smt Ayisha and does not know the address where she lives; that he lives with his second wife Smt. Bousiya; that he does not remember the Corporation Bank branch address where he is holding the account at present.

2.4. The applicant was arrested on 27.09.2011 and was produced before the Hon'ble Addl. Chief Metropolitan Magistrate E.O.II, Egmore, Chennai who remanded him to judicial custody. He was lodged in the Central Prison, Puzhal Chennai. A phonogram vide no. E 52 dated 27.09.2011 was sent to Smt Bousiya, W/o Shri Haja Mohideen Abdul Jaleel, intimating his arrest.

2.5. As a follow up, the officers of R&I Unit Air visited the residential premises of the applicant at Apt.No.14, III Floor, 63, K.K. Road, Venkatapuram, Ambattur, Chennai 600053 to execute the Search Warrant No.16/2011 dated 05.10.2011 issued by the Assistant Commissioner of Customs (R&I-Air) in the presence of two witnesses. However, as the residence of the applicant was locked, the said Search Warrant could not be executed. A mahazar to that effect was drawn. A search was conducted at the said residential premises on 14.10.2011 in execution of the Search Warrant No.17/2011 dated 14.10.11 issued by the Asst. Commissioner of Customs (R&I-Air). During the course of search neither any contraband goods nor any incriminating documents were either recovered or seized. A mahazar to this effect was also drawn.

2.6. A Show Cause Notice was issued to applicant alleging therein as to why:-

I) The two gold bars and one gold coin totally weighing 217 grams and totally valued at Rs.5,74,725/- (Rupees Five Lakhs Seventy Four Thousand Seven Hundred and Twenty Five Only) should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.

II) the assorted electronic goods valued at Rs.59,760/- (Rupees Fifty nine thousand seven hundred and sixty only) should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.

III) The light beige 'D-Code' trouser worn by the applicant which was used for concealing the gold should not be confiscated under Section 119 of the Customs Act, 1962

IV) Penalty should not be imposed on Shri Haja Mohideen Abdul Jaleel under Section 112 (a) of the Customs Act, 1962.

2.7. Accordingly, the Additional Commissioner of Customs(Airport), Chennai passed the order vide Order-in-Original No. 03/2012 dated 08.02.2012 and ordered:-

(i) Absolute confiscation of the 2 gold bars and one gold coin totally weighing 217 grams valued at Rs.5,74,725/- under Section 111 (d),(l) and (m) of the Customs Act, 1962 read with the Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992;

- (ii) Release of the assorted electronic goods valued at Rs.59,760/- on payment of appropriate duties, after deducting the baggage allowance as per the passenger's eligibility.
- (iii) Confiscation of the light beige 'D-Code' trouser worn by the applicant which was used for concealing the gold bars and coin under Section 119 of the Customs Act, 1962.
- (iv) Penalty of Rs. 55,000/- 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 vide Order-in-Appeal No. C.Cus No. 1480/2012 dated 19.12.2012 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 order of the lower authorities are contrary to law, weight of evidence and violates the principles of natural justice.
- 4.2. That the lower authority failed to give an opportunity to declare the goods to the proper officer of Customs. That the applicant was detained pre-emptively and denied his right to declare before the proper officer of Customs.
- 4.3. That the lower authority ought to have seen that the applicant declared the goods which were in his possession as per section 77 of Customs Act before intercepting officer but they failed to record the same.
- 4.4. That the lower authority ought to have seen that the applicant did not cross the Customs barrier.
- 4.5. That the lower authority ought to have seen that baggage is not confined merely to bonafide baggage within the meaning of Section 79 of the Customs Act or to the personal effects but includes any article contained in the baggage even though it is in commercial quantities.
- 4.6. That the lower authority ought to have seen that the applicant had given a statement that he brought the gold to India for his daughter's marriage and Baggage Rule does not prohibit import of gold. Import of gold is permitted provided the passenger has to pay baggage rate of Duty.
- 4.7. That the lower authority ought not to have absolutely confiscated gold as it is not prohibited item as per EXIM Policy. That the absolute confiscation is very harsh.
- 4.8. That the lower authority ought to have seen that the applicant had purchased the gold for his daughter's marriage and not for sale.

