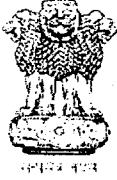


**REGISTERED  
SPEED POST**



**F.No. 380/91,91-A & 91-B/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.....14/2/14

Order No. 29-31/14-cus dated 07.02.2014 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.  
passed by the Commissioner of Customs, (Appeals),  
Mumbai as detailed in table of para 1 of this order.
- Applicant : 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.
- Respondent : As per column 2 of table in para I of this order.

\*\*\*\*\*

**ORDER**

These 3 revision applications have been filed by the Commissioner of Customs, CSI Airport, Mumbai against the Orders-in-Appeal Nos. passed by the Commissioner of Customs, (Appeals) Custom Zone-III, Mumbai with respect to Orders-in-Original Nos. as detailed in the following Table:-

S. N o.	RA No. Name of the Applicant	OIA No. & Date	Order-in-Original No. & Date	Description of Value and Goods (Rs.)	RF/PP/Order As per Order-in- Original (Rs.)	RF/PP/Order As per Order-in- Appeal (Rs.)
1	2	3	4	5	6	7
1	380/91/B/2013-RA Smt. Khushboo H. Sidhiwala	18-07-2013 131-133/13-14 dt. 18-07-2013	6042/2012 dt. 31-10-2012	Gold Jewellery/ Rs. 1,68,300/-	RF 15000/- PP 10000/-	Allowed re export on payment of redemption fine and penalty imposed by adjudicating authority within one month
2	380/91A/B/2013-RA Smt. Asmitaben K. Sidhwala	As above	6040/2012 dt. 31-10-2012	Gold Jewellery/ Rs. 308550/-	RF 35000/- PP 15000/-	-----do-----
3	380/91B/B/2013-RA Shri K H. Shidhiwala	As above	6041/12 dt. 31-10-2012	Gold Jewellery/ Rs. 1,29,030/- Mobile Phone 7728/-	RF 15000/- PP 7500/-	-----do-----

2. Brief stated facts of these cases are that the respondents arrived at Airport Mumbai from abroad. They were intercepted at green channel by the Customs officers. The examination of their baggages and persons resulted in recovery of goods as detailed in the above table. The respondent were of Indian origin and had arrived after stay of six days abroad. All the passegners imported gold jewellery in excess of prescribed limit and did not declare the same before customs in terms of section 77 of Customs Act,1962. The applicant at Sl. No. 3 of above table also imported Mobile Phone valued at Rs. 7728/- in addition to gold jewellery. Import of gold jewellery in excess of prescribed limit by the respondents that too 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 2009-2014 and also the provision of section 3 (1) & 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following the 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 as shown at column No. 6 of above table was given to the said passenger under section 125 of Customs Act, 1962. Penalties as shown at column No. 6 of above table was also imposed on the said passengers under section 112 of Customs Act, 1962.

3. Being aggrieved by the said orders-in-original, applicants filed appeal before Commissioner (Appeals), who modified the Orders-in-Original to the extent of allowing re-export on payment of redemption fines and personal penalties imposed by adjudicating authority.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant department has filed these revision applications under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 In the instant case, the passengers were found in possession of gold jewellery in trade quantities. They are Indian citizens and Indian passport holder, who opted for Green Channel for clearance without declaring the aforesaid items in their possession.

4.2 The passenger who had imported dutiable goods in her baggage also failed to make a true declaration of the contents of the baggage to customs as required under section 77 of the Customs Act, 1962.

4.3 As per their submissions during adjudication of the case, the passengers stated that they were not aware of the baggage rules and that the gold jewellery had to be declared to customs.

4.4 It is observed by the Appellate authority while passing the subject order dated 18-07-2013 observed that, ".....I have gone through the facts of the case and have heard the appellant and his advocate, Smt Khushboo H. Sidhiwala, Smt Asmitaben K. Sidhiwala and Shri K.H. Sidhiwala had arrived on 31-10-2012 and were in possession of various quantities of gold jewellery weighing 60 gms, 110 gms and 46 gms respectively. The appellants choose not to declare the goods and cleared through green channel, where they were intercepted by Customs Officers leading to the recovery of the ornaments. The facts are not denied by applicants. They have stated that since they were not aware of the rules and admitted they had failed to declare the jewellery.

4.5 It is submitted, "ignorance of law is no excuse" is a settled legal maxim, as followed in a plethora of judicial pronouncements and the provisions of law are uniformly applicable to everyone.

