



REGISTERED
SPEED POST

F.Nos. 371/66 to 70, 73 to 75/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. 6-1-14

ORDER NO. 12-19/14 Cus DATED 03.02.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED,
UNDER SECTION 129 DD OF THE CUSTOMS ACT
1962 AGAINST THE ORDER-IN-APPEAL Nos.as per
column 3 of table in para 1 passed by Commissioner
of Customs (Appeals) Mumbai Zone-III, Mumbai

APPLICANT : As per column 2 of table in para 1.

RESPONDENT : Commissioner of Customs(Airport), Mumbai

ORDER

These revision applications are filed by applicants C/o Shri A.M. Sachwani, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp. GPO Fort, Mumbai against the orders-in-appeal nos. passed by Commissioner of Customs (Appeals) Mumbai Zone-III, Mumbai with respect to order-in-original Nos. passed by Deputy Commissioner of Customs, CSI Airport, Mumbai as detailed below :-

S.No.	RA No./Name of Applicant	O-I-A No./ Date	O-I-O No./ Date	Description/ Value of goods	RF/PP as per O-I-O (Rs.)	RF/PP as per O-I-A (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	371/66/B/13 Sushil Sham Chanchlani	75/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/960/11 dt. 25.10.11	Electronic goods & Whisky Rs. 66,000	14000	10000
2.	371/67/B/13 Amit Maheshlal Udhwani	71/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/963/11 dt. 25.10.11	-do-	14000	10000
3.	371/68/B/13 Amit Shamlal Chanchlani	72/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/964/11 dt. 25.10.11	-do-	14000	10000
4.	371/69/B/13 Gagan Vedomal Satija	76/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/959/11 dt. 25.10.11	-do-	14000	10000
5.	371/70/B/13 Ghanshyam Devidas Sanwani	77/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/962/11 dt. 25.10.11	-do-	14000	10000
6.	371/73/B/13 Kumar Gobindram Bhudhwani	73/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/961/11 dt. 25.10.11	-do-	14000	10000
7.	371/74/B/13 Mukesh Ashoklal Punjabi	70/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/943/11 dt. 25.10.11	-do-	14000	10000
8.	371/75/B/13 Manoj Gobindram Bhudhwani	74/Mum- III/13 dt. 14.2.13	Air Cus/49/M- III/942/11 dt. 25.10.11	-do-	14000	10000

2. Brief facts of the case are that on 25.10.2011 the applicants arrived by flight No. SQ-424 at Chhatrapati Shivaji International Airport, Mumbai and declared the goods in their baggage at the Red Channel. The goods were identical and as detailed in the table below :

Sr. No.	Description of Goods	Quantity	Value (Rs.)
1.	Black Label (Whisky)	3	5,000/-
2.	Mac Book Pro (Laptop)	1	38,300/-
3.	Sony Bravia 32EX520 (LCD TV)	2	60,000/-
4.	Sony FM/AM Clock Radio	2	1,000/-
		TOTAL	1,04,300/-

2.1 Since the goods appeared to be trade goods, the cases were put up for adjudication. Issue of formal SCN was waived by each one of the applicant. The cases were adjudicated by the Deputy Commissioner of Customs (Airport) who confiscated the goods valued at Rs.66,000/- under section 111(d) of the Customs Act, 1962 with an option to redeem the goods on a fine of Rs.14,000/- and imposed penalty of Rs.10,000/- under section 112 of the Customs Act, 1962 in each case. One Mac Book Pro Laptop was allowed free of duty in each case.

3. Being aggrieved by the said orders-in-original, applicants filed appeals before Commissioner (Appeals) who after consideration of all the submissions, rejected the appeals.

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 on the following common grounds :

4.1 The applicant arrived on 25.10.2011 at Chhatrapati Shivaji International Airport, Mumbai from Singapore by Flight No. SQ-424. The applicant on his arrival at the above Airport reported at its Red Channel and truly declared the goods valued at Rs.1,04,300/- brought in by him, under Section 77 of the Customs Act, 1962. The applicant submits that in spite of true declaration, the officer made out a case of ITC & the case was put up for adjudication before the Deputy Commissioner of Customs, CSI Airport, Mumbai.

