

**REGISTERED  
SPEED POST**



**F.No. 371/90/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.....7/11/14

Order No. 28/14-cus dated 06.02.2014 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. 183/2013-14-Air dated 16-04-2013 passed by the Commissioner of Customs, (Appeals), Mumbai.

**Applicant** : Mr. Mohammed Naheeb Khalifa, R.No. 134/1, Nafeesa Mansion, Bhatkal, Karnataka.

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

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ORDER

This revision application is filed by applicant Mr. Mohammed Naheeb Khalifa, R.No. 134/1, Nafeesa Mansion, Bhatkal, Karnataka against the Order-in-Appeal No. 183/2013-14-Air dated 16-04-2013 passed by the Commissioner of Customs (Appeals), Mumbai -III with respect to Order-in-Original No. 14/2012 dated 08-10-2012 passed by Addl. Commissioner of Customs CSI Airport, Mumbai.

2. Brief facts of the case are that the applicant arrived at CSI Airport, Mumbai from abroad. He was intercepted at exit gate by the Customs officers. On examination search of his baggage and person Misc goods valued at Rs. 9,97,709/- and assorted gold jewellery weighing to 496 grms valued at Rs. 7,09,135/- were recovered. The said gold jewellery was tied on ankle under ankle band worn by him. In his voluntary statement recorded under section 108 of Customs Act, 1962, he interalia stated that the goods were given to him by some other persons to be delivered in India and he had carried the same for monetary consideration. The goods imported by the applicant were commercial in nature. Import of trade goods for commercial purpose 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 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The applicant was simply a carrier and he had carried those goods for others for monetary consideration. These facts have been admitted by the applicant in his statement recorded under section 108 of Customs Act, 1962. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. A penalty of Rs. 2,50,000/- and Rs. 50,000/- were also imposed on the said passenger under section 112 & 114 AA of Customs Act, 1962 respectively.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the appeal for non compliance of provision of section 129 E of Customs Act, 1962 as the applicant failed to comply with pre-deposit of Rs. 2,00,000/-.

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 adjudication order passed is not legal and proper; that the applicant and no other person has claimed the goods; that the goods imported are neither restricted nor prohibited.

4.2 The adjudicating authority has absolutely confiscated the goods on the ground that the applicant is a carrier.

4.3 Section 125 clearly state that goods should be released to the owner and if owner is not know then the same should be released to the person from whom the goods were recovered.

4.4 The Supreme Court in case of one Dhank Ramji reported in 2009 (237) ELT 280 had clearly considered the issue of carrier and order for release of goods to carrier.

4.5 The other following citations also clarify the same issue:-

- a) T.Elavarasan Vs. Commissioner of Customs 2011 (266) ELT 167 (MAD).
- b) Sapna Sanjiv Kohli Vs. Commissioner of Customs, Airport 2008 (230) ELT 305.

5. Personal hearing was scheduled in this case on 28-01-2014. Shri A.M.Sachwani, Advocate attended hearing on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

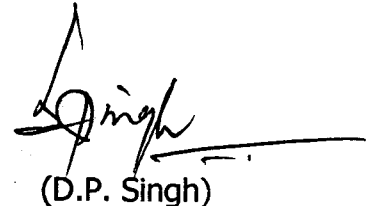
7. Government notes that this revision application is filed on 13-09-2013 against impugned Order-in-Appeal dated 17-04-2013 which was received by

applicant on 04-05-2013. As per provisions of section 129DD (2) of Customs Act, 1962, the revision application is to be filed within 3 months of communication of impugned Order-in-Appeal and delay upto 3 months can be condoned if justified reasons exit. This revision application is thus filed after a delay of 41 days. Applicant stated that they had filed revision application against interim stay order dated 07-03-2013 which was dismissed as non maintainable vide GOI order dated 23-08-2013. In the meantime, Commissioner (Appeals) passed final order dated 17-04-2013. Due to the pendency of revision application the final Order-in-Appeal dated 17-04-2013 was challenged only on 13-09-2013 after receipt of GOI order dated 23-08-2013. So they have requested to condone the delay. Government, keeping in view the genuine reasons as explained by applicant condone the delay of 41 days and takes up the revision application for decision.

8. On perusal of records, Government observes that the Commissioner (Appeals) has rejected the appeal for non-compliance of provision of section 129E of Customs Act, 1962 as the applicant failed to make pre-deposit of Rs. 2,00,000/-. Now applicant has requested to waive the pre-deposit completely or reduce it substantially as he has acute financial hardship. Government keeping in view the overall circumstances of the case directs the applicants to make pre deposited of Rs. 30,000/- within 2 weeks of the receipt of this order. On having confirmation of deposit of said amount, the appeal will get re stored which will be decided by Commissioner (Appeals) on merit after affording a reasonable opportunity of hearing to the applicant.

9. Revision Application is disposed off in above terms.

10. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Mr. Mohammed Naheeb Khalifa,  
R.No. 134/1, Nafeesa Mansion,  
Bhatkal, Karnataka.

Order No. 2-8 /14-Cx dated 06-02-2014.

Copy to:

1. Commissioner of Customs, 5<sup>th</sup> Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
2. The Commissioner of Customs, (Appeals), 5<sup>th</sup> 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. A.M.Sachwani, Advocate, High Court, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O, Fort, Mumbai-400 001.

5. PS to JS(RA)

6. Guard File.

7. Spare Copy

ATTESTED



(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)

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