

**REGISTERED
SPEED POST**



**F.No. 380/74-75/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..... 21/3/14

Order No. 37-38 /14-cus dated 5.3.2014 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.
51 & 52/2013 dated 30-04-2013
passed by Commissioner of Custom (Appeals),
Trichy.

Applicant : Assistant Commissioner of Customs,
Customs Airport, Trichy-620007.

Respondent : 1. Shri S. Ramamoorthy,
Door No 1.80, Nadutheru, Kaduvetti Vidhuthi,
Orathanadu, Thanjavur District.

2. Shri R. Jagdeesan s/o Shri Ramadoss,
No. 290/C, Sakthi Nagar,
Nehru Veedhi, Aladi Road,
Virdhachalam.

ORDER

These revision applications are filed by Assistant Commissioner of Customs, Trichy on authorisation from Commissioner of Customs, Trichy against the Orders-in-Appeal No. 51 & 52/2013 dated 30-04-2013 passed by Commissioner of Customs (Appeals), Tiruchipally with respect to Orders-in Original No. 01/2013 dt. 04-01-2013 passed by the Additional Commissioner of Customs, Trichy. Shri R. Jagdeesan s/o Shri Ramadoss, Virdhachalam and Shri S. Ramamoorthy, Orathanadu, Thanjavur District are respondents in these cases.

2. Brief facts of the case are that the respondent passenger Shri Ramamoorthy/PMR arrived at Airport from abroad. Acting on intelligence, the Air Intelligence Unit of Customs Airport, Trichy intercepted him at Green Channel. On examination/search of his baggage/ person old and used gold jewellery and 3 gold bar collectively weighing to 1340.700 grams totally valued at Rs. 43,43,193 were recovered. The respondent in his statement recorded under section 108 of Customs Act, 1962 interalia stated that he was working as construction labour in Singapore for past four years; that said package was handed over to him by Ms Hasthia at Singapore stating that it contained medicines which was meant for MR. R. Jagdeesan who would collect it at Trichy Airport; that Shri R. Jagdeesan was waiting outside the arrival Hall to receive the packet; that he was told by Shri R. Jagdeesan that the packet to be handed over by Ms Hasthia contains Medicines; Shri R. Jagdeesan was brought inside Airport for interrogation. In his voluntary statement recorded under section 108 of Customs Act, 1962, Shri R. Jagdeesan interalia stated that he worked as a construction employee in Singapore for about five years and returned to India during April 2012; that both Shri P. Ramamoorthy and himself were friends for four years as they were working for the same construction company; that while he was in Singapore he developed friendship with one lady named Ms Hasthia as Indonesian working as a domestic helper in Singapore; that he come to know that Shri P. Ramamoorthy who was working in the same company for the past four years; that Ms Hasthia telephoned him on 02-05-2012 stating that she was in possession of some gold jewellery which she wanted to send to him at India for

which he told her his friend Shri P. Ramamoorthy would be returning from Singapore on 07-05-2012 and through him the gold jewellery could be sent for which Ms Hasthia also accepted and arranged to collect the jewellery through Shri P. Ramamoorthy; that he contacted Shri P. Ramamoorthy and asked him to contact Ms Hashia at Singapore and collect one packet from her and further he told him that it contained medicines for him; that accordingly Shri P. Ramamoorthy met Ms Hasthia and informed him that he had collected the medicine packet; that he told Shri P. Ramamoorthy that he would receive the medicine packet at Trichy Airport itself.

The respondent Shri P. Ramamoorthy and Shri R. Jagdeesan were arrested and subsequently released on bail. The said gold imported by the respondent were in trade quantity and 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 of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law absolutely confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. A penalty of Rs. 5,00,000/- and Rs. 8,00,000/- was also imposed on the Shri P. Ramamoorthy and Shri R. Jagdeesan respectively under section 112 of Customs Act, 1962.

3. Being aggrieved by the said orders-in-original, applicants filed appeals before Commissioner (Appeals), who allowed redemption of gold jewellery/bar on payment of redemption fine of Rs. 2,00,000/-. Penalties imposed on Shri P. Ramamoorthy and Shri R. Jagdeesan were reduced to Rs. 2,00,000/- and Rs. 4,00,000/- respectively.

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

4.1 The Commissioner (Appeals), Trichy in his order has observed that "Whereas in his case the applicants deliberately with wilful heart brought the said gold by way of concealment, is an offence as per the law. It is the duty of the applicants to bring

the said gold bars/jewellery legally and clear the same on payment of duty after producing valid documents. Whereas the applicants have not done so. Instead they concealed the said goods in his suitcase and try to smuggle the same without duty, by non-declaration and to evade payment of duty, which is an offence as per law". However, while passing orders, the Commissioner (Appeals) has allowed the same to be redeemed on payment of redemption fine and appropriate duty, reasoning that the goods are not prohibited, failing to appreciate the fact that the goods were brought in a covert manner.

