

REGISTERED
SPEED POST



F.Nos. 373/71/B/13-RA & 373/72/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. 157-158/14-Cus DATED 20.05.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED, UNDER SECTION 129 DD OF THE CUSTOMS ACT 1962 AGAINST THE ORDER-IN-APPEAL No.31 & 31/13 both dated 28.03.13 passed by Commissioner of Customs (Appeals), Trichy.

APPLICANT : (i) Shri Ashiq Nawaz (ii) Shri Ameer Ali
C/o Shri A. Ganesh, Advocate

RESPONDENT : Commissioner of Customs, Tiruchirapally

ORDER

These revision applications are filed by following applicants against the orders-in-appeal No. passed by Commissioner of Customs (Appeals) Trichy as detailed below :-

S.No.	RA No.	Applicant	OIA No./Date	OIO/Date	Description /value of goods	Orders as per OIO
1.	373/71/B/13	Shri Ashiq Nawaz	31/13 dt. 28.03.13	20/12 dt. 10.12.12	Electronics goods valuing Rs.23,84,109/-	Absolute Confiscation PP=Rs.400000/-
2.	373/72/B/13	Shri Ameer Ali	32/13 dt. 28.03.13	21/12 dt. 12.12.12	Electronic goods valuing Rs.22,26,436/-	Absolute Confiscation PP=Rs.350000/-

2. Brief facts of the case are that on 25.01.12, based on intelligence gathered by DRI officers at Airport Trichy that same passengers arriving by flight TR 2664-Tiger Airways from Singapore were likely to carry electronic goods, the officers maintained strict surveillance over the passengers on arrival of said flight. The officers intercepted the above mentioned two passenger namely Shri Ashiq Nawaz and Shri Ameer Ali and enquired whether they were carrying any dutiable good to which they replied in negative. On further enquiry, the airlines staff informed that said passengers has one package each of 30 kg. On examination of their baggage, the electronic goods i.e. Video Camera and other goods of value as mentioned in the above table were recovered. In their statement recorded under section 108 of Customs Act, they have confessed that said goods are given to them at Singapore by somebody to be handed over a person at Trichy for a monetary consideration. They admitted that said goods do not belong to them. As applicant have acted as carriers in this case and did not declare the goods before Customs as required under section 77 of Customs Act, 1962. Further the said goods were in commercial quantities and could not be considered as bonafide in terms of section 79 ibid. As such, goods were imported in violation of section 77, 79, 11 of Customs Act, para 2.20 of FTP 2009-14, and provisions of section

3(1) and 11(i) of Foreign Trade (Dev. & Reg) Act 1992. After following the due process of law, the adjudicating authority absolutely confiscated the said goods under section 111(d) (e) and (m) of Customs Act and imposed penalty under section 112 as mentioned above in table.

3. Being aggrieved by the said orders-in-original, applicants filed appeals before Commissioner (Appeals) who rejected the same.

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 lower authorities failed to see that the applicant was intercepted before he could go any channel by the DRI officials and thereby prevented him to declare before the proper officers of the Customs. The lower authority ought to have seen that the applicant declared the goods what was in his possession as per section 77 of Customs Act before the DRI officials orally.

4.2 The lower authority ought not to absolutely confiscated since it is commercial quantity. Moreover the goods are free to import goods and under the circumstances section 124 of the Customs Act attracted and it is mandatory to allow redemption fine. No exercise of section 125 of the Customs Act is against law.

4.3 The lower authority ought to have seen that the valuation of goods was arrived by the DRI officials on the basis of imports made in India and they arrived the valuation based on the import made at Mumbai Port and Delhi Port. That too 4 months prior to importation of this goods. The country of origin of the similar goods of import was from Hongkong. Whereas this goods are from Singapore. The valuation was not arrived according to the country of origin. Moreover the valuation of the goods is reducing day by day. Therefore adopting 4 months prior valuation is a wrong procedure and is not according to Customs Valuation Rules. Therefore the value of the goods has to be reduced.

4.4 The lower authority ought to have seen the applicant retracted the statement and also lodged complaint against the DRI immediately before the Commissioner of Customs vide letter dated 30.01.2012. The lower authority ought to have seen that the applicant's relation and friends are in Singapore the goods were given to him as gift.

