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**SPEED POST**

**F.No.372/03/B/14-RA-CUS**

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. 16/5/16.....

**ORDER NO. 40/2016-CUS DATED 10.05.2016** 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. 30/CUS(Bag)/KOL (AP)/2013 dated 06.12.2013 passed by Commissioner of Customs (Appeal), Kolkata.

Applicant : Shri Abdul Salam Chhemundi.

Respondent : Commissioner of Customs, Customs House, Kolkata.

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## ORDER

This Revision Application is filed by Shri Abdul Salam Chamundi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 30/Cus(Bag)/Kol(AP)/2013 dated 06.12.2013 passed by Commissioner of Customs (Appeals) Kolkata, with respect to Order-in-Original No. 43/2013 dated 01.05.2013 passed by Additional Commissioner of Customs, Kolkata.

2. Brief facts of the case are that acting on a specific intelligence watch was kept on a passenger named Shri Abdu Salam Chamundi s/o Shri Mohammad Bapu Chamundi, holder of Indian passport No. Z 2380163 dated 21.02.2012 issued from Dubai, who arrived at N.S.C.B.I. Airport, Kolkata by flight No. QR-294 from Doha on 21.06.2012. On arrival, Shri Abdul Salam Chamundi, walked through green channel of Customs with his two pieces of hand baggage, he was intercepted at the exit gate while handing over the disembarkation card (Customs portion) to the Gate Officer. The Customs portion of disembarkation card of the passenger reflected that he did not declare anything against the column "Total value of the imported goods" Being not satisfied, the officers examined his two pieces of hand baggage in presence of the applicant and two independent witnesses but nothing incriminating was recovered. A personal search was conducted in the presence of a gazetted officer and two independent witnesses. As result of personal search, it was found that passenger had concealed six poly packets in the lower portion of his two legs inside the pair of socks worn by the applicant wrapped with skin colour knee caps thereon. The said six polypackets were opened by the Customs officers in presence of applicant and two independent witnesses, which resulted in the recovery of 3kgs and 350 grams of ornaments made of yellow metal believed to be gold, in chain form of different sizes and design. Apart from that, currency of foreign origin 1 Dinar and 3105 Dirham were also recovered from the wallet carried by Shri Abdul Salam Chamundi. He was asked to produce any licit documents for the acquisition/possession and or importation of the same but he failed to produce the same and could not give satisfactory reply.

2.1 After due process of law, the ornaments as mentioned above were seized under the provision of Section 110 of the Customs Act, 1962 read with Foreign Trade(Development & Regulations) Act, 1992 on the reasonable belief that those goods were attempted to be smuggled/illegally imported into India by Shri Abdul Salam Chamundi by misusing the green channel facility and by way of concealing the gold ornaments on his person, rendering the impugned goods liable for confiscation under Section 111(d),(i), (l) & (m) of the Act, *ibid*. The details of the goods seized are as follows:

Sl.No.	Articles seized	Nos./Pcs	Description
1.	Ornaments made of yellow Metalbelieved to be Gold	75	Ornaments in chain form weighing 302 grams made of yellow metal

2.	Ornaments made of yellow Metal believed to be Gold	107	Ornaments in chain form weighing 714 grams made of yellow metal
3.	Ornaments made of yellow metal believed to be Gold	152	Ornaments in chain form weighing 824 grams made of yellow metal
4.	Ornaments made of yellow metal believed to be Gold	77	Ornaments in chain form weighing 308 gram made of yellow metal believed to be Gold
5.	Ornaments made of yellow metal believed to be Gold	90	Ornaments in chain form weighing 1002 grams made of yellow metal
6.	Ornaments made of yellow metal believed to be Gold	61	Ornaments in chain form weighing 200 grams made of yellow metal
7.	Currency of foreign origin	1 3105	Dinar Dirham
8.	Wallet	1 pc.	Brown coloured and marked "Jovial"
9.	Socks	1 pair	Black Colour
10.	Knee caps	2 pairs	One pair of skin coloured Marked 'Active Support Medium' and another beige coloured with blue stripes.
11.	Plastic wrapper	6pcs	Yellow coloured plastic wrapper having mark (i) & (ii) as 'XYZ', (iii) 'KIRAN', (iv) 'KIRN' (v) 'R' & (vi) unmarked.
12.	Boarding pass	02pcs.	Recovered from the possession of the pax.
13.	Disembarkation card	01pc.	Do
14.	Air Ticket	01pc.	Do

