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SPEED POST



F.No.375/35/B/13-RA-CUS

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..21/3/16..

ORDER NO. 19/2016-CUS DATED 26.02.2016 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under section 129 DD of the
Customs Act, against the Order-in-Appeal No.CC(A)/CUS/
663/2013 dated 16.12.2013 passed by Commissioner of
Customs (Appeal), NCH, New Delhi.

Applicant : Shri Manoj Kumar Jain.

Respondent : Commissioner of Customs, New Delhi.

ORDER

This revision application is filed by Shri Manoj Kumar Jain against the Order-in-Appeal No. CC(A)/Cus/663/2013 dated 16.12.2013 passed by Commissioner of Customs, (Appeals), NCH, New Delhi, with respect to Order-in-Original No. 35/2013 dated 14.05.2013 passed by Additional Commissioner of Customs, I.G.I., Airport, New Delhi.

2. Briefly stating, the facts of the case are that the pax holder of Indian Passport NO.K-9541540 arrived from Bangkok on 07.05.2013 by Flight No.CX-751. He was intercepted by the Customs Officers while walking through the Green Channel along with his baggage and diverted to Red Channel Counter. On detailed examination of his baggage consisting of two suitcases, one wooden box and one carton, the goods as per table below were recovered in the presence of the passenger.

Sr. No.	Description	Qty	Value(Rs.)
1	SamsungLED40" 6series	01	45,000/-
2	Silver crafted Wooden chair	01 (3515 grams)	1,59,757
3	Ladies bag TT	01	2500/-
4	Sandals	10 pairs	10000/-
5	Silver coin	02(50 grams each)	5000/-
6	Sun glasses(Used) Doir	02	1000/-
7	LahangaChuni	01 set	2,50,000/-

TOTAL 6,87,757/-

The above goods were detained for adjudication for green channel violation, appraisalment and adjudication.

2.1 The passenger's authorized representative Shri Ram Prakash Garg (holder of Passport No.Z-2562612) approached the Customs on 10.05.2013 and through his letter dated 10.05.2013 requested for release of the impugned goods on applicable rate of duty, fine and penalty, if any and also requested for waiver of Show Cause Notice and personal hearing. He further stated that the lahanga, Cartier brand watch and silver crafted wooden chowki had been taken from India only for use in the marriage ceremony and also submitted the local purchase invoices for the said goods in support of his contention.

2.2 The authorized representative submitted local invoice no. 522821 dated 02.05.2013 from M/s Johnson Watch Co., C-16, Connaught place, New Delhi. The

invoice was in the name of Ms. Neeta Lila. Similarly, in respect of langha chunni and silver chowki crafted in wood, the authorized representative claimed that these also were taken from India by the passenger and submitted the invoice no. JD-1879/13-14 dt. 02.05.2013 and 00060 dt.25.04.2013 respectively in support of his claim. Regarding two silver coins(each weighing 50 grams), it was stated that the same had been gifted by the father of the bride as a 'NEK'. The passenger failed to produce any evidence or certificate in support of his contention that these goods were taken by the passenger to Bangkok on departure. Further it was found that the goods were found in possession of the passenger Shri Manoj Kumar Jain but the invoices submitted by him indicating local purchases are in the name of Mr. Rajinder Lila, BN-73, Shalimar Bagh, West New Delhi in respect of silver crafted wooden chowki and in the name of Ms. Neeta Lila in respect of Cartier watch. The Langha invoice did not have the name of the customer.

2.3 As the passenger had failed to produce any documents/evidence in support of his claim that these goods were legally carried by him and constitute his bonafide baggage, at the time of departure to abroad the same were confiscated under the provisions of Section 111, of the Act, *ibid.* for the contravention of non-declaration of impugned goods under Section 77 & 79 of the Customs Act, 1962 and Section 20 of the Act, *ibid* which provides that if the goods are re-imported into India after exportation there from, such goods shall be liable to duty subject to all the conditions and restrictions, if any, to which the goods of the like kind and value are liable or on importation thereof.

