

REGISTERED  
SPEED POST



**F.No.380/65/B/13-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 2/5/2016

**ORDER NO. 39/2016 DATED 28.04.2016** OF THE GOVERNMENT OF INDIA,  
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF  
INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under Section 129 DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
53/2013 dated 01.02.2013 passed by Commissioner of  
Customs, Bangalore.

Applicant : Commissioner of Customs (Appeals), Bangalore.

Respondent : Shri Archie Maru.

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## ORDER

This Revision Application is filed by Commissioner of Customs Bangalore (hereinafter referred to as the Department) against the Order-in-Appeal No. 53/2013 dated 01.02.2013 passed by Commissioner of Customs (Appeals), Bangalore, with respect to Order-in-Original No. 57/2012 dated 13.08.2012 passed by Assistant Commissioner of Customs, BIA, Bangalore.

2. Brief facts of the case is that Shri Archie Maru, (hereinafter referred to as the respondent) residing at No.114, 1<sup>st</sup> Floor, Pamadi Chambers, 120 Dr. DVG Road, Basavanagudi (Gandi Bazar) Bangalore - 560004 holder of Passport No. Z 202275 arrived at Bangalore International Airport at 23.45 hours on 13<sup>th</sup> July 2011 by flight number MH 192 along with 6.2 Kgs of silver coins imported through his baggage. The said silver coins, which are antiques in as much as they were more than 100 years old, were cleared on payment of duty in foreign currency of US \$ 210 vide Baggage Receipt No. 2668 C dated 14.07.2011 calculated at the rate of Rs.1500/- per Kg and 2% of Education Cess and 1% of Secondary and Higher Education Cess on the said rate under Notification No. 172/94 dated 30.09.1994. Further, from the records it is seen that the passenger has left India on 04.07.2011 and has returned to India on 13.07.2011 and also during the period prior to 13.07.2011 he had not stayed abroad for six months.

2.1 In terms of Customs Notification No. 172/1994 dated 30.09.1994 as amended from time to time, among other things, any passenger of Indian origin can import silver as baggage upto 100 Kgs provided he/she is coming to India after a period of not less than six months stay abroad. However, short visits during these six months shall be ignored if the total duration of such short visits does not exceed 30 days and the passenger has not availed exemption under this scheme at the time of such short visits. Further as per the Antiquities and Art Treasures Act, 1972, no person shall engage in business of selling or offering to sell any antiquities except in accordance with the license granted under the said Act.

2.2 From the facts and circumstances stated above, it was evident that Shri Archie Maru had stayed less than six months abroad and accordingly was not eligible for import of silver in any form in terms of Notification No. 172/1994 cited above. Further, it appeared from the facts that the subject silver coins are more than 100 years old and thus, are antiquities. In terms of Section 111(d) of the Customs Act, 1962, any goods which are imported or attempted to be imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable for confiscation; whereas in terms of Section 111 (o) of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import hereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the condition was sanctioned by

the proper officer shall be liable for confiscation. Further, as per Section 112 (a) read with Section 112 (i), envisages that any person who in relation to any goods does or omits to do any act which act or omission would render goods liable to confiscation under Section 111, shall be liable to penalty. Hence, the 6.2 Kgs of silver coins brought into the country by him were liable for confiscation under Section 111 of the Customs Act, 1962 read with Customs Notification No.172/1994 dated 30.09.1994 and the Antiquities and Art Treasures Act, 1972 and the passenger is liable for penalty under Section 112(a) read with Section 112 (i) of the Customs Act, 1962.

2.3 In view of the above, Show Cause Notice C. No. VIII/48/27/91/2011 AP dated 18.10.2011 was issued to Shri Archie Maru, to show cause to the Deputy Commissioner of Customs, Bengaluru International Airport, Bangalore within 30 days of receipt of the Notice, as to why:

(i) The 6.2 Kgs of silver coins cleared on payment of duty vide Challan No.2668 C dated 14.07.2011 should not be confiscated under Section 111(d), and (o) of the Customs Act, 1962, read with Customs Notification No.172/1994 dated 30.09.1994 and the Antiquities and Art Treasures Act, 1972;

(ii) Penalty should not be imposed upon him under Section 112 (a) r/w Section 112 (i), of the Customs Act, 1962 and Customs duty @ 36.05% amounting to \$210 paid should not be appropriated against the same.