As such, the goods at Sl. No. 1-6 had been seized under the provisions of Section 110 of the Customs Act, 1962 on the reasonable belief that those were being smuggled into India in contravention of the provisions of the Act ibid and hence were liable for confiscation under Section 111(d),(j),(l) &(m) of the Customs Act, 1962. The goods at sl.no. 7,8,12,13 and 14 had been seized under the provisions Section 110 of the Act, ibid on a reasonable belief, those would be relevant to the proceedings of the case. The goods at sl.no. 9,10 and 11 had been seized on a reasonable belief those were used to conceal the goods mentioned at sl.no. 1 to 6 and were liable to confiscation under Section 119 of the Customs Act, 1962.

2.2. Statement of the applicant was recorded on 21.06.2012 under Section 108 of the Customs Act, 1962 in which he inter-alia stated that he was engaged in the profession of trading of garments from Mumbai to Dubai; that he had arrived at NSCBI Airport Kolkata from Dubai via Doha by flight no. QR 294 dated 21.06.2012; that he was intercepted at the exit gate of the Customs arrival hall by the Customs officers while he was passing through the green channel; that on being asked by the Officers

whether he was carrying any dutiable goods to which he replied in the negative; that his baggage was examined in the presence of two independent witnesses but nothing incriminating was found; that his personal search in presence of a Gazetted officer and two independent witnesses was conducted after serving him notice under Section 102 of the Customs Act, 1962 and officers recovered ornaments made of gold of different weights kept in six yellow plastics packets as mentioned in the inventory list dated 21.06.2012 to the panchanama; that those six packets were concealed by him in the socks covered by the knee caps; that he had intentionally and deliberately concealed the gold ornaments for the purpose of smuggling those into India to hoodwink the Customs officers and did not keep those in the baggage to avoid being apprehended during X-ray of the same; that in an earlier occasion also he had carried such types of ornaments and arrived at Mumbai Airport from Dubai via Doha; that initially he was working in Dubai in different shops such as Damas Jewellery shop; that for the last one year he had been working in trading of garments from Mumbai to Dubai; that on 21.06.2012 while going from Goa to Dubai he was directed by one person named Damodi, resident of Bhatkal, whose phone no. was 08904433031, to pick up the gold ornaments from Baffle Jewelers, Gold City building, Deira, Dubai and carried the same and handed over the same to Shri Damodi on arrival; that in the month of February 2012 he had carried the gold ornaments for Damodi from same jeweler at Dubai; that Shri Damodi had promised to pay him Rs. 40,000/- on handing over those ornaments to him. In his subsequent statement dated 22.06.2012 under Section 108 of the Act, ibid the applicant stated that he did not know the person who instructed him to carry the gold ornaments from Dubai to India; that even he had never seen the person; that he was instructed from Dubai that the person to whom the gold ornaments was to be delivered at Mumbai, would contact him on his mobile no.; that he would have got a commission of Rs. 40,000/- for the said consignment apart from the expenses.

2.3. A Government approved valuer Shri A.B. Kundu was called upon on 21.06.2012 and he valued the goods (Gold Ornaments) as below :

Sl.No.	Articles Seized	Description	Net.Wt.	Value(Rs.)
1.	75 pcs. Of gold chains	18K Gold	302gms	7,15,740/-
2.	77pcs of gold chains	18K Gold	308.500gms	7,13,140/-
3.	107 pcs of gold chains	18K Gold	719.500gms	17,05,215/-
4.	152pcs.of gold chains	18K Gold	830.800gms	19,68,996/-
5.	90 pcs. of gold chains	22K Gold	1006.200gms	29,17,980/-
6.	61pcs. of gold chains	18K Gold	200.500gms	4,75,185/-
<b>Total</b>	<b>562 pcs. of gold chains</b>		<b>3367.500 gms</b>	<b>85,14,265/-</b>

2.4 In this case the applicant was trying to clear the goods in a clandestine manner concealed in his person through green channel by misusing the green channel facility. On earlier occasions also as admitted by him, he had carried similar consignments and he was an habitual offender. The applicant was arrested under Section 104 of the Customs Act, 1962 with the prior permission of competent authority. He was produced

before the Ld. C.J.M. of Barasat Court on 22.06.2012 and was granted bail by the Ld. C.J.M. on the same day.