- 4.2 The Deputy Commissioner of Customs allowed the goods i.e. Laptop valued at Rs.38,300/- and ordered the confiscation of other goods valued at Rs.66,000/- under section 111(d) of the Customs Act, 1962 but with an option to the applicant to redeem the above said goods on payment of a redemption fine of Rs.14,000/- besides imposing a personal penalty of Rs.10,000/- also on the applicant under section 112 of the Customs Act, 1962.
- 4.3 The applicant is an Indian National. The applicant reported at Red Channel and truly declared all the goods, which is mandatory under section 77 of the Customs Act, 1962. The goods brought in by applicant are neither restricted nor prohibited. In spite of proper declaration of the goods by the applicant, the fine and personal penalty imposed on his is very harsh.
- 4.4 The benefit of Free Allowance has not been granted to the applicant.
- 4.5 The original order passed by the Deputy Commissioner of Customs, CSI Airport, Mumbai may kindly be set aside. The free allowance of Rs.25,000/- may kindly be granted to the applicant.
5. Personal hearing scheduled in these cases on 23.12.2013 at Mumbai was attended by Shri N.J. Heera, Advocate 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 peruse the impugned orders-in-original and orders-in-appeal.
7. On perusal of records, Government observes that each applicant passenger imported identical goods i.e. 3 Black Label Whisky, one Mac Book Pro (Laptop), 2 Sony Bravia 32E/520 (LCD TV) and 2 Sony FM/AM Clock Radio totally valued at Rs.1,04,300/-. The passengers reported at Customs red channel and declared all the items. The adjudicating authority allowed one Laptop valuing Rs.38,300/- as baggage free allowance and denied baggage free allowance under Baggage Rules 1998. The adjudicating authority confiscated other goods valuing Rs.66,000/- under section 111(d) of Customs Act 1962. However, an option to redeem the said goods on payment of

redemption fine of Rs.14,000/- in each case was given under section 125 of Custom Act. A personal penalty of Rs.10,000/- was also imposed in each case. Commissioner (Appeals) rejected their appeals. Now they have filed these revision applications on the grounds stated above. They have also filed application for condonation of delay.

8. In these cases the revision applications are filed on 1.8.2013 against the order-in-appeal dated 14.2.2013 received on 22.2.2013. The revision applications were required to be filed within three months of receipt of the impugned order-in-appeal i.e by 22.5.2013. As such these revision applications are filed after a delay of 2 months 10 days. The application for condonation of said delay are filed on the grounds of personal problem and domestic difficulties and for the reasons beyond their control. Applicants have cited the judgment of Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag vs. M/s Katji reported in (1987) 2 SCC 107 wherein it was held that a liberal approach shall be followed in condoning the delay because ordinarily a litigant does not stand to benefit by lodging an appeal late. As per provisions of section 129 DD (2) first proviso, the delay upto 3 months can be condoned. Government therefore by following the principles laid down in the above said judgment of Hon'ble Supreme Court condone the said delay in filing these revision applications and takes up said applications for decision on merits of the case.

9. Applicants have pleaded that the items brought by them are for personal use and not in commercial quantity and therefore requested for allowing baggage allowance of Rs.25,000/- admissible under baggage rules. Government notes that one LCD TV and 2 litres of whisky cannot be treated in commercial quantity. One Laptop is already allowed duty free clearance as per existing instructions. The applicants have made trips to abroad ranging from 2 to 4 in the year but no offence case is stated to have been booked against them. So they cannot be called repeat offenders. The investigations conducted by department has not suggested any case of organized smuggling. CBEC had issued clarification vide circular No.64/94-CusVI dated 17.12.1996 on admissibility of baggage allowance which is reproduced below :-

" Subject: Permissibility of free allowance to passengers when the whole of the goods or a part of the goods of their baggage is treated to be imported in commercial quantity.

