

**REGISTERED
SPEED POST**



F.No. 373/34, 37-39, 49/B/2013/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. 6-1-14.

Order No. 7-11/14-cus dated 02-01-2014 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. passed by the Commissioner of Customs (Appeals), Custom House, Chennai, as mentioned in Column 3 of the table in para 1 of this order.
- Applicant : As per column 2 of table in para I of this order.
- Respondent : Commissioner of Customs, Chennai Airport and Air Cargo Meenahakkam, Chennai.

ORDER

These 5 revision application have been filed by the applicants c/o Shri Palanikumar, Advocate, No. 10, Sunk Ram Street, Chennai-600 001 against the Orders-in-Appeal Nos. passed by the commissioner of customs, (appeals) Chennai with respect to Orders-in-Original Nos. as detailed in the following table :-

Sl.No. (1)	R.A. No. & Name of the applicant (2)	O-I-A No. & Date (3)	O-I-O No & Date (4)	Description of goods & value thereof (5)	RF/PP as per O-I-o (in Rs.) (6)	RF/PP as per O-I-A (in Rs) (7)
1.	373/34/B/13/RA Mohammed Fareed Srilankan origin pax	342/2013 12.3.2013	967/12 17.12.2012	Gold chain 99.1 gms. 2,99,778/-	R.F 1,50,000/- PP 30,000/-	No change
2.	373/37/B/13/RA Periasamy Soundararajan Srilankan	320/13 28.2.2013	168/2012 10.3.12	White colour gold in bracelet 107 gms.2,78,735/-	RF 1,40,000/- PP 28,000/-	-do-
3.	373/38/B/13/RA Kanapathy Chandrasekaran Srilankan	321/13 28.2.2013	266/12 25.4.2013	Silver granule 1509 gms 86,187/-	Absolute confiscation PP 10,000/-	-do-
4.	373/39/B/13/RA A. Damodaran Srilankan	345/13 12.3.2013	548/2012 12.9.2012	Crude gold rings 23.50 gms. 75,952/-	Absolute confiscation PP 7,500/-	-do-
5.	373/49/B/13/RA Mani K.V.Pillai Indian	548/13 20.3.2013	236/12 11.4.2012	Gold Chain 80 gms. 2,22,068/-	RF 1,11,000/- PP 22,000/-	-do-

2. Briefly stated facts of the case are that the applicants arrived at Chennai Airport from abroad. They were intercepted at the exit gate by the Customs officers. On examination/search of their baggage & persons goods description quantity & value as shown at column no 5 above table were recovered. The applicant at Sl. No. 1 – 4 were Srilankan national whereas applicant at sl. No. 5 was Indian. The applicants were not eligible passengers to import gold in terms of Notification No. 31/2003 Cus, Dated 1.3.20003. Import of gold by non eligible passengers that too undeclared does not constitute part of bonafide baggage in terms of section 79 of the Customs Act, 1962 and violates the provisions of baggage Rules 1998, section 77 79 & 11 of Customs Act 1962, read with para 2.20 of FTP 2009- 2014 section

3(1) & 11 (1) of foreign Trade (Development & Regulation) Act 1992. The adjudicating authority after following due process of law confiscated the imported gold under section 111(d) (l)(m) of the Customs Act, 1962 in the case of applicant at sl. No. 1,2 & 5 of the above table with an option to redeem the same on payment of redemption fine as shown at column No.(6) of above table. However, goods in the case of applicant no. 3 & 4 were absolutely confiscated under section 111(d) (l) (m) of the customs Act, 1962. Penalty as shown in the column no 6 of above table were also imposed on the applicants under section 112 of the Customs Act, 1962.

3. Being aggrieved by the said order-in-originals, applicant filed appeal before Commissioner (Appeals), who rejected the appeals and upheld the Order-in-Original.

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

4.1 Order of the respondent is against law with of evidence and circumstances and probabilities of the case; the applicants have made first visit to India; they had declared orally that they were wearing gold jewellery showed to the officer, having seen the same and question of declaration does not arise. Further when law is permissible to make oral declaration, office has been registered for non fill up the declaration card is against law and contrary to the guideline given but the CBEC circular no 9/2001.

They have cited a number of case laws in support of their defence. The applicants finally pleaded to set aside the order of absolute confiscation of goods to allow re-export of the same on payment of redemption fine & reduce Redemption fine & personal penalty.

5. Personal hearing was scheduled in these cases of 25.6.2013, 24.7.2013 and 31.10.2013. Nobody appeared on behalf of applicant and respondent.