2.5 On investigation of the mobile no. given by the applicant, it was revealed that the number belonged to one Shri Munawar Hussain Damdaleu, Anjum Nasheman, Navayat Colony, Bhatkal. However, enquiries made with his parents residing at his address revealed that Shri Munawar Hussain Damdaleu was residing along with his family at JP Nagar Bangalore and they were not aware about his complete address.

2.6 A Show Cause Notice dated 04.12.2012 was issued to Shri Abdul Salam Chamundi proposing confiscation of goods mentioned at Sl. No. 1 to 6 of the Table under Section 111(d), (j), (i) and (m) of the Customs Act, 1962, confiscation of goods at sl.no. 9,10 & 11 of the Table under Section 119 of the Customs Act, 1962 and imposition of penalty under Section 112(a) and (b) of the Customs Act, 1962 for the confiscation of provisions of Customs Act, 1962. Upon adjudication of the Show Cause Notice, the Additional Commissioner of Customs passed Order-in-Original No. 43/2013 dated 01.05.2013 and ordered:-

a. Confiscation of 562 pcs of gold chains valued at Rs. 85,14,265/- under Section 111(d), (j), (i) and (m) of the Customs Act, 1962 with an option to redeem the same on payment of a redemption fine of Rs. 25,00,000/- and duty as applicable. and confiscation of goods at sl. No. 9 to 11 of the table under Section 119 of the Customs Act, 1962.

b. Imposition of penalty of Rs. 10,00,000/- under Section 112 (a) and (b) of the Customs Act, 1962 on Shri Abdul Salam Chamundi for the act of commission and omission on his part for his attempt to illegally import the said goods into the country.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal No. 30/Cus (Bag)/Kol(AP)/2013 dated 06.12.2013 upheld the order of the adjudicating authority.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 129 DD of Customs Act, 1962 on the following grounds:-

4.1: That the gold jewellery was not prohibited in nature and was not mentioned in the list of prohibited items in the Foreign Trade (Development and Regulation) Act.

4.2. That regarding the issue of the gold jewellery the adjudicating authority had already provided option for redemption fine under Section 125 of the Act ibid against payment of Customs duty, interest and redemption fine. That they need to be allowed for re-export. That once subject goods are redeemed there is no problem in allowing export as per law. That the extent of redemption fine and penalty imposed is too harsh to be workable hence may be reduced to the minimal.

4.3. That the applicant was arrested by the department and the impugned goods were in custody of the department ever since 21.06.2013. That he has suffered financially and mentally.

4.4. That the disposal action for the seized goods was initiated by the seizing unit by filing a petition in Learned Court of Chief Magistrate, Basarat, West Bengal. That presently the seized goods are under process of disposal by disposal unit. That the goods are not absolutely confiscated therefore the disposal of goods by the department is not at all justified.

4.5. That the goods are being non notified goods were liable for re-export.

4.6. The applicant relied on the following case laws:-

- Bio-Chemical Pharmaceuticals Ltd Vs Commissioner of Customs Mumbai 2005 (186) ELT 564 (Tri Mum)
- V.P. Hameed Vs Collector of Customs, Bombay 1994 (73) ELT 425 (Tri)
- Kader Mydin Vs Commissioner of Customs (Prev), West Bengal 2001(136) ELT 758 (Tri Kol)

5. A show cause notice was also issued to the Respondent Commissionerate on 14.12.2015, in response to which the following submissions have been made:-

5.1. That the contention of the applicant that gold is not a prohibited item does hold ground in light of the judgement of Om Prakash Bhatia Vs Commissioner of Customs 2003 (6) SCC 161 which states that :-

*"10-From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods is not complied with, it would be considered to be prohibited goods."*

5.2. That applying the ratio of the judgement by the Supreme Court in Om Prakash Bhatia case, since the applicant is not an eligible passenger who did not satisfy the conditions laid down in Notification No. 12/2012-Cus dated 17.03.2012, the seized gold imported by the applicant becomes prohibited goods.