4.2 In as much as the goods were brought by concealment to avoid detection and to evade payment of duty, the same were rightly ordered to be confiscated absolutely by the adjudicating authority. Further to this, the pax who had brought the goods had disowned them. Therefore, the goods are deemed to have been imported illegally, warranting absolute confiscation rightfully under section 11 (i), (l) and (m) of the Customs Act, 1962.

4.3 Absolute confiscation had been ordered in this case not because they were considered as prohibited goods but on the ground that the goods were illegally imported. Therefore, the mere fact that the goods are not prohibited goods is not a sufficient ground enough to set aside the absolute confiscation. In view of this, the Order-in-Appeal passed by the Commissioner (Appeals) is not correct.

4.4 The Commissioner (Appeals) had also reduced the penalty from Rs. 5,00,000/- to Rs. 2,00,000/- on Shri Ramamoorthy and from Rs. 8,00,000/- to Rs. 4,00,000/- on Shri R. Jagdeesan. He has not given any reason for reducing the penalty. Penalty imposed should be deterrent enough to punish the passenger not to do repeated offence, else he would never feel the pinch of being caught according to Board's letter F. No. 495/6/97-Cus dt. 06-05-1996. Therefore, the reduction of penalty ordered by the Commissioner (Appeals) without assigning any reason is not right in the sight of law.

5. The Show cause notices were issued to the respondents under section 129DD of Customs Act, 1962 to file their counter reply. Respondents have not filed any written reply but requested for early hearing.

6. Personal hearing scheduled in this case 17-02-2014 was attended by Shri T. Chazhiyan, Advocate on behalf of the applicant who requested to uphold the impugned Order-in-Appeal. The department in their written submission vide letter dated 13-02-2014 again reiterated the grounds of revision applications.

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

7. The respondent passenger arrived at Trichy Airport from abroad. Acting on intelligence the Air Intelligence Unit of Customs intercepted him at Green Channel. On examination of his baggage old and used gold jewellery and 3 gold bar collectively weighing to 1340.700 grams and valued at Rs. 43,43,193 were recovered. The respondent in his statement recorded under section 108 of Customs Act, 1962 interalia stated that he was working as construction labour in Singapore for past four years; that the said package stated to contain medicine was given to him by one Ms Hasthia in Singapore to be delivered to Shri R. Jagdeesan at Trichy Airport and that Shri R. Jagdeesan was waiting outside the arrival Hall to receive the packet that he was told by Shri R. Jagdeesan that the packet to be handed over by Ms Hasthia contains Medicines. Shri R. Jagdeesan was brought inside Airport for interrogation. In his voluntary statement recorded under section 108 of Customs Act, 1962 , Shri R. Jagdeesan interalia accepted the version of statement given by Mr. Ramamoorthy. The passenger opted for green channel customs clearance and failed to follow provision of section 77 and 79 of Customs Act. Shri Jagdeesan actively participated in the activity of illegal import of said gold and he was mastermind behind said smuggling. The goods imported by the respondent were in trade quantity and attempted to be smuggled into India by non declaration/concealment, 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 of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law absolutely confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. A penalty of Rs. 5,00,000/- and Rs. 8,00,000/- was also imposed on the Shri P. Ramamoorthy and Shri R. Jagdeesan respectively under section 112 of Customs Act, 1962. In appeal the Commissioner (Appeals) allowed redemption of said gold on payment of redemption fine of Rs. 2,00,000/- and reduced penalties imposed on Shri P. Ramamoorthy and Shri R. Jagdeesan to Rs. 2,00,000/- and Rs. 4,00,000/- respectively. In this revision application the applicant department has challenged the Order-in-Appeal and pleaded to set aside the same and restore the Order-in-Original.

8. The applicant department has contended that as the respondent concealed the said gold inside his suit case and did not declare the same to Customs in terms of section 77 of Customs Act, 1962 with the intention to evade customs duty. Hence allowing redemption of goods on payment of redemption fine and reduced penalties is not legal and proper. The respondent through his advocate Shri T. Cheziyan has contended that the Order-in-Appeal is legal and proper and requested uphold the same. He has cited the case law Abdulla Kaliangal Andu Vs. Union of India reported in 1994 (71) ELT 349 Bombay High Court.

9. On perusal of records, Government observes that the respondent passenger did not declare the goods to customs under section 77 of Customs Act, 1962. It was obligatory on the part of passenger to import goods in his baggage as per limits prescribed in Baggage Rules and follow the statutory provisions. Since he had opted for green channel customs clearance, goods were concealed and found in excess of permissible limits, the passenger has contravened the legal provisions mentioned above and attempted to smuggle the said gold with an intent to evade payment of customs duty. The other person Shri Jagdeesan has actively involved himself in said act of smuggling of gold and he was the mastermind behind said

smuggling. Therefore order for confiscation of said gold and imposition of penalty on both persons cannot be assailed.

