

**REGISTERED
SPEED POST**



**F.No. 373/03/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.. 9-4-14

Order No. 67/14-cus dated 07.04.2014 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.
165/2012 dated 28-09-2012
passed by Commissioner of Custom (Appeals),
Bangalore.

Applicant : Shri Byar Mohammed Asraf,
s/o Late Shri Bayar Andunchi Beary,
H.No. 656, Badiyar House,
PO Beripadave Via Uppala,
Kasaragod District,
Kerala.

Respondent : Commissioner of Customs,
Bangalore.

ORDER

This revision application is filed by Shri Byar Mohammed Asraf, s/o Late Shri Bayar Andunchi Beary, H.No. 656, Badiyar House, PO Beripadave Via Uppala, Kasaragod District, Kerala against the Order-in-Appeal No. 165/2012 dated 28-09-2012 passed by Commissioner of Customs (Appeals), Bangalore with respect to order-in original No. 21/2012 dated 22-03-2013 passed by the Additional Commissioner of Customs, Bangalore.

2. Brief fact of the case are that the applicant Shri Byar Mohammed Asraf was intercepted by Customs Officers, Air Intelligence Unit, Bangalore International Airport in the wee hours of 22-04-2010 on his arrival from Dubai by Emirates flight No. EK 568 and an examination of his baggage and person resulted in recovery of 164 cartons of Cigarettes and 44 gold chains of different types weighing around 500 grams. The gold chain were found concealed on the body below the pant belt. Since the cigarettes packets were not containing the statutory warning as prescribed under Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 and gold was concealed on his body with an intention to smuggle the same, the adjudicating authority absolutely confiscated 164 cartons of cigarettes and confiscated the gold chains valuing Rs. 7,84,000/- with an option to redeem the good on payment of a redemption fine of Rs. 4,00,000/- under section 125 of the Customs Act, 1962 imposed a penalty of Rs. 1,50,000/- under the provisions of section 112 and Rs. 1,00,000/- under the provisions of section 114AA of Customs Act, 1962.
3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who 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 mainly on the following grounds:

4.1 The Mahazar dated 22-04-2010 states that the applicant was moving around in the arrival lounge in a suspicious manner and appeared to carry some contraband. The factual position is that the applicant had approached the Customs Officer on duty in the arrival lounge to declare the good brought by him and had requested the officer to fill up the customs declaration form. The applicant had neither entered the green channel nor concealed any goods/information from the Customs Officers.

4.2 The customs declaration form prescribed by the department does not carry any specific column/row/space, where the passengers can declare details of the goods brought by them. The form requires the passenger to declare the name, flight number, number of hand baggage, number of checked-in-baggage and value of good imported, whether they are carrying any plants or animals and signature. The ornaments (Polished) and wanted to declare the same in the customs declaration form in the absence of any specific place in the form where he could declare the above said goods; he had approached the customs officer on duty to help him in making a true declaration. Despite the lacuna in the customs declaration form, the applicant was arrested and his goods were seized without giving him an opportunity to make the necessary declaration under section 77 of Customs Act, 1962. It is further submitted that the Adjudicating Authority has not considered our reply submission's dated 12-03-2011, 11-05-2011. On this ground the applicant deserves sympathetic consideration by this Hon'ble Authority.

4.3 It is alleged that the applicant had concealed two packets wrapped with brown tape around his stomach below the pant belt has also been seized it is very difficult to comprehend as to how a person can concealed valuable goods like gold below his belt. No garment has been seized by the customs officers, which was allegedly used to conceal the gold ornaments.

4.4 The provisions of Cigarettes and other tobacco products (Packaging and Labelling) Rules, 2008 requiring every package of cigarettes manufactured or sold in India to have a statutory warning as specified in the schedule are not applicable to the cigarettes brought by the applicant in Dubai. Hence the same were not carrying

any pictorial warning as specified in the above said rules. As stated above the cigarettes brought by the applicant were only for personal use and not for sale, the provisions of the above said rules are not at all applicable in this case. The applicant would like to submit that gold ornaments brought by him were his own/his family's old ornaments which were brought back after polishing. The investigation have not produced any evidence in the form of invoice/bill/payment details to prove that the ornaments brought by the applicant are new gold ornaments and were purchased by him in particular shop in Dubai or any other foreign country. The onus is on the department to prove that the gold ornaments were purchased by the applicant abroad and had imported the same in violations of the customs provisions which has not been proved by the investigation. The applicant being an illiterate and ignorant person hailing from a small village in Kerala was not aware of the provisions of the law or the need to take export certificate in respect of the goods carried by him from India which can only be termed as technical lapse and the same deserves to be condoned by this Hon'ble Authority.