5.3. That the applicant neither in reply to the show cause notice nor during the personal hearing ever asked for re-export. That during appeal he requested for re-export of the goods after release on payment of fine, penalty and duty. That the Commissioner (Appeals) held that the impugned goods may be re-exported after redemption under Section 125 ibid as imposed by the adjudicating authority.

5.4. That imposition of quantum of fine and penalty is purely in exercise of discretion by quasi judicial authority.

- 5.5. That the goods falls under category-II of the Disposal Manual and disposal action is initiated in accordance with the provisions of Customs Act, 1962. That the certification of the said goods is done as per laid down procedure under Section 110 (1A) of the Customs act, 1962.
- 5.6. That the contention of the applicant is not correct that gold jewellery may be allowed on redemption fine with nominal penalty in as much as there are plethora of case laws wherein it is stressed upon that the gold imported by way of concealment should be confiscated absolutely.
6. Personal hearing scheduled in this case on 20.01.2016 was attended by Shri V.K. Puri, Advocate on behalf of the respondent who stated that the export of the impugned goods be allowed in view of similar decisions by the Commissioner (Appeals) in similar cases and Revisionary Authority as in case of Mukadam Rafique Ahmed 2011 (270) ELT 447 (GOI); that a lenient view be taken for the fine and penalty; that the impugned goods are jewellery (chains) and not gold in primary form. Nobody attended the hearing on behalf of respondent commissionerate.
7. Government has carefully gone through the relevant case records available in case file, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.
8. On perusal of records, Government observes that on 21.06.2012 on the basis of information officers of Customs at Kolkata Airport intercepted and examined in detail the baggage of Shri Abdul Salam Chamundi who arrived from Doha by Flight No. QR 294. The examination under panchnama resulted in recovery of non bonafide baggage items such as 562 pieces of gold chains valued at Rs. 85,14,265/- concealed on the body of the passenger. The applicant had not-declared the goods and hence the goods were seized under reasonable belief that these constituted non bonafide baggage which were smuggled into the country and therefore, liable for confiscation under the provisions of the Customs Act, 1962. In his voluntary statement recorded under Section 108 of the Customs Act, 1962 he admitted the he was not the owner of the impugned goods but just a carrier working for a monetary gain. A Show Cause Notice was issued to him and subsequently the case was adjudicated vide Order-in-Original No. 43/2013 dated 01.05.2013 ordering confiscation of seized goods valued at Rs. 85,14,265/- with an option to redeem the same on payment of redemption fine of Rs. 25,00,000/- and imposition of personal penalty of Rs. 10,00,000/- on the applicant. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No.30/Cus(Bag)/Kol(AP)/2013 dated 06.12.2013 rejected the appeal of the applicant. Now the applicant has filed this revision application under Section 129 DD of the Customs Act, 1962 before the Central Government on the grounds stated at para 4 above.
9. Government observes, that it is an established fact that the impugned goods were not declared to the Customs under Section 77 of the Act and the passenger

passed through the green channel. Even upon being asked if he had anything to declare, he answered in the negative. However, upon his personal search 562 pieces of gold chains carefully concealed on his person were recovered and the passenger admitted in his statement that he was carrying the gold without paying duty as a carrier for a monetary consideration. The passenger was not entitled to import the impugned gold under Rule 6 of the Baggage Rules (which allows import of only specified quantity of gold jewellery for eligible category of passengers). Further import of goods in trade quantity through baggage mode is not permissible in terms of para 2.20 of EXIM Policy 2004-2009 and violates provisions of Section 11 (1) of Foreign Trade (Development and Regulations) Act, 1992.