10. As regards the pleadings of the applicant department to set aside the order of Commissioner (Appeals) with respect to redemption of gold on payment of redemption fine, Government notes that the gold was not concealed in any ingenious manner and Commissioner (Appeals) has considered all the relevant circumstances while allowing release of gold under section 125 of Customs Act, 1962. Government agrees with the findings of Commissioner (Appeals) as regards allowing redemption of gold under section 125 of Customs Act, 1962. However keeping in view the profit margin in gold which is generally quite significant and the gravity of offence committed by both respondents, the redemption fine imposed by Commissioner (Appeals) is quite low and required to be enhanced.

11. Government notes that the Hon'ble High Court in this case of CC Vs. M/s. Vaibhav Exports has held as under:-

" 16. In the case of M/s Vaibav Exports (Supra) the Bombay High Court notes that the premium on import of imported diamonds in that case was around 3% only and that the importers in that case could have made profit of about 3% by the illegal imports without valid licences. Yet, the Hon'ble Bombay High Court authorized imposition of redemption fine equal to 20% of the value of the imported diamonds with observations that the importers should not find it profitable to make the imports without proper licence. The Hon'ble High Court took into account the fact that if the offender is required to pay only the amount which he has saved by not paying the premium for securing a genuine licence, he will never feel the pinch of being caught. He may commit same wrongs repeatedly and as and when he is caught, he may pay amount equivalent to the premium only. In the considered opinion of the Hon'ble Court the redemption fine should be more than such amounts.

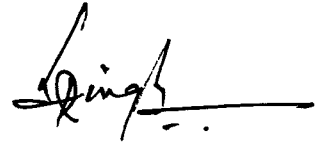
17. In the appeals filed by the department it is clearly mentioned that all these cases are repeated offence and that the respondents are repeatedly importing second-hand digital photocopiers without licences, undervaluing the same and in one case even the quantity was found to be mis declared. In respect of Appeal No. C/70/2010 and C/71/2010, it has been indicated by the learned SDR that these are the 4th and 6th imports of the same kind by the same importers. As stated earlier, fines and penalties imposed on such importers previously have not deterred the respondents from continuing to make illegal undervalued imports. In fact, the fine and penalty at somewhat higher levels (together ranging from about 30% to about 55%) imposed in these cases are not at all excessive as the respondents have found it still profitable to clear the goods on payment of the fines and penalties levied and have only subsequently filed appeals before the lower appellate authority. Reduction in fine and penalty granted by the said authority has only gone to further increase their profit margin.

18. *Under the circumstances, I am of the considered view that the fines and penalties imposed by the original authorities in these cases of repeated offences are not unreasonable or arbitrary or whimsical considering the fact that the authorities under the law have a duty cast upon them to prevent illegal imports and effectively implement the import policy validly laid down by the Government and to curb undervaluation and mis-declaration apart from preventing repeated offences. Hence, the lower appellate authority is totally unjustified in reducing the fines and penalties in these cases to very low levels totalling 20% only. Accordingly, I set aside the impugned orders passed by the lower appellate authority insofar as they relate to lowering of redemption fines and penalties and restore the orders passed by the original authorities. All the seven departmental appeals are allowed in the above terms. "*

11. Keeping in view the overall circumstances of the case and the principles laid down in above said judgment Government modifies the redemption fine upwards to Rs. 1000000/- (Rs. Ten Lakh). The penalty imposed by Commissioner (Appeals) is quite reasonable and there is no reason to modify the same. The revision applications are therefore partially allowed and impugned Orders-in-Appeal is modified to this extent.

12. Revision Applications are disposed off in above terms.

14. So, ordered.

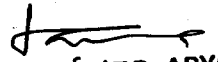


(D.P. Singh)

Joint Secretary to the Govt. of India

Assistant Commissioner of Customs,
Customs Airport, Trichy-620007.

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. 37-38 /14-Cx dated 05-03 -2014

Copy to:

1. Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappali-620001.
2. Assistant Commissioner of Customs, Customs Airport, Trichy-620007.
3. The Additional Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirappali-620001.
4. Mr. S.Ramamoorthy, Door No. 1/80, Nadutheru, Kaduvetti Vidudhi, Orrathanadu Taluk, Tanjor Distt.
5. Mr. R.Jagdeesan No. 290/C, Sakthi Nagar, Nehru Veedhi, Aladi Road, Virddhachalam.
6. ~~PS to JS(RA)~~
7. Guard File.
8. Spare Copy

ATTESTED



(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)