2.4 Later on corrigendum dated 19.01.2012 to Show Cause Notice dated 18.10.2011 was issued and the following allegations were leveled against the pax :-

(i) As per ITC (HS) to Foreign Trade Policy 2009-2014, relating to classification 98030000, all dutiable articles, imported by a passenger/member of a crew, in his baggage is restricted, except as provided under Rule 3(1)(h) of Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 and Rule 3 of the Baggage Rules, 1998, read with Notification No. 136/1990 Cus dt. 20/3/1990, as amended.

(ii) It appears that 6.2 Kgs of silver coins imported by Shri Archie Maru is not a bonafide baggage, as defined under the provisions of Section 79 of the Customs Act, 1962, read with the Baggage Rules, 1998. Further, para 2.2 of the Foreign Trade Policy allows only bonafide household goods and personal effects as part of passenger baggage, as per limits, terms and conditions thereof, as per the Baggage Rules,1998, formed under the provisions of Section 79 of the Customs Act, 1962. Therefore the silver coins weighing 6.2 Kgs imported by Shri Achie Maru are not a bonafide baggage and therefore is restricted in terms of Rule 3 of Baggage Rules, 1998. Hence, the aforesaid silver coins are liable for confiscation in terms of Section 111(d) and 111(o) of the Customs Act, 1962.

(iii) As the afore stated goods imported by the passenger, cannot be considered as bonafide baggage and accordingly, the aforesaid silver coins weighing 6.2 Kgs fall

under Customs Tariff Heading 9803 and are liable to be charged to basic Customs duty @ 35% ad valorem in terms of Notification No. 136/90 dated 20.03.1990 and 2% Education Cess & 1% Secondary and Higher Education Cess on the Customs duty.

(iv) Shri Archie Maru did not know/furnish the value of the stated goods and also did not have/ produce any relevant purchase invoice at the time of clearance of the said goods. Therefore, appropriately, as per the best judgment method of valuation as in Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules 2007, read with Section 14 of the Customs Act, 1962 the total value of goods so imported by him appears to be Rs. 3,62,396/- as detailed below:-

Weight of silver coins imported	Prevailing rate on 14.07.2011	Total value of silver coins	Rate of custom duty	Custom duty + cess	Total Customs duty
6.2 kgs	Rs. 58,451/ per Kg	Rs 3,62,396	35%+3% on 35%	Rs. 1,26,839+ Rs 3,805	Rs. 1,30,644

Para 5 sub Para (i) & (ii) of the SCN dated 18.10.2011 was substituted by the following sub-paras:

- i) The benefit of Customs Notification No. 172/94 dated 30.9.94 should not be denied to Shri Archie Maru as the conditions of the said Notification are not fulfilled.
- ii) The value of Rs 3,62,396/- calculated @ Rs. 58,451/- per Kg on 6.2 Kgs of silver coins imported by Shri Archie Maru, should not be adopted, in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962, for the purpose of calculating the Customs duty thereon;
- iii) The value of Rs 1,12,649/- calculated @ 36.05% on the value of Rs. 3,12,480 on 6.2 kgs of Silver coins should not be demanded under Section 28 of the Customs Act, 1962 and why foreign currency of 210 \$ (equivalent to INR Rs 9555) so collected as Customs duty vide baggage receipt no. 2668 dated 14.7.2011 should not be appropriated towards the above amount so determined.
- iv) Penalty should not be imposed upon him under Section 112(a) read with Section 112(i) of the Customs Act, 1962 for violation of the above provisions of law.

2.5 The show cause notice was adjudicated and the adjudicating authority vide Order-in-Original No. 57/2012 dated 13.08.2012 ordered:-

- a) payment of Customs duty of Rs. 1,30,644/- under Section 28 of Customs Act, 1962.

