



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/41/B/14-RA | 4706

Date of Issue 02.09.2021

ORDER NO. 189/2021-CUS (WZ)/ASRA/MUMBAI DATED 25.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Sanjay Parshottam Sagparia

Respondent : Commissioner of Customs, SVPIA, Ahmedabad

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 108 - 113/Cus/Commr. (A)/AHD dated 28.02.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri Sanjay Parshottam Sagparia (herein referred to as Applicant) against the Order in Appeal No. 108 – 113/Cus/Commr. (A)/AHD dated 28.02.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad..

2. The Officers of Customs intercepted had a specific formation that Shri Shehzadkhan Pathan, a tour operator was arriving along with nine other passengers at the SVP International Airport, Ahmedabad with huge quantity of electronic goods. When passengers including six passengers proceeded to the green channel, after collecting their check-in-baggage they were intercepted by the customs officers. The customs officers asked them if they had any dutiable goods, they replied in negative. The customs officers noticed that they had hand bags, plastic carry bags containing liquor bottles and corrugated boxes containing Sony Bravia make LED TV 55 and therefore, all the passengers were diverted for X-ray screening. On screening, they found suspected objects and were diverted to red channel for thorough examination. During examination, ten TV sets with 3D spectacles and 30 bottles of liquor bottles were found. The customs officers also found medicines, and foreign currency from some of the LED TV boxes. None of these goods was declared to the customs by any of the passengers. Foreign currency notes were also recovered on personal search of the appellants Shri Shehzadkhan Pathan, Shri Sanjay P. Sagparia and Shri Mahesh B. Devalia.

3. After due process the original adjudicating authority vide order no. 19/ADC/SVPIA/O&A/2013 DATED 30.08.2013

(i) confiscated 9 LED TV sets, 30 bottles of liquor and the 7600 US\$, under various clauses of section 111 of the Customs Act, 1962 and gave option to redeem the goods on payment of fine under section 125 of the Act

(ii) ordered for absolute confiscation of the medicines under various clauses section 111 of the Act

(iii) confirmed demand of duty on TV sets and 30 Liquor bottles

(iv) imposed penalties on the passengers under section 112(a) and 112(b) of the Customs Act, 1962.

(v) ordered that redemption fines imposed shall be in addition to recovery of customs duty at appropriate rates applicable to the articles of baggage under Chapter heading 98.04 of the Customs Tariff Act without extending free allowance under the Baggage Rules, 1998.

4. Being aggrieved with the impugned order, some the appellants including the Applicant filed appeals before the Commissioner (Appeals) who rejected the Appeal of all the Appellants.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application interalia submitting that ;

5.1 The appellant submits passed that the impugned order has been in utter violation of principles of natural justice, as the appellate authority has failed to consider the submissions made by the appellant. The impugned order being unreasoned and non speaking, is required to be quashed and set aside.

5.2 The applicant submits that adjudicating as well as the appellate authority have proceeded on an incorrect appreciation of facts by recording the facts considered to be undisputed. It is submitted that carrying one TV by one passenger can by no stretch of imagination be considered as huge quantity.

5.3 The appellant submits that there cannot be any intention of evading duty of customs on a TV of 55", which is carried in a separate packing and is clearly visible to the naked eyes. That being the case,. the findings of the adjudicating authority of intention to evade payment of duty is without any basis.

5.4 The adjudicating authority has held that the basic intention behind the said tour was to smuggle costly TVs, taking advantage of Baggage Rules. Here, it may be submitted that each passenger before the start of the tour was informed that they are required to bring one TV and the same would the same if given to the appellant, the cost of the tour would be reduced by Rs. 6,000/- and if the passenger (tourist) intended to retain TV, the passenger was required to pay Rs. 6,000/ more. It is a well settled law that tax planning cannot be equated to tax evasion. That being so, the benefits under Baggage Rules was required to be extended to each of the passenger and its denial on certain extraneous and flimsy grounds is not sustainable.

5.5 The appellant submits that in the entire case, the department has not been able to point out as to what offence was committed by each of the passengers, even if the said one TV was to be given to the appellant after clearance from the airport. The appellant submits that after clearance of the goods for home consumption, the same cannot be considered as imported goods. Thus, even if the said one TV was to be given to the appellant after clearance, no offence can be said to have been committed under the Baggage Rules.

5.6 The adjudicating authority has erred in interpreting Section 79 of the said Act. The said section only provides for duty free clearance of the goods, up to a certain value. The said section further provides that a passenger if returning after a stay of three days is allowed free clearance upto a value of Rs.25,000. Thus, in any case if the cost of articles brought by the appellant including the TV was more than Rs. 25,000/, the duty was required to be paid. The TV being of 55", there was no question of not paying duty thereon.

5.7 The adjudication authority has erred in interpreting the Section 79 of the said Act, as observed by him in Para 46 of the impugned order. Sub section 2 of section 79 of the said for passing the free of duty the goods, which are for Personal use of the passenger or his family.

