

**REGISTERED  
SPEED POST**



F. No. 373 / 51, 52, 53, 55 / B / 12 - R. A.  
F. No. 373 / 60, 79 & 94 - A / B / 12 - R. A.  
F. No. 373 / 82, 86 & 89 / B / 13 - R. A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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6 FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 17/3/14

Order No. 78-87 /2014-Cus dated 17-4-2014 of the Government of India, passed By Shri D.P.Singh, Joint Secretary to the Government of India, under Section 129DD of Customs Act, 1962.

Subject : Revision applications filed, under Section 129 DD of Customs Act 1962 against the orders-in-appeal as stated in Column 3 of the table in para 1 of this order passed by Commissioner of Customs Excise (Appeals), Chennai / Trichy.

Applicant : As per Column 2 of table in para 1 of this order.  
C/o. Shri S. Palanikumar,  
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C/o. M/s. Natarjan Associates,  
Advocates & Consultants  
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Yogambal Street,  
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Respondent : The Commissioner of Customs (Airport),  
Integrated Air Export Complex,  
Meenambakkam,  
Chennai - 600 027

The Commissioner of Customs,  
No. 1, Williams Road,  
Cantonment,  
Tiruchirapally - 620001

\* \* \* \*

**ORDER**

These Revision Applications are filed by the applicants against the Order-in-appeal numbers passed by the Commissioner of Customs (Appeals), Custom House, Chennai / Trichy as detailed in the following table :

S. No.	R.A.No. Name of the Applicant S/Shri	Against Order-In-Appeal No. & Date	Order-in-Appeal passed by Commissioner of Customs (Appeals)	Order-in-Original No. & Date	Description / Value of goods (Rs.)	Redemption Fine / Personal Penalty (PP) imposed in O-I-O (Rs.)	Redemption Fine / Personal Penalty (PP) imposed in O-I-A (Rs.)
1.	2.	3.	4.	5.	6.	7.	8.
1	373/51/B/12 -R.A. Kuruppaiya Mari Muthu	267-269/12 dated 20.04.2012	Chennai	505/11-Air dated 11.10.2011	Gold Jewellery 190 Grams Rs. 473100/-	Absolute confiscation PP 47000/-	Absolute confiscation PP 23500/-
2	373/52/B/12 -R.A. Rama Muthuramalingam	267-269/12 dated 20.04.2012	Chennai	506/11-Air dated 11.10.2011	Gold Jewellery 152 Grams Rs. 378480/-	Absolute confiscation PP 37000/-	Absolute confiscation PP 18500/-
3	373/53/B/12 -R.A. Joseph Rex Sebastiyar	267-269/12 dated 20.04.2012	Chennai	501/11-Air dated 11.10.2011	Gold Jewellery 152 Grams Rs. 378480/-	Absolute confiscation PP 37000/-	Absolute confiscation PP 18500/-
4	373/55/B/12 -R.A. Shaik Nasir Ahmed	70/12 - Air dated 09.02.2012	Chennai	27/11 dated 27.08.2011	Gold Jewellery 1084.2 Grams Rs. 2130331/-	Absolute confiscation PP 213000/-	Absolute confiscation PP 213000/-
5	373/60/B/12 -R.A. Arulsamy Gnanasekar	246/12 - Air dated 09.04.2012	Chennai	10/11 -ADC (Air) dated 15.03.2011	Electronic Goods Rs.723299/-	Absolute confiscation PP 72000/-	Absolute confiscation PP 72000 -
6	373/79/B/12 -R.A. Rafeek Mohd. Shameesha	685/12 - Air dated 05.07.2012	Chennai	18/11 -ADC (Air) dated 10.05.2011	Electronic Goods Rs.370000/-	Absolute confiscation PP 37000-	Absolute confiscation PP 37000-
7	373/86/B/13 -R.A. Khon Mohd. Sabiyullah	1174/13 dated 28.08.2013	Chennai	26/12 -Air dated 30.08.2012	Electronic Goods Rs.774000/-	Absolute confiscation PP 80000	Absolute confiscation PP 80000
8	373/89/B/13 -R.A. Hassain Ibrahim Mohd. Kuraisi Para Mohammed	1175/13 dated 28.08.2013	Chennai	25/12 -Air - JC dated 30.08.2012	Electronic Goods Rs.686000/-	Absolute confiscation PP 70000	Absolute confiscation PP 70000
9	373/82/B/13-R.A. S. Balachandran	50/13 dated 30.04.2013	Trichy	19/12 - ADC dated 26.11.2012	Four Gold Biscuits 400 Grams Rs.1170000/- 233177/-	Absolute confiscation PP 200000/-	Absolute confiscation PP 200000/-
10	373/ 94-A / B / 12-R.A. K. Saravanan	1043/12 dated 25.09.2012	Chennai	OS No. 245/12 -Air dated 16.04.2012	19 Gold Chains 84 Grams Rs.233177/-	Absolute confiscation PP 25000/-	Absolute confiscation PP 10000/-