- b) appropriation of the Customs duty already paid vide Baggage receipt No. 2668C dated 14.07.2011 to the Government account.
- c) payment of differential Customs duty along with applicable interest with effect from 14.07.2011 under Section 28 of Customs Act, 1962.
- d) The impugned goods were held to be liable for confiscation under Section 111(d), 111(o) of the Customs Act, 1962. However, confiscation was not ordered as the goods are already released to Shri Archie Maru.
- e) imposed personal penalty of Rs. 35,000/- on Shri Archie Maru Under Section 112 of the Customs Act, 1962.

3. Being aggrieved by the said Order-in-Original, respondent filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. 53/2013 dated 01.02.2013 allowed the appeal of the respondent and set aside the Order-in-Original.

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

4.1 That the passenger has accepted the assessment of goods as silver coins and paid the duty accordingly, when the benefit under Notification No. 172/1994 was extended to the goods. When it is found that the passenger is not eligible for such benefit of Notification owing to non-fulfillment of condition of stay abroad for not less than six month, and the demand is raised, the passenger has claimed before the Appellate Authority that the goods are not silver coins but are silver coated coins. It is a settled law that what has been admitted need not be proved. That the passenger has admitted the goods to be silver coins and cleared the same as silver coins. That the passenger at the time of appeal cannot claim that the goods are silver coated coins having cleared them as silver coins and it is not proper for the Commissioner (Appeals) to entertain such a contention at this stage. That the findings of Commissioner (Appeals), on valuation of the goods, are based on the contention put forth as a matter of afterthought by the passenger and hence, the same are not acceptable.

4.2 That the Commissioner (Appeals) failed to appreciate that Section 28 of Customs Act, 1962 does not make challenge of assessment as a prerequisite for demand of duties short-levied, not levied etc. The interpretation put forth in the Order-in-Appeal would render Section 28 of Customs Act, 1962 ineffective and redundant.

4.3 Though, the specific clause proposing confiscation of the goods under Section 111 of the Customs Act, 1962 has got omitted in the Corrigendum dated 19.01.2012, the necessary ingredients to invoke the said provision are clearly brought out in the

show cause notice read with the corrigendum. In contention of the same, the applicant has relied upon the following case laws:-

i) N.B. Sanjana, Asst Collector of Central Excise, Bombay and others vs The Elephinstone Spinning and Weaving Mills Co. Ltd., reported in 1978(002) ELT 339(SC)

ii) Fortune Impex v/s Commissioner- 2004(167) ELT A134 (SC)

iii) Jagson International Ltd v/s. Commissioner - 2005(225) ELT A94 (SC)

iv) Kothari & Co. v/s. Collector - 1997(92) ELT A207 SC

that non-mention of particular Section of Customs Act would not vitiate the proceedings particularly when allegations and charges against, the parties are mentioned in clear terms in the show cause notice. That the Commissioner (Appeals) erred in setting aside the penalty imposed under Section 112 ibid.

4.4 That the order passed by the appellate authority is not legal, proper and correct and needs to be set aside.

5. A show cause notice was also issued to the Respondent on 09.09.2013, in response to which the following submissions have been made:

5.1 That the revision application filed by the Commissioner of Customs, Bangalore is a time barred application. That the date of communication of the order is shown as 18.02.2012 whereas the verification certificate attached with revision application bears the Additional Commissioner's signature of dated 14.05.2013. Moreover the date of passing the impugned ORDER-IN-APPEAL is shown as 13.02.2013. In absence of any documentary evidence to show the date of communication of the ORDER-IN-APPEAL, it appears the revision application is filed beyond the stipulated period of three months from the date of communication of the order. In that event and further in the absence of any application by invoking the second proviso to Section 129DD, the present application is liable to be dismissed at the very threshold.