5.8 The adjudicating authority has erred in holding that the appellant had acquired the foreign currency through illegal channel. The appellant submits that he had had informed the place from he got the Indian currency exchanged on behalf of all the tourist passengers. No investigation with the said agency was conducted to ascertain the genuineness of the facts stated by the appellant. The appellant submits that no adverse inference could be drawn based on an inconclusive inquiry.

5.9 The findings of the adjudicating authority that 9 TVs were owned by appellant is without any basis. The appellant had only stated that two TVs were for him and only Shehzadkhan had gone to purchase the said TVs and the same were booked in the name of individual tourist passengers. Even the refund of the VAT was granted in the name of each tourist passenger and therefore it cannot be said that the said 9 TVs were owned by the Shehzadkhan Pathan.

5.10 The appellant submits that appellate authority has held that the law forbids sale of the goods imported as baggage in commercial quantity. The appellant submits that bringing one TV cannot be considered as bringing goods as baggage in commercial quantity. Further, he has not mentioned the provisions of the law, which prohibits the sale of goods brought as baggage.

5.11 The adjudicating authority has erred in relying on the decisions in the case of Rajiv chopra. The appellant submits that the facts in both the said cases were different from the facts of the present case and as such, the ratio of the said decisions could not have been applied.

5.12 The appellant submits that the charge of conspiracy against him with Shehzadkhan Pathan, has been made. It is submitted that the said tour was

operated by the appellant with the assistance of Shehzadkhan. The appellant had requested for the assistance of Shehzadkhan as he was well conversant with the topography of the entire area including Boarding and lodging. The appellant had informed him the terms and conditions settled with the passengers accompanying him and accordingly, Shehzadkhan and other who were interested in tour package from Ahmedabad. There is absolutely no evidence brought on record which suggest that the appellant had hatched a conspiracy with Shehzadkhan Pathan. The terms and conditions were explained by the appellant to the tourist passengers who had agreed to the same purely on commercial terms without involvement or having any repercussion on revenue. The adjudicating authority has conveniently' ignored the above facts.

5.13 It is submitted that even if the passengers had stated that the TV were not purchased by them, but the fact remains that they had agreed to bring one TV and give to the appellant or retain with them and the cost of tour was decided accordingly.

5.14 The appellant submits that the provisions of Section 111 (d) have been referred. The said section for confiscation can be invoked only if the goods are prohibited. In the present case, the TV and the two bottles of liquor being personal effects are not prohibited. The impugned order also invokes the provisions of Section 111 (m) for confiscation of the goods under seizure. The said section for confiscation can be invoked only if there is mis declaration of value. In the present case, the officers during the course of personal search had recovered the bills showing purchase price of the TV and the same has been adopted. The value was never declared by appellant and therefore the charge of mis declaration of value cannot be made against the appellant, consequently, confiscation under Section 111 (m) of the said Act, is not sustainable.

5.15 Both the authorities have held that by bringing TVs under baggage, it worked out to be cheaper after considering free allowance. The said findings travel beyond the scope of the allegation made in the SCN. Further even if it works out to be cheaper, no provisions of baggage rules can be considered to have been violated.

5.16 The Baggage Rules does not place any restriction on the ownership of the goods, it only stipulates that the goods should be carried by the passenger. Further, the Baggage Rules, do not prohibit or put any restriction on the disposal of the goods brought by the passenger. In view of above, it cannot be alleged that the appellant had contravened the provisions of Baggage Rules and Customs Act, 1962, so as to warrant any action against him.

5.17 The appellant submits that the provisions of Section 111 (d) have been referred. The said section for confiscation can be invoked only if the goods are prohibited. In the present case, the TV and the two bottles of liquor being personal effects are not prohibited.

5.18 The appellant submits that the entire case of the department is based on the allegation of non declaration on the disembarkation slip. The appellant submits that the TV brought was clearly visible to the naked eye and there was no intention of non declaration for the said TV. The appellant submits that mere non declaration of the goods, which otherwise is seen by everyone, cannot be construed as non declaration with an intention to evade the payment of duty. The appellant submits that the said TV was brought for his personal use and the free allowance admissible was required to be extended. The adjudicating authority has not allowed any amount towards the free allowance. The impugned order is thus legally not tenable.

5.20 The appellant submits that the adjudicating authority has imposed a huge redemption fine without discussing the methodology adopted for arriving at the said amount of fine. The appellant submits that for imposing the quantum of redemption fine, the margin of profit earned is the basis for imposition of redemption fine. In the present case, the goods under seizure were for personal use and there being no profit motive, no redemption fine should have been imposed or in the alternative, a minimum redemption fine should have been imposed.

5.21 The Applicant submitted case laws in favour of his case and prayed that the Appellate order be set aside, the foreign currency carried by the Applicant is not liable for confiscation and the same be allowed redemption on redemption fine or any other reliefs this Hon'ble court may deem fit and proper.