2. Briefly stated facts of the case are that the applicants arrived at Chennai / Trichy Airport from abroad. They were intercepted at exit gate by the Air Intelligence Unit of Customs. On examination / search of their baggages and persons, goods of description / quantity and value as mentioned in the column 6 of above table were recovered. The goods recovered from applicants were not declared by them before Customs as required under Section 77 of Customs Act and they attempted to clear the said goods through green channel customs clearance without payment of duty. In their statements recorded under section 108 of Custom Act 1962 all applicants had admitted that the said goods were brought by them as carriers for someone else for monetary consideration and goods did not belong to them. Applicant passengers imported the said goods in commercial quantity and they did not declare it before customs as required under section 77 of Customs Act, 1962. The goods being in commercial quantity cannot be treated as bonafide baggage in terms of section 79 of Customs Act. As such the said goods are attempted to be smuggled into India by evading payment of duty. The goods are imported in violation of the provisions of section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-2014 and also the provision of section 3 (1) and 11 (1) 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 as shown at column No. 7 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 appeals before Commissioner (Appeals) who upheld the absolute confiscation of the goods, but reduced personal penalty on applicants in shown in the above table.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicants have filed these revision applications under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following common grounds:

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

4.2 The applicant submits that the goods must be prohibited before export or import, simply because of non declaration of the goods cannot become prohibited after import. Therefore the authority had come to the conclusion that the gold is prohibited because of non declaration is nothing but clear not application of mind.

4.3 The release of gold and other items is not against the policy or not against section 125 of the customs act. In several similar cases the Hon'ble Supreme Court, Revisional authority and Commissioner of Customs (Appeals) Chennai has ordered to redemption of goods. There is no provision for absolute confiscation of goods. The option should be given under section 125 of the Customs Act. Further there are several judgments by Revisional authority and CESTAT and Hon'ble Supreme Court and High Court said the authority should excise the power under section 125 of the act because the same is mandatory.

4.4 The adjudication authority has relied upon the judgment in CESTAT order no. 1980/2009 dated 24-12-2009 which has been stayed by the Hon'ble High Court Madras in CMA No. 3773 of 2010 order dated 25-01-2011- GV Ramesh Vs CESTAT Chennai and Commissioner of Customs (Air.), Chennai. Though the CESTAT order has been stayed but the adjudication authority still relying upon the same is nothing but non application of mind. The applicant further submits that every day in airport the Assistant or Additional or Deputy Commissioner have passed several orders to release the goods on payment of redemption fine under section 125 of the Customs Act. But the adjudication authority failed to apply its mind while passing the impugned order.

4.5 That a reported judgment in 2012 (276) ELT 129 (GOI) in Re Chellani Mukesh the Hon'ble Revisional authority held confiscation and penalty (Customs) absolute confiscation option of redemption fine –non declaration of Indian currency and

attempt to export such illegally currencies not being prohibited-goods, absolute confiscation is very harsh option to redeem confiscated currency granted in view of the various precedent decision of CESTAT/GOI giving liberal interpretation as regards to absolute confiscation of currencies.