5.2 That the revision application is factually incorrect and is an attempt to twist the true facts. The respondent have never ever accepted the assessment of goods as silver coins and no duty was paid accordingly. The averment that the benefit under Notification No. 172/94 was extended to the goods is also not true.

5.3 That the baggage receipt no. 2668 dated 14.07.2011 is the only document which reveals the assessment and rate of duty. However, no where it is mentioned on the said document the benefit of Notification no. 172/94 is extended to the goods shown as 'Silver faded coins for study' and weight is shown as 6.2 Kgs approximately. The aforesaid inconvertible documentary evidence would prove that respondent had never accepted the assessment of goods as silver coins and benefit of Notification 174/94 was never extended to the goods. Admittedly, except the goods no other

documents like purchase bill was available at the time of assessment and the assessment was evidently made on best judgment basis by the assessing officer.

5.4 That the contention regarding extension of benefit under the Notification No. 172/94 at the time of clearance of goods was neither mentioned in the show cause notice nor in the corrigendum issued to the respondent. In the circumstances that the contention of the applicant at this stage that the passenger had admitted the goods as silver coins is not based on any documentary evidence but also beyond the scope of the show cause notice and the purported corrigendum.

5.5 That there was no allegation either in show cause notice or in purported corrigendum in respect of non-declaration/misdeclaration against the respondent and subject coins were permitted for clearance by the proper officer upon proper assessment of goods and also upon proper valuation as per the best judgment method.

5.6 That no laboratory test was conducted to find out whether the subject coins are made of pure silver, to which Notification No. 172/94 dated 30.09.1994 could be invoked. At most, it could be explained only as a quick method used by the assessing officer to clear the baggage.

5.7 That the contention of the applicant placing reliance on the four judgments of Hon'ble Supreme Court mentioned therein is nothing but misinterpretation of the case laws. After realizing the fact that the proposal made in the show cause notice for confiscation of goods invoking the provisions of Section 111(d) & (o) of the Customs Act, 1962 would not legally survive. The applicant clearly spelt out in the purported corrigendum that 'Para 5 Sub Para (i) & (ii) of SCN dated 18.10.2011 is substituted by the following sub-paras' and accordingly the proposal for confiscation made in the show cause notice was substituted with the proposal for the denial of the benefit of Notification no. 172/94 and also with the proposal for the demand of higher rate of duty under Section 28 of the Customs Act. This express substitution cannot be termed as 'mere omission to quote the specific laws proposing the confiscation of goods'. That the judgments of the Hon'ble Supreme Court relied on by the applicant are not relatable to the facts of the present case and the said judgments would not come in handy for establishing the case of the revision applicant. That the show cause notice and the corrigendum issued are materially different and that fact has been properly appreciated by the Commissioner (Appeals).

5.8 That the Commissioner (Appeals) was perfectly justified in holding that if the goods are not liable for confiscation, the resultant penalty under Section 112 of the Act, *ibid* is not impossible in as much as penalty under Section 112 depends on the confiscation of goods under Section 111. No reasons are assigned in the revision application for making interference of this settled legal position, which is also in tune with the wordings embodied in Section 112 of the Customs Act.

5.9 That in view of above, it is prayed that Revisionary Authority may be pleased to:-

- a) Adjudge the question of maintainability of the revision application as a preliminary issue, basing on the contention of limitation of time and a further reasons mentioned above.
- b) Abstain from annulling the order in appeal and from passing any other order, which are detrimental to the interest of respondent.
- c) To dismiss the revision application upon proper appreciation of the facts and question of law involved in the case.

6. An application for condonation of delay in filing Revision Application is also filed by the Department on the following grounds:-

6.1. That the applicant is preferring an appeal against the Order-in-Appeal No. 53/2013 dated 01.02.2013/13.02.2013 passed by the Commissioner of Customs(Appeals),Bangalore vide which the Commissioner (Appeals) has set aside the Order-in-Original and upheld the present respondent's appeal seeking to set aside the Order-in-Original.

6.2. That the applicant is filing this application for seeking condonation of delay of 01 day in filing the appeal against the impugned Order-in-Appeal No. 53/2013 dated 01.02.2013/13.02.2013.