It has come to the notice of the Board that adjudicating authorities at different levels are holding different opinions whether free allowance would be permitted on import of baggage's, where part of the goods are found to be in commercial quantity. The issue of import of consumer goods in commercial quantity had earlier been examined by the Board and instructions were issued vide circular No.2/92, dated 31.01.1992 and vide File No. 495/10/92-Cus. VI dated 7.7.1992 and recently vide F.No.495/6/96-Cus. VI dated 6.5.1996. The gist of the said instructions are that import of the consumer goods in commercial quantity is not permissible even in the present EXIM Policy and in addition they are not to be treated as part of the bona fide baggage. Therefore, they would be liable to be adjudicated. The present problem is where a part of the goods are in the commercial quantity and that part attracts adjudication and penalty, whether free baggage allowance can be allowed to the other part of the goods which is not in commercial quantity. The matter has been examined and it is found that the entire baggage imported by a passenger does not become non-bonafide or tainted because some articles in the baggage are held liable to confiscation being in commercial quantity. Therefore, the portion of the baggage which is not in commercial quantity would be eligible to free baggage allowance.

Sd/-
(Ranjana Jha)
Secretary to the Govt. of India"

CBEC has categorically clarified that portion of baggage which is not in commercial quantity would be eligible to free baggage allowance.

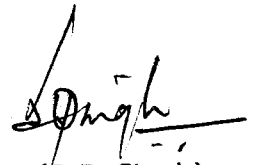
10. In view of above position, Government observes that free baggage allowance is admissible to the applicants. Applicants are entitled for duty free clearance of 2 litres of whisky as per baggage rules. So, the confiscation of one LCD TV and two litre whisky is set aside and same may be allowed to be cleared in free baggage allowance after charging duty on value of goods which is in excess of free baggage allowance of Rs.25,000/- . The remaining goods i.e. one TV, one litre whisky and 2 Sony FM/AM clock Radio totally valuing Rs.32,666/- being non-bonafide baggage are liable to confiscation. As such the confiscation of goods valuing Rs.32,666/- is upheld. The redemption fine and penalty is therefore modified keeping in view the value of confiscated goods, as detailed below :

S.No.	RA No./Name of Applicant	O-I-A No./ Date	O-I-O No./ Date	Redemption Fine modified to (Rs.)	Penalty modified to (Rs.)
(1)	(2)	(3)	(4)	(6)	(7)
1.	371/66/B/13 Sushil Sham Chanchlani	75/Mum-III/13 dt. 14.2.13	Air Cus/49/M- III/960/11 dt. 25.10.11	8000	5000
2.	371/67/B/13 Amit Maheshlal Udhwani	71/Mum-III/13 dt. 14.2.13	Air Cus/49/M- III/963/11 dt. 25.10.11	8000	5000
3.	371/68/B/13 Amit Shamlal Chanchlani	72/Mum-III/13 dt. 14.2.13	Air Cus/49/M- III/964/11 dt. 25.10.11	8000	5000
4.	371/69/B/13 Gagan Veedomal Satija	76/Mum-III/13 dt. 14.2.13	Air Cus/49/M- III/959/11 dt. 25.10.11	8000	5000
5.	371/70/B/13 Ghanshyam Devidas Sanwani	77/Mum-III/13 dt. 14.2.13	Air Cus/49/M- III/962/11 dt. 25.10.11	8000	5000
6.	371/73/B/13 Kumar Gobindram Bhudhwani	73/Mum-III/13 dt. 14.2.13	Air Cus/49/M- III/961/11 dt. 25.10.11	8000	5000
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8.	371/75/B/13 Manoj Gobindram Bhudhwani	74/Mum-III/13 dt. 14.2.13	Air Cus/49/M- III/942/11 dt. 25.10.11	8000	5000

The impugned orders are modified to above extent. Appropriate custom duty is payable on the goods.

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


12. So ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

As per column 2 of table in para 1
C/o Shri A.M. Sachwani, Advocate
Nulwala Building, Ground Floor,
41, Mint Road, Opp. GPO Fort,
Mumbai - 400 001



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

Order No. 12-19/14-Cus Dated 03.01.2014

Copy to:

1. The Commissioner of Customs (Airport), Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400059
2. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400059
3. The Deputy Commissioner of Customs, CSI Airport, Mumbai
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(T.R. ARYA)
SUPRINTENDENT (REVISION APPLICATION)