The applicant department cited the following case laws;

- i) Rajiv Chopra as reported in 2012 (277) ELT 141 (GOI)
- ii) Rafat Fawl as reported in 1992 (59) ELT 338 (GOI)
- iii) Jasvir Kaur 2009 (241) ELT 521 (Del.)
- iv) Hemal K. Shah by the Revisionary Authority, Department of Revenue, Ministry of Finance, Government of India reported in 2012 (275) ELT 266 (GOI).
- v) Commissioner of Customs Vs. Grand Prime Ltd. Reported in 2003 (155) ELT 418 (SC).

The department finally pleaded to set aside the Orders-in-Appeal and restore Order-in-Originals.

5. The Show cause notices were issued to the respondents under section 129DD of Customs Act, 1962 to file their counter reply but no written reply is filed by the respondents.

6. Personal hearing held in these cases on 28-01-2013 was attended by Shri A.M.Sachwani, Advocate on behalf of the applicant who pleaded to uphold Order-in-Appeal.

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


8. On perusal of records, Government observes that the respondents arrived at Airport Mumbai from abroad. They were intercepted by the Customs officers at green channel. On examination of their baggages and persons goods as detailed in the above table were recovered. The respondent passengers were of Indian origin and had arrived after stay of six days abroad. All the respondent passengers imported gold jewellery in excess of prescribed limit and did not declare the same before customs in terms of section 77 of Customs Act,1962. The applicant at Sl. No. 3 of above table also imported Mobile Phone valued at Rs. 7728/- in addition to gold jewellery. The goods imported by the respondents were in trade quantity and commercial in nature. Import of gold jewellery in trade quantity by the respondents that too 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 5 (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 as shown at column No. 6 of above table was given to the said passenger under section 125 of Customs Act, 1962. Penalty as shown at column No. 6 of above table was also imposed on the said passengers under section 112 of Customs Act, 1962. In appeal the Commissioner (Appeals) modified the Order-in-Originals and allowed the re-export of the goods on payment of redemption fines and penalties imposed by the adjudicating authority. Now in the revision application the applicant department has challenged the said Orders-in-Appeal on the ground that the respondents were Indian citizen who have returned after stay of six days abroad, that they have not

declared the said gold jewellery to customs in terms of section 77 of Customs Act, 1962; that they have brought gold jewellery in excess of prescribed limit; that hence allowing re-export by the Commissioner (Appeals) is not legal and proper. The department has cited number of case laws in support of their defence.

9. On perusal of records Government notes that all the respondent passengers were Indian citizens who have returned after a stay of six days abroad. All of them imported gold jewellery in trade quantity and did not declare the same before customs in terms of section 77 of Customs Act, 1962. Had the customs officers not stopped these passengers they would cleared the said gold without payment of customs duty. The passenger neither made true declaration before customs nor requested for detention of goods for re-export at the time of their arrival. Government notes that in similar circumstances, Government of India has denied re-export of good in its order in the case of Hemal K.Shah reported in 2012 (275) ELT 266 (GOI), GOI revision order No. 166/2013-Cyus dt. 23-07-2013 in the case of Denish Kumar Chabbria Vs. CC Mumbai and GOI Revision order No. 186/13-Cus dt. 19-08-2013 in the case of Abhishek Rajan Mehra V. CC Airport Mumbai. The ratio of said judgments is squarely applicable to these cases as facts are identical. Therefore the re-export of said gold jewellery allowed by the Commissioner (Appeals) is not legal and proper. Hence Government set aside the Order-in-Appeal passed by Commissioner (Appeals) and restores the impugned Order-in-Original.

9. Revision Application is disposed off in terms of above.

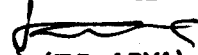
10. So, ordered.

  
(D.P. Singh)

Joint Secretary to the Govt. of India

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.

ATTESTED

  
(टी. आर. आर्य / T.R. ARYA)  
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. 29-31/14-Cx dated 7-2-2014

Copy to:

1. 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.
2. Assistant Commissioner of Customs, CSI Airport, Mumbai.
3. Shri A.M.Sachwani, Advocate, High Court, Nulwala Building, Ground Floor,41, Mint Road, Opp. G.P.O, Fort, Mumbai-400 001

~~4. PS to JS(RA)~~

5. Guard File.

6. Spare Copy

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(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)