The lower authority ought to have seen that the cameras and camcorders are free to import category under the EXIM policy. Under the circumstances the goods ought to have confiscated absolutely.

4.5 The lower authority ought not to have imposed higher penalty of Rs.4,00,000/- and Rs.3,50,000/- when they were inside the prison for this case and facing prosecution proceedings. The lower authorities ought to have allowed the petitioner to re-export the goods on redemption fine and minimum payment of penalty.

4.6 Applicant finally prayed for allowing re-export of said goods by setting aside the impugned orders-in-appeal for absolute confiscation and penalty.

5. Applicant vide their written reply submitted at the time of personal hearing on 21.03.2014, reiterated the grounds of revision applications and cited certain more case laws.

6. Personal hearing scheduled in these cases on 21.03.14 at Chennai was attended by Shri A. Ganesh, Advocate on behalf of the applicants who reiterated the grounds of revision applications and requested that goods may either be allowed to be redeemed for home consumption or for re-export on payment of redemption fine under section 125 of Customs Act 1962.

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

8. On perusal of records, Government observes that in the instant cases, the original authority has ordered absolute confiscation of goods as applicant passengers

were not the owners of goods and they acted as carriers of goods for somebody else for monetary consideration. Original authority also imposed the personal penalty on both the passengers as stated above in table. Commissioner (Appeals) upheld the said orders-in-original. Now applicants have challenged the impugned orders-in-appeal on the grounds stated above.

9. Applicant has now contended that they were not allowed to declare goods by DRI officers otherwise they were about to declare the goods before Customs that goods belongs to them, that goods are not prohibited goods and therefore may be allowed to be redeemed on payment of fine under section 125 or alternatively re-export may be allowed.

9.1 Government notes that applicant on enquiry had stated before DRI officers that they were not having any dutiable goods. The Airline staff on further enquiry informed that said passengers were carrying one package of 30 kg each and also gave the tag numbers of bags. So, it is quite clear that applicant had not declared the goods before Customs and attempted to smuggle the same without payment of Customs duty.

9.2 Further, applicants have contended that they have retracted their statements subsequently and claimed the ownership of said goods. In this regard, Government notes that statement recorded before Customs officer is a valid evidence and subsequent retraction is an afterthought as applicant have not produced any evidence in support of their plea that statement was recorded under pressure or coercion. Hon'ble Supreme Court has held in the case of Surjeet Singh Chabbra vs. UOI 1997 (84) ELT 646 (SC) that statement made before Customs officer though retracted within 6 days is an admission and binding since Customs officers are not police officers under section 108 of Customs Act 1962. So the statement given before Customs is a valid evidence and subsequent retraction is an attempt to get the goods released on payment of fine.

9.3 As regards pleading that goods are overvalued, Government notes that applicants have not furnished any documentary evidence in support of their contention and therefore, this plea is not acceptable.

9.4 In cases where passenger is not the owner of goods has acted as carrier of goods and owner of goods is not known, in following judgments absolute confiscation of goods is upheld.

(i) Government notes that absolute confiscation in such cases is upheld in the judgments of Hon'ble High Court of Madras in the case of CC Air, Chennai Vs. Samynathan Murugesan 2009 (247) ELT 21 (Mad). Hon'ble High Court of Madras in this case has held as under :-

"Confiscation - Absolute confiscation of goods- 7.075 Kgs Gold ornaments recovered from T.V. Set- Goods were prohibited as petitioner did not belong to category of persons who could bring gold at concessional rate of duty - previous periods where petitioner stayed for longer duration, not relevant for the purpose of Notification No. 31/2003-Cus-Liberalization policy and repeal of Gold control order weighed with the Tribunal -Tribunal ought to have considered whether he could have carried the gold as part of his baggage as an eligible passenger -Goods imported in violation of Import (control) Order, 1955 read with section 3 (i) of Import and Export Control Act, 1947 - Concealment weighed with the Commissioner to order absolute confiscation -Commissioner's order upheld - Section 111 of Customs Act, 1962."

