

**REGISTERED
SPEED POST**



**F.No. 372/8/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... 21/5/14

Order No. 113/14-cus dated 02.05.2014 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. 01/Cus (Baggage) Kol/2013 dated 15-01-2013 passed by the Commissioner of Customs (Appeals), Custom House, Kolkata.

Applicant : Shri Shamsul Ghani
C/o Shri Punam Chand Jain, Consultant
64, Burtolla Street, Kolkata-700007.

Respondent : Commissioner of Customs,
Custom House, Kolkata.

ORDER

This revision application is filed by applicant Shri Shamsul Ghani C/o Shri Punam Chand Jain, Consultant 64, Burtolla Street, Kolkata against the Order-in-Appeal No. 01/Cus (Baggage) Kol/2013 dated 15-01-2013 passed by the Commissioner of Customs (Appeals), Kolkata with respect to Order-in-Original No. 560/2012 dated 25/06/2012 passed by the Assistant Commissioner of Customs (AP) Airport, Kolkata.

2. Brief facts of the case are that the applicant arrived from Singapore on 25-06-2012 at N.S.C.B.I Airport by flight No. MI-488. On arrival the applicant was intercepted near the conveyor belt of the arrival hall by the officers of Revenue Intelligence Unit (DRI), Kolkata. The Officers then checked and examined the baggage of the passenger. DRI officers also made the inventory and valuation of the goods brought by the applicant and subsequently handed over the same to the Customs officers (Baggage) at the Airport. The officers then re-examined the baggage and as per A.S.A No. 560/2012 dt. 25-06-2012 i.e (1) 01 piece Electronic Key Board, (2) 01 Piece Philips Air Fryer, (3) 58 pieces Empty cartoons, (4) 15 pieces of Video cassette, (5) 10 pieces of Battery Charger, (6) 240 pieces of Sony Video cassette, (7) 10 pieces of Digital Camera, (8) 10 pieces of Digital Camera, (9) 20 pieces of video Recorder and (10) 6 bottles of Black Label Whisky total goods worth of Rs. 3,28,000/- were found. As the goods were commercial in nature and were not bonafide baggage and imported in violation of provisions of the Customs Act, 1962, Foreign Trade Policy 2009-14 the passenger was informed about the same and a personal hearing was granted and he was heard. The Assistant Commissioner, Airport held the impugned baggage as non bonafide and commercial in nature and confiscated the goods for Foreign Trade Policy and Baggage Rules violations and allowed to redeem the same on payment of fine of Rs. 66000/- and also imposed a personal penalty of Rs. 33000/-. The applicant cleared the goods on payment of the appropriate duty, fine and penalty, amounting to Rs. 247064/- under Baggage Receipt No. 2830 dt. 25-06-2012.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who modified the impugned Order-in-Original and reduced the redemption fine and personal penalty to Rs. 50000/- and Rs. 30000/- respectively.

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 provision of Baggage Rules 1998, the applicant entitled to get full free allowance which has been denied to applicant. The item Nos. 1 i.e. 1 pc keyboard & 2 bottles of whisky from item no. 10 are reasonable in quantity which may be allowed under F/A as per rule.

4.2 The officer of DRI is not a valuer or has any knowledge about the valuation of the goods they just completes the formalities and has over valued the goods which is too much, wrong and bad in law. The valuation done is baseless i.e. without any proper valuation method or as per currency valuation Rule. Kindly revalue the same as per invoice submitted at the time of personal hearing. The Ld. CC (A) has also clearly mentioned in the discussions and findings that the goods has been over valued but did not gave effect, revalued the goods as per purchase invoice while passing the order.

(a) The item no. 1 Electronic Keyboard is of SGD 784 i.e. Rs. 32,000/- as per purchase Invoice but the officer valued it to Rs. 50000/-. The same should be revalued after deducting the margin of profit 30% from the purchase invoice which comes to Rs. 22400/-. Therefore the goods should be revalued to Rs. 22400/- as per the purchase invoice submitted at the time of personal hearing.

(b) Item No. 2 Philips Air fryer is of Rs. 11000/- per piece as per purchase Invoice. The CIF value of the same would be 30% less than its market value which

will be Rs. 7700/-. Therefore the air fryer should be revalued to Rs. 7700/- as per the purchase invoice submitted at the time of personal hearing.

(c) The item No. 10 i.e 6 bottles of Whisky 1 ltr. each is also wrongly overvalued. The value of each bottle is Rs. 1000/- as per price label mentioned on box of bottle and as per duty free invoice which means the total value is Rs. 6000/- out of which 2 bottles are allowed duty free as per current Baggage Rule. Therefore revalue the same to Rs. 6000/- and allow 2 bottles of whisky under F/A as per rule.