7. Personal hearings in the case was scheduled in the case on 09.04.2018, 24.05.2018, 30.08.2019, 16.03.2021, 23.03.2021, 16.07.2021 and 20.07.2021. Nobody attended the hearing on behalf of the Applicant or the department. The case is therefore being decided on the basis of available records on merits.

8. The Government has gone through the facts of the case. The Applicant claims that the TVs under import were visible to the naked eye and therefore there was no question of specific declaration, however Government notes that The customs officers also found medicines, and foreign currency from some of the LED TV boxes. 30 bottles of liquor bottles were recovered by the officers. None of these goods was declared to the customs by any of the passengers or tour operators as required under section 77 of the Customs Act, 1962, the confiscation of the goods is therefore justified and the Applicant as well as the tour passengers have rendered themselves liable for penal action.

9. The Applicant has submitted that carrying one TV by one passenger can by no stretch of imagination be considered as huge quantity. Further, each passenger was informed before the start of the tour that they are required to bring one TV and the would the same if given to the appellant, the cost of the tour would be reduced by Rs. 6,000/- and if the passenger (tourist) intended to retain TV, the applicant was required to pay Rs. 6,000/ more and that it is a well settled law that tax planning cannot be equated to tax evasion. Government however observes that the baggage rules extends free allowance to genuine passengers. In this case it is noticed that conditions were put in advance for compulsory purchase of TVs by the tour operators, and the same were booked in the name of individual tourist passengers in the guise of bonafide passenger baggage. The modus operandi was to take advantage of the baggage rules and import duty free goods. These TVs were all purchased by Shri Shezadkhan one of the tour operators. This is not tax planning but a well planned duty evasion. The tour operators intended to profit from the transaction by evading duty by showing as if the TVs were brought by individual passengers and using individual duty free allowance to evade duty, clearly misusing the duty free allowance on goods, which are for personal use of the passenger or his family.

10. The Applicant has contended the Baggage Rules refer to the passenger, in this case all the 9 persons were passengers and therefore, they all are individually entitled for benefits under the said Baggage Rules. The Baggage Rules does not place any restriction on the ownership of the goods, and it only stipulates that the goods should be carried by the passenger, and that the Baggage Rules, do not prohibit or put any restriction on the disposal of the goods brought by the passenger. In view of above, it cannot be alleged that the appellant had contravened the provisions of Baggage Rules and Customs Act, 1962, so as to warrant any action against him. In this regard the Appellate authority has held that *" import of articles by a passenger only if the same is brought as bonafide baggage for use of the passenger or his family or is a bona fide gift or souvenir. This means that only if the import article is for use of the passenger or his family or is a bona fide gift or souvenir, the passenger is entitled for the concession under the Baggage Rules, 1998. In other words, if the goods are brought with intention to sell, it is not allowed free of duty and it will also not be eligible for free allowance of Rs. 35000 as discussed earlier. In the present case, the appellant admitted that they have purchased the TV sets with a view to selling in local market at prices ranging from Rs. 1.05 lakh to 1.10 lakh per TV. The TV sets are in commercial quantity and hence, they are not considered as bona fide baggage. Here, the perception of the adjudicating authority that the law forbids sale of the goods imported as baggage in commercial quantity actually implied that the passenger is entitled for the concession under the Baggage Rules, if the import article is for use of the passenger or his family, whereas the law forbids the goods for concession if imported in commercial quantity meant or sale in local market of India. The appellants have wrongly construed it otherwise.....the entire act was played with malice, to deprive revenue from*

legitimate duty... Government is in full agreement with the above reasoning of the Appellate authority.

11. It is an admitted fact that medicines of foreign origin were recovered from the passengers which were concealed in the packing of the TVs. The liquor bottles were financed and purchased by the tour organisers and distributed among the passengers so as to get the same cleared from Customs, in the guise of bonafide passenger baggage. The foreign currency of 7600 USD being more than USD 5000 or equivalent was recovered which should have been declared on arrival under the provision of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, which was not done. The passengers did not declare LED TV sets, 30 bottles of foreign liquor, foreign currency and medicine, as the case may be, in the disembarkation slip under section 77 of the Customs Act, 1962. Non-declaration itself is sufficient ground under section 111(l) of the Customs Act, 1962.

12. Government also notes that the original adjudicating authority has used his discretion in allowing the goods to be redeemed under section 125 of the customs Act, 1962. The redemption fine and penalty imposed is also appropriate and the same has been rightly upheld by the Appellate authority. The Appellate order therefore does not merit interference. The revision Application is therefore liable to be dismissed.

13. Revision Application is accordingly dismissed.

Shrawan
25/8/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 189/2021-CUS (WZ) /ASRA/MUMBAI

DATED 25-08.2021

To,

1. Shri Sanjay P Sagpariya, Khafeja Chowk, University Road, Rajkot 360007.
2. The Commissioner of Customs, SVPIA Airport, Ahmedabad.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.