4.6 That subsequently, they obtained involuntary statement from them by way of force, threat and intimidating. The statement was recorded by the officers of customs as their own will and forcibly obtained signatures from the applicant in some empty papers. They could not even make a complaint of ill treatment before the Magistrate Chennai at the time of remand due to the serious warning by the officers. Therefore, applicant submits that the mahazar and statement are involuntary and false and they do not reflect true facts. The applicants sent a retraction letter to the sponsoring authority and also retracted through bail application and denied the allegations and retracted his statement given before the officers.

4.7 The gold is not prohibited item and according to the liberalized policy the gold can be released on payment of redemption fine and applicable duty. The Hon'ble Supreme Court said in recent judgments that the main object of the customs authority should collect the duty not to punish the person who violated the provisions of customs act.

4.8 There is no provision for absolute confiscation of goods. The option should be given under section 125 of the customs act. Further there are several judgments by revisional authority and CESTAT and Hon'ble Supreme Court and High Court said the authority should excise the power under section 125 of the act because the same is mandatory. The adjudication authority rightly excised his power given under the said act. The adjudication authority totally ignored the section 125 of the Customs Act.

4.9 The Hon'ble Court of Calcutta's decision in the case of Commissioner of Customs (Preventive) west Bengal Vs India sales international reported in 2009 (241)

ELT 182 (Cal.) Hon'ble court while deciding whether prohibited has to be read as prohibited absolutely held that the court cannot insert any word in the statute since it is in the domain of the legislators. The High Court has also held that option given under section 125 of the said act in respect of prohibited goods and right given to authorities for redemption of the confiscated goods cannot be taken away by court by inserting a particular word therein. The Hon'ble high court further held that power has been given by the legislators to particular authority to act in a particular manner and the said authority must act accordingly and not otherwise at all. Therefore the redemption of confiscated gold on an option of pay fine in lieu of confiscation is not against the provisions of section 125 of the Customs Act.

4.10 Further even assuming the applicant is a carrier the act clearly stated that the gold can be released. Since the goods have been recovered from the applicant. Further the applicant only claiming the goods through letter and reply to show cause notice and there is not rival claimant.

4.11 The applicant further submits that they are the owner of the goods and hence applicant is claiming the same. Further they have not smuggled the goods on behalf of third party. But the officers recorded the statement as if applicant smuggled the gold for third party is not correct. The applicant further submits that under section 125 of the Customs Act when even confiscation of any good is authorized by this act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or were such owner is not known the person from whose possession or custody been such goods have seized.

4.12 The applicant also the following case laws and number of cases passed by CESTAT of Government:

- a) Hargovind Dash Vs. Collector of Customs 1992 (61) ELT 172 (SC)

- (b) Sheik Jamal Basha Vs. GOI 1997 (91) ELT 277 (AP)
- (c) Muknadam Rafique Ahmed GOI Order No. 198/2010-Cus. Dated 20.5.10 2010(270) ELT 447 (GOI)
- d) Sabir Ahmed Abdul Rehman Vs. Commissioner of Customs, Mumbai replied in ELT 2009 (235) ELT 402 (Bom.)
- e) 2011 (263) ELT 685 (Tri. Mum.) Yakub-Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai.
- f) Om Prakash Bhatia V. Commissioner of Customs, Delhi, reported in 2003 (155) ELT 423 (S.C.)- 2003 (6) S.C.C 161

5. Personal hearing scheduled in these cases on 20.03.2014 at Chennai was attended by the Advocates on behalf of the applicants as detailed below who have reiterated the grounds of revision application.

S. No.	Name of the Advocate	Hearing attended on the date	Serial Nos. of R.A. of the table in para 1
1.	Shri Palani Kumar	20.03.2014	Sl. No. 1 – 09 of the table
2.	Shri K. R. Natarajan	20.03.2014	Sl. No. 10 of the table

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

7. On perusal of records Government observes that the applicant passengers did not declare the said goods before customs as required under Section 77 of Customs Act. They attempted to clear the goods without payment of customs duty opting for green channel customs clearance. In addition, all of them acted as carrier for monetary consideration and goods did not belong to them. These facts have been admitted by the applicant in their statement recorded under section 108 of the Customs Act, 1962. Since the goods are imported in trade quantity and that too not declared, so the same cannot be treated as bonafide baggage in terms of section 79 of Customs Act,