6.3. That the applicant is seeking condonation of delay in filing the appeal against the Order-in-Appeal No. 53/2013 dated 01.02.2013/13.02.2013 on the grounds that the applicant was engaged in other administrative matters i.e Annual General Transfers in the month of May, 2013.

7. Personal hearing was scheduled in this case on 03.09.2015, 18.09.2015 & 13.10.2015 and was attended by Shri Archie Maru (respondent) himself, who reiterated the earlier counter reply to show cause notice dated 09.09.2013. Nobody, from the Department attended the hearing on any of the above scheduled dates.

8. Government has carefully gone through the relevant case, records/ available in case files, oral & written submission and perused impugned Order-in-Original and Order-in-Appeal.

9. Government first proceeds to decide the issue of limitation in filing of Revision Application after the stipulated period of three months under Section 129DD(2) of the Customs Act 1962, as the Department has filed the Revision Application 02 days after initial stipulated period of three months.

9.1. Government observes that Rule 129DD (2) reads as under:-



*"(2) An application under sub-section (1) shall be made within three months from the date of communication to the applicant of the order against which the application is being made:*

***Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months allow it to be presented within a further period of three months".*

From a perusal of the above proviso it is clear that delay in filing an application can be condoned subject to the satisfaction of the Central Government that the applicant was prevented by sufficient cause from presenting the application within time. The applicant vide their letter C.No. VIII/28/1334/2012-Cus:Prev dated 23.03.2016 informed that they are seeking condonation of delay of 01 day in filing the appeal against the impugned Order-in-Appeal No. 53/2013 dated 01.02.2013/13.02.2013 on the grounds that the applicant was engaged in other administrative matters i.e. annual general transfers in the month of May, 2013.

9.2. From a perusal of records, Government observes that the Revision Application dated 14.05.2013 was received on 21.05.2013 whereas the impugned Order-in-Appeal was received by the Department on 18.02.2013. As such, the applicant filed this revision application in 02 days only after initial 03 months period, which falls within condonable limit of 03 months under Section 129 DD (2) of the Customs Act, 1962. Hence, Government condones the said delay and proceeds to decide the issue on merits.

10. On perusal of records, Government observes that the respondent upon arrival at the Bangalore International Airport at 23:45 hours on 13<sup>th</sup> July 2011 by flight number MH 192 had imported 6.2 kgs of silver coins as baggage. The said silver coins, which are antiques in as much as they were more than 100 years old, were cleared on payment of duty in foreign currency of US \$ 210 vide Baggage Receipt No. 2668 C dated 14.07.2011 calculated at the rate of Rs.1500/- per Kg and 2% of Education Cess and 1% of Secondary and Higher Education Cess on the said rate. A show cause notice dated 18.10.2011 and corrigendum dated 19.01.2012 was issued to the respondent demanding duty after denying benefit of the said Notification among other things as the respondent had stayed less than six months abroad and accordingly was not eligible for import of silver in any form in terms of Notification No. 172/1994 cited above. The adjudicating authority vide Order-in-Original No. 57/2012 dated 13.08.2012 ordered payment of Customs duty of Rs. 1,30,644/- under Section 28 of Customs Act, 1962, appropriation of the Customs duty already paid vide Baggage receipt No. 2668C dated 14.07.2011 to the Government account, payment of differential Customs duty along with applicable interest with effect from 14.07.2011 under Section 28 of Customs Act, 1962, held the impugned goods liable for confiscation under Section 111(d), 111(o) of the Customs Act, 1962 and imposed

personal penalty of Rs. 35,000/- on Shri Archie Maru under Section 112 of the Customs Act, 1962. Commissioner (Appeals) vide impugned order allowed the appeal of the respondent and set aside the Order-in-Original. Now the Department has filed this Revision Application under Section 129 DD of the Customs Act, 1962 before the Central Government on the grounds mentioned at para 4 above.