6. On perusal of records, Government observes that the applicants who were not eligible passenger to import gold under notification No 31/2003 Cus. Dated 1.3.2003 imported gold through baggage mode and did not declare the same before Customs as required under section 77 of Customs Act, 1962. Import of gold by non eligible passengers that too undeclared does not constitute bonafide baggage in terms of section 79 of Customs Act, 1962 and violates the provisions of Baggage Rules 1998, section 77, 79 & 11 of Customs Act, 1962 read with Para 2.20 of FTP 2009-2014. Section 3(1) & 11(1) of Foreign Trade (Development & Regulations) Act, 1992. The Adjudicating Authority after following due process of law confiscated the gold absolutely in the case of applicant at the sl. No. 3 &4, and confiscated the imported gold in the case of applicants at sl. No. 1, 2 & 5 of above table with option to redeem the same on payment of RF as shown at column no. 6 of above table. Penalty as shown at column no.6 was also imposed on the applicants under section 112 of Customs Act, 1962. In appeal, the commissioner (appeals) rejected the appeals. Now in these revision application the applicants

have disputed the order of Commissioner (Appeals) and pleaded to allow re-export of goods and reduce RF & PP. They have cited the following case laws in support of their defence:-

(a) 2011 (270) ELT 447 (GOI) MUKUADM RAFUQYE AHMED order no. 198/2010-Cus dated 20.05.2010 in F.No. 375/14/B/2010-RA-CUS),

(b) OA. No. 517 of 2011 Smt. Hameetha Begam, the Hon'ble Additional Commissioner of Customs (air) Chennai,

(c) OS. No. 383/08 Air datd 29.5.2008 in C4/221/0/2008-AIR CCUS/423/2008 dated 30.10.2008 Sh. Velu Hariharan (Srilankan national).

(d) OS. No. 388/08 Air dated 29.05.2008 in C4/447/0/2008 Air CCUS/428/2008 dated 30.10.2008 Shri Mohamed Subai Siras Mohamed (Srilankan national) and

(e) GOI Order No. 283-287/2012-Cus dated 31.3.2012.

7. On perusal of records Government notes that the applicant at Sl. No. 1-4 were Srilankan national and applicant No. 5 was Indian national. All the applicant were not eligible passenger to import gold in terms of Notification No. 31/2003 dated 1.3.2003. However, there was no previous offence registered against them and there was no case of ingenious concealment. The adjudicating Authority under the similar circumstances had allowed redemption of goods on payment of Redemption Fine in the case of applicant No. 1, 2 & 5 whereas goods in the case of applicant No. 3 & 4 had confiscated the gold absolutely. Therefore, the Adjudicating Authority has not maintained consistency and uniformity in these orders hence in case of applicant at Sr. No. 3 and 4, goods are allowed to be redeemed on payment of redemption fine.

8. Keeping the overall circumstances of the cases and principals laid down in aforesaid orders, Government set aside the absolute confiscation of goods in the case of applicant No. 3 & 4 and allow to redeem the same on payment of Redemption Fine and Personal penalty as shown in the following table in lieu of confiscation. Applicants at Sr. No. 1 to 4 being Srilankan national have requested for allowing re-export of goods. Keeping in view the circumstances of the case the re-export of said goods is permitted on payment of redemption fine and penalty as shown in the table below.

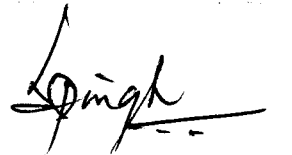
As regards the pleading of applicant to reduce Redemption Fine & Personal penalty, Govt. notes that redemption fine imposed in these case is on higher side which can be reduced further. Government, therefore reduces redemption fine in these cases as shown in the following table. However, personal penalty imposed in these case is reasonable hence Govt. Upholds the same.

Sl.No. (1)	R.A. No. & Name of the applicant (2)	O-I-A No. & Date (3)	O-I-O No & Date (4)	Redemption Fine imposed/ reduced to Rs. (5)
1.	373/34/B/13/RA Mohammed Fareed Srilankan origin pax	342/2013 12.3.2013	967/12 17.12.2012	90,000/-
2.	373/37/B/13/RA Periasamy Soundararajan Srilankan	320/13 28.2.2013	168/2012 10.3.12	85,000/-
3.	373/38/B/13/RA Kanapathy Chandrasekaran Srilankan	321/13 28.2.2013	266/12 25.4.2013	26,000/-
4.	373/39/B/13/RA A. Damodaran Srilankan	345/13 12.3.2013	548/2012 12.9.2012	23,000/-
5.	373/49/B/13/RA Mani K.V.Pillai Indian	548/13 20.3.2013	236/12 11.4.2012	67,000/-

The impugned Orders-in-Appeal are modified to above extent.

9. The revision applications are disposed off in terms of above.

10. So, ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

As per column 2 of table in para I.
c/o Shri.S. Palanikumar, Advocate,
No. 10, II Floor, Sunku Ram Street, Chennai-1.

ATTESTED



(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए./Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 7-11/14-Cus Dated 02.01.2014

Copy to:

1. The Commissioner of Customs, Custom House, Chennai-1.
2. The Commissioner of Customs (Appeals), Custom House, 33 Rajaji Salai, Chennai-600001.
3. The Deputy Commissioner of Customs, Air Cargo Complex, Chennai-600001.
4. Shri.S. Palanikumar, Advocate, No. 10, II Floor, Sunku Ram Street, Chennai-1.
5. PS to JS(RA)
6. Guard File.
7. Spare Copy

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(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)