4.3 The goods contained in the baggage are not prohibited nor restricted items. To bring such items in baggage is permissible under the provision of BR 1998. That after allowing F/A and revaluation of the goods the value comes to Rs. 271300/- only, so imposition of redemption fine of Rs. 50000/- is not legally correct. It may be reduced to a reasonable amount.

4.4 Since the goods are not prohibited nor restricted and the applicant has made a bonafide declaration to this effect under section 77 of this Customs Act, 1962 the imposition of heavy penalty of Rs. 30000/- may kindly be waive or reduce to a reasonable amount.

4.5 Under the facts and circumstances of the case the applicant pray to your good self kindly look into the matter sympathetically and allow free allowance on item no. 1 and 2 bottles of whisky as per Normal Baggage Rule, revalue item Nos. 1,2 and 10 as per purchase invoice and current valuation rule of Customs Act, 1962. Redemption fine of Rs. 50000/- and [penalty of Rs. 30000/- imposed may be waive or reduce to a reasonable amount.

5. Personal hearing scheduled in this case on 29.3.14 at Kolkata was attended by Shri Poonam Chand Jain, Consultant on behalf of the applicants who reiterated the grounds of revision application.

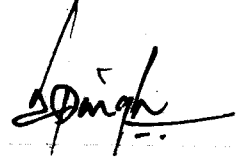
6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that applicant has mainly contended that one electronic keyboard PA50SD Brand Korg is overvalued and requested to assess its value as per invoice No.INV.1233232 dated 23.8.12 issued at Singapore for said product mentioning the value as Singapore dollars 784=INR35035 (@1\$=44.70 on said date). Applicant has pleaded that said item may be allowed in baggage free allowance which has been denied to him. Government notes that the Commissioner (Appeals) has also recorded in his findings that applicant had submitted documents claiming lesser value of said item. But no finding was given on this issue. The documentary evidence submitted by applicant is quite convincing and therefore its value is accepted as Rs. 35050/-. One key board cannot be treated as commercial in nature. So, said item may be allowed in baggage free allowance as per his entitlement under baggage rules by charging duty on value in excess of free allowance.

8. Applicant has further contended that black label whisky was over valued @6000/- per litre bottle whereas its value is only Rs.1000/- per bottle. The black label (one litre) whisky was sold @USD 37=Rs. 2084.95, @1USD=Rs.56.35, on 25.6.12 at the duty free shop, Kolkata as informed by Deputy Commissioner of Customs, Airport, Kolkatta vide letter F.No. S(Misc. 779/2013 R/C (APIP) Baggage dated 29-04-2014. As such this contention of applicant merits acceptance and therefore the black label whisky one litre bottle is to be valued @Rs. 2085/-. Since applicant passenger is eligible to import two litre of whisky duty free in terms the baggage rules, the two litre whisky is allowed to be cleared duty free as per his entitlement in terms of Baggage Rules. The value of 4 bottles works out to Rs. 2085 x 4=8340/- and duty may be charged accordingly. Government notes that redemption fine and penalty of Rs.50000/- and Rs.20000/-imposed by lower authorities is quite reasonable and cannot be called harsh. Therefore, Government do not find any reason to interfere with the same. The impugned order is modified to this extent.

9. The revision application is disposed off in terms of above.

10. So, ordered.

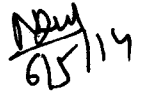


(D.P. Singh)

Joint Secretary to the Govt. of India

Shri Shamsul Ghani
C/o Shri Punam Chand Jain, Consultant
64, Burtolla Street, Kolkata-700007.

ATTESTED



(निर्मला देवी / NIRMALA DEVI)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 112 /14-Cus Dated 02.05.2014

Copy to:

1. The Commissioner of Customs, 15/1 Strand Road, Custom House, Kolkata-700001.
2. The Commissioner of Customs (Appeals), 15/1 Strand Road, Custom House, Kolkata 700001.
3. The Assistant Commissioner of Customs (Airport), NSCBI Airport, Custom House, Kolkata.
4. Shri Shamsul Ghani, 4/1, Mominpur Road, Kidderpore, Kolkata-700023.
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

NDM
6/5/14
(NirmalaDevi)

Section Officer (REVISION APPLICATION)

(निर्मला देवी/NIRMALA DEVI)
अनुभाग अधिकारी/Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/N&W D/11/14