11. Government observes that the main issues of contention are whether the goods have been rightly valued as silver coins and not silver coated coins; whether demand can be raised without reviewing the assessment order; whether goods can be confiscated without specific clause proposing confiscation and whether penalty under Section 112 ibid is imposable.

12. Government notes that the Department in its grounds of revision has stated that the passenger himself has accepted the assessment of the impugned goods as silver coins valued at Rs. 3,62,396/- which were cleared on payment of duty in terms of Notification No. 172/94 dated 30.9.94 at Rs. 1500/kg along with applicable cess. The respondent accepted the value of coins at Rs. 3,62,396/- under Rule 9 of Customs Valuation Rules, 2007 read with Section 14 of Customs Act, 1962 and paid duty of USD 210 at a concessional rate, thereby accepting the assessment of goods as silver coins. However, the respondent in his counter reply submitted that he has never accepted the assessment of goods as silver coins and duty was not paid accordingly. Government notes that it is a fact on record that on duty payment receipt the description of the impugned goods is mentioned as silver faded coins (study purpose) and duty was paid in convertible foreign currency amounting to USD 210. The duty payment receipt bears the signature of the respondent and there is no evidence on record to show that he paid the duty under duress or not of his free will. In fact the respondent had signed the duty payment receipt in token of having accepted the description of goods as silver coins besides levy of duty of USD 210 at the rate of Rs 1500 per kg on 6.2 kgs of silver coins in convertible foreign currency (which is as per Notification No. 172/94). Therefore, Government opines that the contention of the respondent that he had never accepted the assessment of goods as silver coins is not tenable. Moreover the observation of the Commissioner (Appeals) that the department has confirmed the duty without checking the purity of silver is also not tenable as the respondent has not objected to it at the time of clearance and is nothing but an afterthought by him before the Commissioner (Appeals). It is a settled position of law that what is accepted need not be proved. Government finds that the impugned goods have rightly been assessed as silver coins.

13. The Department has contended that the Commissioner (Appeals) failed to appreciate that Section 28 of the Customs Act, 1962 does not make challenge of assessment as a pre-requisite for the demand of duties short levied, not levied etc.

13.1 Section 28 of the Act ibid reads as under:-

*'Section 28-Recovery of duties not levied or short-levied or erroneously refunded-(1) Where any duty has not been, levied or short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-*

*(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to Show Cause why he should not pay the amount specified in the notice;*

*(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of*

*(i) his own ascertainment of such duty; or*

*(ii) the duty ascertained by the proper officer the amount of duty along with the interest payable thereon under Section 28AA or the amount of interest which has not been so paid or part-paid".*

From a plain reading of the above provisions Government observes that it is clear that whenever any duty has not been paid or has been short paid the proper officer shall within one year from the relevant date demand such duty from the person chargeable with the duty. It provides for the recovery of any duty which has not been paid, short paid or erroneously refunded. No review order is required to be passed for issue of demand for any short payment as per the provisions of the said Section.

13.2 This view of Government also finds support in the ruling of the Hon'ble Supreme Court in the case of Union of India vs Jain Shudh Vanaspati Ltd 1996(86)ELT 460 (SC) where the Apex Court held that show cause notice under Section 28 of the Customs Act, 1962 for demand of duty can be issued without revising the assessment order. Commissioner (Appeals) has thus erred in holding that challenge of assessment order is a prerequisite for raising demand for non levy, short levy of duty.

13.3 Government notes that the impugned goods were cleared on payment of duty at a concessional rate of duty under a conditional notification applicable to bonafide passenger coming to India after a stay of not less than six months abroad. In the present case, the respondent did not fulfill this condition and thus was not eligible to import silver as brought by him as baggage and was neither eligible for the benefit of the said notification. Government therefore holds that the differential duty has been rightly demanded under the provisions of Section 28 of the Act.