- 4.9. That the lower authority ought to have seen that the gold is not comes under prohibited goods and therefore the Section 125 of the Customs Act is attracted. That under that circumstances the absolute confiscation" is 'very harsh.
- 4.10. That the lower authority ought to have allow the applicant to redeem the gold and allow him to re-export the gold as it will affect the sentiments.
- 4.11. That the lower authority ought to have order for Re Export of gold under Section 125 of the Customs Act.
- 4.12. That the lower authority ought not to have imposed higher penalty of Rs.55,000/-.
- 4.13. That the lower authorities ought not to have rejected the request for re-export of the goods when the applicant made true declaration to the Intelligence Officer and that no opportunity was given to him to declare before the proper officer.
- 4.14. That the lower authority ought to have seen that the applicant was not allowed to go to the allotted table to declare and under that circumstances the officer of Customs should help the passenger and guide him properly.
- 4.15. That the lower authorities ought not to have rejected the request for re-export of the goods under Section 125 of the Customs Act. That the lower authorities ought to have seen that he do not have any previous case.
- 4.16. That the lower authorities ought to have seen that once the goods redeemed under Section 125 of the Customs Act, he is absolute owner of the goods and he is at liberty to clear the goods for home consumption or to re export the goods.
- 4.17. That the lower authority ought not to have confiscated the goods when the applicant was not given opportunity to declare before the proper officer and thereby the import itself is not completed.
- 4.18. That the lower authority ought to have seen that the bonafide baggage comes into picture only to claim free allowance.
- 4.19. That the lower authority ought not to have imposed the penalty when the ingredients of Section 112(a) of Customs Act itself not proved in this case.
- 4.20. That the lower authority ought not to have imposed higher penalty when there is no mensrea on the part of the applicant.
- 4.21. That the lower authority ought not to have held that the import is complete when there are lot of dictum held that import means i.e to say unless the goods are brought into the country for the purpose of use, enjoyment, consumption, sale or

distribution are incorporated in and got mixed up with totality of the property in the country they cannot to have been imported.

4.22. That the lower authority ought to have seen that when he was not given opportunity to declare before the proper officer and therefore his right was curtailed by the intelligence officer and thereby his right of exercising the Section 80 of Customs Act also curtailed.

4.23. That the officer of Customs should be friendly and help the passengers who travel abroad first time and advise them properly and guide them for deposit of goods for re-export as per Section 80 of the Customs Act instead of barging on them.

4.24 That the gold was kept in his pant pocket which is the normal practice and the gold cannot bring in hand. That this cannot be considered as concealment. That the case of Samynathan Murugesan is not applicable in his case. That without looking into merit of the case blindly adopting the said Judgment and absolutely confiscating the same is unwarranted and shows non application of mind.

4.25 That the applicant has prayed to pass an order by setting aside the absolute confiscation of the gold and allow him to redeem the same under Section 125 of the Customs Act and permit him to re-export the goods valued at Rs 5,74,725 and reduce the penalty.

5. Personal hearing was scheduled in this case on 15.09.15, 13.10.2015 & 04.11.2015. Nobody attended the hearing nor sought any adjournment.

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

7. On perusal of records, Government observes that the officers of the Air Intelligence Unit of Customs, Chennai Airport intercepted the applicant who had arrived from Singapore by Air India Flight No. AI 359 dated 26.09.2011 while he was proceeding through the Green Channel in the Arrival Hall of the Anna International Airport after he had cleared the immigration and collected his baggage from conveyor belt. Upon search and examination of the baggage in the presence of the witnesses the checked-in baggage of applicant was found to contain his personal clothes, foodstuff and the electronic goods (details mentioned at para 2 above). During his personal search, two gold bars each weighing 100 grams and with foreign markings and one gold coin weighing 17 grams with foreign markings were recovered from the internal pocket of the trouser worn by the applicant. As the applicant did not declare that he was carrying gold and also he did not have or produce any document to show legal import of the gold and he had attempted to smuggle the said gold into the country by concealing the same on his person, the two gold bars and one gold coin totally weighing 127grams and totally

valued at Rs.5,74,725/- (Rs. Five Lakhs Seventy Four Thousand Seven Hundred and Twenty Five Only) were seized under the Customs Act, 1962. The electronic goods valued at Rs.59,760/- were also seized. The applicant in his voluntary statement dated 27.09.2011 stated that he is the holder of Indian Passport No. Z1744593 dated 17.06.2008; that apart from doing real estate business in Ambattur he also goes to Singapore once in a month to meet his customers; that while coming back from Singapore he buys TV, Camera, Watches etc. and sells them in the local market; that during this year he had gone 6 times to Singapore; that on 27.09.2011 he had arrived at the Chennai Airport from Singapore by Air India AI 359; that when he went to Singapore on 17.09.2011 he borrowed 12000 SGD from his friend Shri Habib and purchased 217 grams of gold biscuits from M/s G.J. Goldsmith; that he purchased TV and electronic goods from the balance money; that in order to earn more profit he decided to pass through green channel without paying Customs duty; that he is aware that smuggling is an offence but to get more profit he attempted to pass through the Green Channel. 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 applicant was also arrested on 27.09.2011 and was produced before the Hon'ble Addl. Chief Metropolitan Magistrate E.O.II, Egmore, Chennai who remanded him to judicial custody. The Additional Commissioner of Customs(Airport), Chennai vide Order-in-Original No. 03/2012 dated 08.02.2012 ordered absolute confiscation of the 2 gold bars and one gold coin totally weighing 217 grams valued at Rs.5,74,725/- under Section 111 (d),(l) and (m) of the Customs Act, 1962 read with the Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992; release of the assorted electronic goods valued at Rs.59,760/- on payment of appropriate duties, after deducting the baggage allowance as per the passenger's eligibility, confiscation of the light beige 'D-Code' trouser worn by the applicant which was used for concealing the gold bars and coin under Section 119 of the Customs Act, 1962 and imposed penalty of Rs. 55,000/- on the applicant under Section 112 (a) of the Customs Act, 1962. Aggrieved by the said Order, the applicant filed appeal before Commissioner (Appeals) who vide impugned order upheld the Order-in-Original and rejected the appeal. 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 gold be released to him on concessional rate or its re-export permitted; and that the personal penalty may be reduced.