1962. The said goods are imported in violation of Foreign Trade the provisions of section 77,79,11 of Customs Act, 1962, para 2.20 of Exim Policy 2009-2014 and also the provision of section 3 (3) and 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law absolutely confiscated the said gold under section 111 (d) (l) & (m) of Customs Act, 1962. Penalties as shown at column 7 of above table were also imposed on the under section 112 of Customs Act, 1962. The Commissioner (Appeals) has upheld the absolute confiscation of goods but reduced the penalty as shown in column 8 of the above table. Now in these revision applications the applicants have contested the order of absolute confiscation and imposition of high penalty and requested to allow redemption of goods on payment of redemption fine under section 125 of Customs Act, 1962.

8. Applicants have pleaded for allowing redemption of goods under section 125 of Customs Act on payment of fine in lieu of confiscation or to allow re-export. Government observes that in these cases, the passengers did not declare goods to Customs and attempted to smuggle the same without payment of Customs duty. They have acted as carriers and goods did not belong to them. They had to receive monetary consideration for the carriage of these goods. These facts are admitted by the applicants in their statements recorded under section 108 of Customs Act. The lower authorities have not allowed redemption of goods under section 125 as the passengers were not the owners of goods and acted as carriers in addition to not declaring the goods to Custom and they had attempted to smuggle the goods without payment of duty.

8.1 Government notes that absolute confiscation in such cases is upheld in the judgments of Hon'ble High Court of Madras in the case of CC Air, Chennai Vs. Samynathan Murugesan 2009 (247) ELT 21 (Mad). Hon'ble High Court of Madras in this case has held as under :-

*"Confiscation - Absolute confiscation of goods- 7.075 Kgs Gold ornaments recovered from T.V. Set- Goods were prohibited as petitioner did not belong to category of persons who could bring gold at concessional rate of duty - previous periods where petitioner stayed for longer duration, not relevant for the purpose of Notification No. 31/2003-Cus-*



*Liberalization policy and repeal of Gold control order weighed with the Tribunal -Tribunal ought to have considered whether he could have carried the gold as part of his baggage as an eligible passenger -Goods imported in violation of Import (control) Order, 1955 read with section 3 (i) of Import and Export Control Act, 1947 - Concealment weighed with the Commissioner to order absolute confiscation -Commissioner's order upheld - Section 111 of Customs Act, 1962."*

The said order was upheld by Hon'ble Supreme Court in the order dated 11-01-2010 reported as 2010 (254) ELT A 015 (S.L) dismissing the petition for special leave to Appeal (Civil) No. 22072 of 2009 filed by Samyanathan Murugesan. Supreme Court passed the following order:-

*" Applying the ratio of the judgment in the case of Om Prakash Bhatia II. Commissioner of Customs/ Delhi reported in 2003 (155) ELT 423 (S.C)= 2003 (6) sec 161/ to the facts of the case/ we find that; in the present case/ the assessee did not fulfill the basic eligibility criteria, which makes the imported item a prohibited goods; hence/ we see no reason to interfere with the impugned order. The special leave petition is accordingly dismissed. "*

8.2 Hon'ble High Court of Madras in their judgment dated 02-03-2012 in WP No. 21086/2002 in the case of Aiyakannu Vs JC Customs reported on 2012-110L- 806-HC-MAD-Cus has also held as under:-

*" Petitioner being a foreign (Sri Lankan) national is not entitled to import gold in . terms of clause 3 of Foreign Trade (Exemption from application of Rules in certain cases) order 1993/ as it will apply to the passenger of Indian origin- attempt to smuggle 10 gold bars with Foreign markings wrapped in carbon paper by concealing in baggage justifies the order of absolute confiscation. "*

8.3 Government also notes that Hon'ble High Court of Bombay in its judgment dated 23-07-2009 in the case of UOI Vs Mohammed Aijaj Ahmed (WP No.1901/2003) reported as 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT ordering to allow redemption of gold and upheld the absolute confiscation of gold ordered by Commissioner of Customs. In this case the gold did not belong to passenger Mr. Mohammed Aijaj Ahamed who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reports as 2010 (253) ELT E83 (SC).