The said order was upheld by Hon'ble Supreme Court in the order dated 11-01-2010 reported as 2010 (254) ELT A 015 (S.L) dismissing the petition for special leave to Appeal (Civil) No. 22072 of 2009 filed by Samyanathan Murugesan. Supreme Court passed the following order:-

" Applying the ratio of the judgment in the case of Om Prakash Bhatia II. Commissioner of Customs/ Delhi reported in 2003 (155) ELT 423 (S.C)= 2003 (6) sec 161/ to the facts of the case/ we find that; in the present case/ the assessee did not fulfill the basic eligibility criteria, which makes the imported item a prohibited goods; hence/ we see no reason to interfere with the impugned order. The special leave petition is accordingly dismissed. "

(ii) Hon'ble High Court of Madras in their judgment dated 02-03-2012 in WP No. 21086/2002 in the case of Aiyakannu Vs JC Customs reported on 2012-110L- 806-HC-MAD-Cus has also held as under:-

" Petitioner being a foreign (Sri Lankan) national is not entitled to import gold in terms of clause 3 of Foreign Trade (Exemption from application of Rules in certain cases) order 1993/ as it will apply to the passenger of Indian origin-attempt to smuggle 10 gold bars with Foreign markings wrapped in carbon paper by concealing in baggage justifies the order of absolute confiscation. "

(iii) Government also notes that Hon'ble High Court of Bombay in its judgment dated 23-07-2009 in the case of UOI Vs Mohammed Aijaj Ahmed (WP No.1901/2003) reported as 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT ordering to allow redemption of gold and upheld the absolute confiscation of gold ordered by Commissioner of Customs. In this case the gold did not belong to passenger Mr. Mohammed Aijaj Ahamed who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reports as 2010 (253) ELT E83 (SC).

(iv) The adjudicating authority of Chennai Airport in its Order-in-Original No. 312/2001 dated 08-06-2011, 496/2011 dated 07-10-2011, 1142/2010 dated 16.10.2010 16-10-2010, 307/2011 dated 08-06-2011, 310/2011 dated 08-06-2011 and 311/2011 dated 08-06-2011 and had ordered absolute confiscation in concealment cases. The said orders were upheld by Commissioner (Appeals) in Order-in-Appeal No. 108/2012 dated 29-02-2012, 71/2012 dated 09-02-2012, 646/2011 dated 14-09-2011, 393/2011 dated 28-09-2011, 696/2011 dated 28-09-2011 and 669/2011 dated 28-09-2011. Finally absolute confiscation was also upheld by Government of India in these cases vide GOI Order No. 361- 366/12-Cus dated 06-09-2012.

9.5 Government notes that the ratio of judgments cited in para 9.4 above are squarely applicable to this case and in view of these judgment, the case laws cited by applicants are not applicable to instant cases.

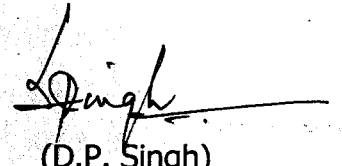
10. In view of position explained above, Government finds that there is no infirmity in the impugned orders-in-appeal as far as absolute confiscation of goods is concerned. As regards pleadings of applicants to reduce penalty, Government finds that penalty

imposed on applicants is on higher side and same should be reduced. Government, keeping in view the overall circumstances of the cases, reduces the penalty as under :-

S.No.	RA No.	Applicant	OIA No./Date	Penalty reduced to (Rs.)
1.	373/71/B/13	Shri Ashiq Nawaz	31/13 dt. 28.03.13	Rs.2,30,000/-
2.	373/72/B/13	Shri Ameer Ali	32/13 dt. 28.03.13	Rs.2,20,000/-

The impugned orders-in-appeal are modified to this extent.

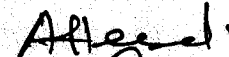
11. The revision applications are disposed off in terms of above.
12. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

- (i) Shri Ashiq Nawaz
 - (ii) Shri Ameer Ali
- C/o Shri A. Ganesh, Advocate
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(भागवत ~~Atul Shome~~)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 157-158 /14-Cus Dated 20.05.2014

Copy to:

1. Commissioner of Customs, No.1, Williams Road, Tiruchirapalli – 620 001.
2. The Commissioner of Customs (Appeals), No.1, Williams Road, Tiruchirapalli – 620 001.
3. Additional Commissioner of Customs (Airport), Trichy Customs Commissionerate, No.1, Williams Road, Tiruchirapalli – 620 001.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(B.P. Sharma)
OSD(Revision Application)