9. As regards the applicant's contention that he was eligible to import gold, Government notes that eligibility to import gold by a person of Indian origin or a passenger holding a valid Indian passport is determined in terms of Notification No. 31/2013-Cus dated 01.03.2013. The Commissioner (Appeals) in the impugned order has examined the eligibility and come to the conclusion that as per records the applicant is not eligible to bring gold. The applicant has failed to place anything to the contrary on records that he fulfilled the criteria of the said notification.



Government therefore, finds no merit in the plea of the applicant that he was eligible to import gold.

9.1. Government observes, it is an established fact that the goods were not declared to the Customs under Section 77 of the Act and the passenger passed through the green channel. Even upon being asked if he had anything to declare, he answered in the negative except for the Sony T.V. set before his personal search was conducted. However, upon his personal search 217 grams of 24 carat gold was recovered and the passenger admitted in his statement that he was carrying the gold without paying duty in order to earn more profit. The passenger has also not fulfilled the conditions of Notification 31/2013-Cus dated 01.03.2013 and nor was he entitled to import the impugned gold under Rule 6 of the Baggage Rules ( which allows import of only specified quantity of 22 carat personal gold jewellery for passengers).

10. As regards, whether the import of the impugned good is prohibited or not, Government notes that prohibited goods have been defined in Section 2 (33) of the Customs Act, 1962 as under:-

*" 2(33) – Definition – "Prohibited goods means" any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."*

10.1. The Apex Court in the case of Om Prakash Bhatia Vs. Commissioner of Customs Delhi reported in 2003(155) ELT 423 (SC) has categorically held that if there is any prohibition of import or export of goods under the Customs Act, 1962 or any other law for the time being in force the goods would be considered to be prohibited goods and this prohibition would also operate on such goods the export or import of which is subject to certain prescribed condition if the conditions are not fulfilled. Further in the case of Samyanathan Murugesan vs Commissioner reported in 2010(254) ELT A15 (SC) the Hon'ble Supreme Court has held that the passenger did not fulfill the eligibility criteria it makes the imported gold prohibited goods.

10.2. The applicant was not eligible to import gold either in terms of Notification No. 31/2013-Cus dated 01.03.2013 nor under rule 6 of Baggage Rules *ibid*. He also did not declare the impugned goods that were in a substantial/commercial quantity. Hence, 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 provisions of Section 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 thus appropriately constitute "prohibited goods" liable to confiscation under Section 111 (d) and (l) of the Customs Act, 1962.

10.3. 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. 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. Government also finds no merit in the plea of the applicant that the gold was not required to be declared and can be cleared free of duty on the condition of re-export. Government notes that in terms of Section 77 anything imported by a passenger is required to be declared to Customs and is chargeable to duty above the specified limits. Further gold and gold jewellery can be imported only by eligible passengers subject to fulfillment of conditions thereof. Government finds that the applicant was carrying gold and also he did not have or produce any document to show legal import of the gold and he had attempted to smuggle the said gold into the country by concealing the same on his person. Also in the Customs declaration form he neither declared the gold or the electronic items. Penalty has rightly been imposed upon the applicant under Section 112 ibid. The quantum of penalty imposed is also reasonable considering the gravity of the offence.

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

14. Revision Application is thus rejected as being devoid of merit.

15. So, ordered.

  
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

✓  
Mr. HajaMohideenAbdul Jaleel,  
63, K.K. Road, T-2, Venkatapuram,  
Ambattur, Chennai-600053.

Attested. 

**ORDER NO. 26/2016-CUS DATED 03.03.2016**

Copy to:

1. The Commissioner Customs (Air Review Cell), Customs House, Chennai-600027
2. The Commissioner of Custom (Appeals), Customs House, Chennai 600001.
3. The Commissioner of Customs (Appeals), 60 Rajaji Salai, Custom House, Chennai-600001.
4. The Additional Commissioner of Customs, Airport, Air Cargo Complex, Meenambakkam, Chennai-600027
5. Shri A. Ganesh ,Advocate, F Block, 179 Anna Nagar(East) Chennai- 600102.
6. PA to JS (RA)
7. ✓ Guard File
8. Spare Copy

ATTESTED

(Shaukat Ali)  
Under Secretary(RA)

शौकत अली  
अधीन सचिव (रा)  
कस्टम, चेन्नई-६००००१