8.4 The adjudicating authority of Chennai Airport in its Order-in-Original No. 312/2001 dated 08-06-2011, 496/2011 dated 07-10-2011, 1142/2010 dated 16.10.2010 16-10-2010, 307/2011 dated 08-06-2011, 310/2011 dated 08-06-2011 and 311/2011 dated 08-06-2011 and had ordered absolute confiscation in concealment cases. The said orders were upheld by Commissioner (Appeals) in Order-in-Appeal No. 108/2012 dated 29-02-2012, 71/2012 dated 09-02-2012, 646/2011 dated 14-09-2011, 393/2011 dated 28-09-2011, 696/2011 dated 28-09-2011 and 669/2011 dated 28-09-2011. Finally absolute confiscation was also upheld by Government of India in these cases vide GOI Order No. 361- 366/12-Cus dated 06-09-2012.

8.5 Government in the similar circumstances upheld the absolute confiscation of goods vide GOI Revision order No. 352-354/12-Cus dated 28-08-2012. The said orders were challenged by parties before Hon'ble High Court of Madras vide WP No. 132981 to 32983/12 and Hon'ble High Court vide order dated 12-12-2012 granted interim stay in the matter. Now, Hon'ble high court vide order dated 05-11-2013 has passed the following order and vacated the interim stay order.

*" Order: These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of Mr. B.Kumar Senior Counsel for M/s. S. Palanikumar, advocate for the petitioner in each of the petitions and of Mr. Rajnish Pathiyil SCGSC for the respondents in all the petitions the court made the following order:-*

*The matter is posted today for final disposal of the writ petition. Learned counsel for the petitioner still requests time for arguing the matter. Interim order is vacated. Post this writ petition in the usual course. "*

9. Applicants have stated that their statement were recorded under duress and were not voluntary. In this regard, Government observes that the punchnama is drawn before independent witnesses and same is accepted as correct by applicants by signing the same. Moreover the statement rendered under section 108 of Customs Act, 1962 is a valid admissible evidence in the court of law. There is no evidence brought on record that statements were recorded under duress. As such, the confessional statements of the applicants cannot doubted and ignored. Hon'ble Supreme Court has held in the case of Surjeet Singh Chabra Vs. UOI reported on 1997 (84) ELT 646 (SC)

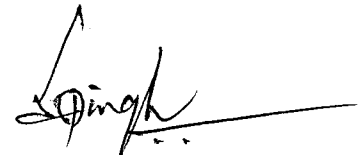
that statement made before customs officer though retracted within 6 days is an admission and binding since customs officers are not police officers under section 108 of Customs Act. In view of principles laid down in said apex court judgment there is no merit in this pleading of the applicants.

10. Government notes that ratio of above cited judgments are squarely applicable as the facts of these cases are identical. The case laws cited by applicants cannot be made applicable to these cases as facts involved are not similar. In view of this position, Government upholds the absolute confiscation of gold as ordered by lower authorities. The penalty imposed in these cases is quite low and same cannot be called harsh keeping in view the gravity of offence. As such, Government do not interfere with the penalty imposed in these cases.

11. In view of above circumstances, Government finds no legal infirmity in the impugned Orders-in-Appeal and therefore upholds them.

12. The revision applications thus stand rejected being devoid of merits.

13. So, ordered.



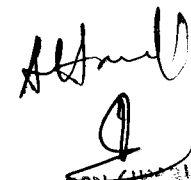
(D.P. SINGH)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

As per Column 2 of table in para 1 of this order.

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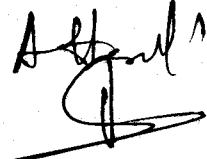


श्री. B. S. शेट्टी (श्री. B. S. Shetty)  
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GOI Order No. 78-87 / 14-Cus dated 17-11-2014

Copy to:

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3. The Commissioner of Customs (Appeals), Custom House, 60, Rajaji Salai, Chennai - 600 001
4. The Additional Commissioner of Customs (Airport), Integrated Air Export Complex, Meenambakkam, Chennai - 600 027
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नई दिल्ली / New Delhi