Applicant finally requested to set aside absolute confiscation and penalty or in the alternative reduce penalty and also reduce redemption fine in the interest of justice.

5. Personal hearing was scheduled in this case 24-07-2013, 31-10-2013 & 21-03-2014. Nobody attended hearing on said on behalf of applicant as well as respondent department. However Shri Bijali Shamendra Singh, advocate vide letter dated 28-10-2013 had stated that order may be passed taking into account the written submissions. He further requested that redemption fine and personal penalty may be reduced to 50%.
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.
7. On perusal of records, Government observes that examination of baggage and personal search resulted in recovery of 164 cartons of cigarettes and 44 gold chains weighing 500 grams and valuing Rs. 784000. The gold chain were found

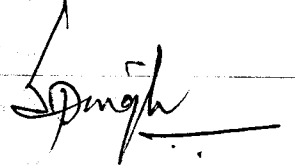
concealed on his body below the pant belt. Applicant has contended that he had approached customs officer to fill declaration form and he wanted to declare the goods. But the facts narrated in the punchnama and his statement confirm that the said goods were recovered as a result of baggage examination and personal search. Applicant has confessed in his statement recorded under section 108 of Customs Act that gold chains were concealed in his body with an intention to smuggle the same without payment of duty. The various contention raised by applicant were also raised by Commissioner (Appeals). The appellate authority has discussed each contention and did not found them acceptable. Government agree with his findings. It is noted that Hon'ble Supreme Court has held in the case of

8. The contention raised by applicant contrary to the version given in his statement are not acceptable. The cigarettes and gold imported by the applicants in commercial quantity is excess of limits prescribed in the baggage rules. Commissioner (Appeals) has already held that applicant was not an eligible passenger to import gold. These goods cannot be called bonafide baggage as defined in section 79 of Customs Act. Applicant has failed to declare the goods are required under section 77 of Customs Act. As such the goods imported in violation of section 77,79 of Customs Act, baggage rules, 1998, para 2.20 of FTP and section 3, 11 (1) of Foreign Trade (Development and Regulation) Act, 1992, are rightly confiscated by the original authority. There was no statutory warning printed on the cigarettes packages as required under the cigarettes and other Tobacco Products (Packaging and Labelling) Rule, 2008 as amended. So, Cigarettes were rightly confiscated absolutely.

9. As regard, applicant's pleading to reduce redemption fine and penalty, Government finds that redemption fine/personal penalty imposed is harsh and can be reduced. Keeping in view the overall circumstance of the case. Government therefore reduces the redemption fine to Rs. 250000/- and penalty to Rs. 100000/- and 50000/- under section 112 and 114AA respectively. The impugned Order-in-Appeal is modified to this extent.

10. The revision application is thus disposed off in terms of above.

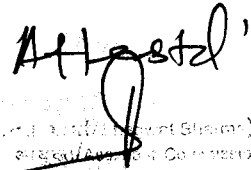
11. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Shri Byar Mohammed Asraf,
s/o Late Shri Bayar Andunchi Beary,
H.No. 656, Badiyar House,
PO Beripadave Via Uppala,
Kasaragod District,
Kerala.



(Joint Secretary to the Govt. of India)
C. P. S. D. (Revenue) (Application)
INDIA (13-RA-cus/03)
Ministry of Finance (Deptt. of Rev.)
New Delhi (2003)

Order No. 67/14-Cx dated 07-04-2014

Copy to:

1. Commissioner of Custom, Custom House, P.B No. 5400, C.R. Building, Queens Road, Bangalore-560001.
2. Commissioner of Customs (Appeals), P.B No. 5400, C.R. Building, Queens Road, Bangalore-560001.
3. Joint Commissioner of Customs, Bangalore International Airport, Bangalore.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

Attard

(Signature of Shri. Attard Sharma)
Assistant Commissioner
CPS C-OSD (Revenue Collection)
101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000