10. As regards, whether the import of the impugned good is prohibited or not, Government notes that prohibited goods have been defined in Section 2 (33) of the Customs Act, 1962 as under:-

*" 2(33) – Definition – "Prohibited goods means" any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. "*

10.1. The Apex Court in the case of Om Prakash Bhatia Vs. Commissioner of Customs Delhi reported in 2003(155) ELT 423 (SC) has categorically held that if there is any prohibition of import or export of goods under the Customs Act, 1962 or any other law for the time being in force the goods would be considered to be prohibited goods and this prohibition would also operate on such goods the export or import of which is subject to certain prescribed condition if the conditions are not fulfilled. Further in the case of Samyanathan Murugesan vs Commissioner reported in 2010(254) ELT A15 (SC) the Hon'ble Supreme Court has held that the passenger did not fulfill the eligibility criteria it makes the imported gold prohibited goods.

10.2. The applicant was neither eligible to import gold nor did he declare the impugned goods that were in a substantial/commercial quantity. Instead he had carefully concealed them on his person to smuggle it into the country and to hoodwink the authorities. Hence, the same cannot be treated as bona fide baggage in terms of Section 79 of the Act *ibid*. The said gold is imported in violation of provisions of Section 77, 79, of Customs Act, 1962; para 2.20 of Exim Policy of 2009-14 and provisions of Section 3 (3) and 11(1) of Foreign Trade (Development & Regulation) Act, 1992. The same would thus appropriately constitute "prohibited goods" liable to confiscation under Section 111 (d), (j), (l) and (m) of the Customs Act, 1962.

10.3. Therefore, Government finds no reason to interfere with the order of the lower authority ordering confiscation of the impugned gold under Section 111 (d), (j), (l) and (m) of the Act *ibid*.

11. Government further finds that in view of the facts and circumstances of the case redemption fine and penalty under relevant provisions of the Act *ibid* has been rightly



imposed on the applicant for the offence committed. The quantum of penalty is reasonable and commensurate to the nature of the offence where the gold has been sought to be smuggled by deliberate concealment. Therefore, the plea of the applicant that redemption fine and penalty imposed is too harsh is not tenable.

12. The applicant has also requested to permit re-export of impugned goods. Government finds that the provision for re-export of baggage is available under Section 80 of the Customs Act, 1962. However, this Section is applicable only to cases of bonafide baggage declared to Customs, which the applicant had failed to do. Thus the applicant is not eligible for re-export of the impugned goods. In similar circumstances, Government had denied re-export of the goods in case of Hemal K. Shah 2012(275)ELT 266 (GOI). Further the Apex Court in the case of CC Kolkata Vs Grand Prime Ltd 2003 (155) ELT 417 (SC) had supported the view that goods which are liable for confiscation cannot be allowed to be re-exported. The case laws cited by the applicant in this regard are not relevant to the present case as the facts and circumstances are different. Hence Government finds no merit in the request of the applicant to allow the re-export of the impugned goods.

13. The applicant has also pleaded that the initiation of disposal action for the seized goods is not justified as the goods are not absolutely confiscated. Government observes that issue related to disposal of seized goods is not a subject matter of either the impugned Order-in-Original or the Order-in-Appeal and is also beyond the purview of the Revisionary Authority in terms of Section 129 DD read with proviso to Section 129 A (1) of the Customs Act, 1962.

14. In view of the above facts and overall circumstances, Government finds no merit in the Revision Application filed by the applicant against the impugned Order-in-Appeal.

15. The Revision application is rejected being devoid of merits.

16. So ordered.

  
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

Shri Abdul Salam Chamundi,  
S/o Shri Mohamed Bapu Chamundi,  
Chamundi House, No. 18, Bhatkal-581320,  
Uttar Kannada, Karnataka.

  
ATTESTED

**ORDER NO. 40/2016-CUS DATED 10.05.2016**

Copy to:

1. The Principal Commissioner of Customs, Netaji Subhash Chandra Bose International Airport, Kolkata.
2. The Commissioner of Customs (Appeal), 3<sup>rd</sup> Floor, Custom House, Strand Road, Kolkata-700001
3. The Additional Commissioner of Customs, Netaji Subhash Chandra Bose International Airport, Kolkata.
4. Shri V.K. Puri, Advocate, A-184, Sarita Vihar, New Delhi-110076
- ✓ 5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED



(Shaukat Ali)

Under Secretary to the Government of India

शुकात अली  
अधीक्षक (आपल),  
कस्टम हाउस (3<sup>र</sup> फ्लोर)  
अन्तःपुराण (49)