14. Commissioner (Appeals) has also held that if proposal for confiscation is not made in the show cause notice the offended goods cannot be confiscated. Government observes that the show cause notice dated 18.10.2011 read with corrigendum dated 19.01.2012 clearly describes the violations made by the

respondent under Section 111 (d) and (o) of the Customs Act, 1962. The respondent in the present case stayed abroad for less than 6 months and was accordingly not eligible for import of silver as baggage let alone for benefit of Notification 172/94. Further as per the Antiquities and Art Treasures Act, 1972 no person shall engage in business of selling or offering to sell any antiquities except in accordance with the license granted under the said Act. It is thus seen that though the provisions for ~~confiscation of the goods under Section 111(d) and 111(o) may not find specific~~ mention in the concluding para of the Show Cause Notice, the provisions have clearly been invoked in the show cause notice along with reasons thereof.

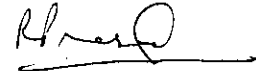
14.1 In this regard, Government observes that the liability of the goods for confiscation cannot be ignored on the mere technical ground that the Section 111 of the Customs Act is not mentioned in the concluding para of the show cause notice. Also it is not the case that the respondent was not put on notice regarding the charges against him. In the present case, exact nature of the contravention has been clearly spelt out in the show cause notice. Government places reliance in support of the above averments in the case of Commissioner Customs, Amritsar vs ATM International 2008(222)ELT 194 (P&H). The Apex Court in case of Jagson International Ltd Vs Commissioner 2005(225) ELT A 94 (SC) upheld Tribunal's view that non mention of statutory provisions is not fatal when there is sufficient averment in the show cause notice. Similarly in the case of Fortune Impex vs Commissioner 2004(167)ELT A134(SC) the Apex Court again upheld the Tribunal's findings that non mention of particular Section of Customs Act will not vitiate the proceedings when allegations and charges were mentioned in clear terms in show cause notice.

15. Government notes that the applicant has also contended that the Commissioner (Appeals) has erred in setting aside the penalty imposed by the original adjudicating authority under Section 112 of the Act, *ibid* on the grounds that goods are not liable for confiscation. Government observes that Section 111 of Customs Act, 1962 deals with confiscation of improperly imported goods. In this case the original authority has clearly held the impugned goods to be liable for confiscation under Section 111(d) & (o) of the Customs Act, 1962 but did not order for actual confiscation of the goods as the same were already released to the respondent. Further, in terms of Section 112 penalty shall be imposed on a person involved in acts of omission or commission, in relation to any goods which renders such goods liable to confiscation under Section 111 of the said Act, or abets the same, or acquire possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under the said Section 111. As Commissioner (Appeals) has erred in holding that the goods have not been held to be liable for confiscation, Government thus holds that penalty is rightly imposed under Section 112 of the Act *ibid* by the original authority.

16. In view of the above facts and circumstances, Government sets aside the impugned order of Commissioner (Appeals) being devoid of merits and restores the Order-in-Original.

17. The Revision Application is thereby allowed.

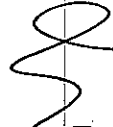
18. So, ordered.



**(RIMJHIM.PRASAD )**

Joint Secretary to the Government of India

Commissioner of Customs,  
C.R. Building, P.B. No. 5400,  
Queens Road,  
Bangalore- 56001



ATTESTED

सहायक सचिव  
रिज्जिम प्रसाद  
कमिश्नर (अपील) (क.स.)  
मुंबई/१५६००१/१५६००१

**ORDER NO. 39/2016 DATED 28.04.2016**

Copy to:-

1. The Commissioner of Customs (Appeals), Bangalore, C.R. Building, P.B. No. 5400, Queens Road, Bangalore.
2. Mr. Archie Maru, No. 114, 1<sup>st</sup> Floor, Pamadi Chambers, 120 Dr. DVG Road, Basavanagudi (Gandi Bazar), Bangalore-560004.
3. The Additional Commissioner of Customs, Central Revenue Building, P.B. No. 5400, Queens Road, Bangalore.
4. PA to JS (RA)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED



( SHAUKAT ALI )  
UNDER SECRETARY (RA)

शौकत अली  
Under Secretary (RA)  
Under Secretary (RA)