2.4 Personal hearing in the matter was given on 14.05.2013 and it was attended by Shri Ram Prakash Garg, authorized representative of Shri Manoj Kumar Jain. He submitted B/E No. 9257465 dated 08.02.2013 under which the Cartier brand watch was imported. He also requested for the re-valuation of Langha on the basis of invoice value produced by him instead of appraising the value at taking Rs.2.5 lakhs on the higher side. He further submitted that it was only a procedural lapse on part of the passenger, who had not taken export certificate at the time of carriage of impugned goods to Bangkok for marriage. He further pleaded that no fine and penalty be imposed. He admitted the valuation of all other items except langhachunni.

2.5 After due process of law, the case was adjudicated by the adjudicating authority vide his Order-in-Original dt. 14.05.2013, the adjudicating authority acceded to the request of the passenger for re-assessment of the value of Langha at Rs. 75,000/- on the basis of invoice and in absence of any cogent reason to appraise the value of it to higher side of Rs. 2.5 lakhs. The Adjudicating Authority passed the following order:

(i) *I order for confiscation of the impugned goods valued at Rs.5, 12, 757/- under Section 111 (I) (m) of the Customs Act, 1962. However, I give an option to the Pax to redeem the said goods on payment of redemption Fine of Rs.10,000/-(Rupees Ten . thousands only) under the provisions of Section 125 of the Custom Act, 1962;*

ii) I order for payment of applicable rate of customs duty at the Baggage Rate of Duty on the assessable value of goods for Rs.5,12,757/-. I deny the free allowance to the PAX in terms of Baggage Rules, 1998.

(iii) I also impose a Penalty of Rs.5, 000/-(Rupees Five Thousands only) on the Pax under Section 112 of the Customs Act, 1962. "

Accordingly, the appellant deposited Custom duty Rs.1,84,848/-, Redemption Fine Rs.10,000/- and Personal Penalty Rs.5,000/- vide BR No.6545 dated 14.05.2013 and got clearance of the goods.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal No. CC(A)/Cus/663/2013 dated 16.12.2013 modified the Order-in-Original to the extent of extending 40% rebate on the market value to arrive at the effective assessable value of impugned goods. Rest of the Order-in-Original was upheld by Appellate Authority except above modification.

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 on the following grounds :

4.1 It is on record that the petitioner has produced the VAT paid invoice no. 00060 dated 25.04.2013 issued by M/s Geol Jewellers 150 Kapil Vihar Pitampura Delhi - 34 showing that the petitioner purchased silver chowki crafted in wood and are packed in wooden box in India and is of Indian origin. He has also produced the purchase invoice of Lehnga for Rs. 75,210 / - from M/sJindal Designs Jindal House 139, Main Maliwara, Nai Sarak, Chandini Chowk, Delhi vide Invoice No. JD - 1879 / 13- 14 dated 02.05.2013. He purchased Cartier watch (Model No.W6901OZ4) Sr No. 3009 - 528271 invoice no. 522821 dated 02.05.2013 Connaught Place New Delhi - 1. It is also on record that the same watch was imported by M/s Johnson Watch Company Private Ltd. from UAE vide import invoice no. 0041465 dated 22.01.2012 and cleared vide bill of entry no. 9257467 / 08.02.2013. From the above said facts of the case it is clearly established without any doubt that the goods re imported by the petitioner are of Indian goods exported to Thailand and re-imported to India. Therefore, there is no justification for charging the customs duty on the goods exported from India. Particularly in the case of Cartier watch the serial number of the watch is clearly mentioned on the import invoice produce by the petitioner.

4.2 It was also the observation of the Addl.Commissioner of Customs that the identity of the goods was to be established. The documentary evidence produced by the petitioner clearly established the identity of the Cartier watch which is duty paid. There is no justification for charging the Customs duty twice one at the time of import by the M/s Johnson Watch Co., C- 16, Connaught Place, New Delhi and second time from the petitioner.

4.3 It is not the case of the Department that the petitioner has taken rebate/drawback at the time of export of goods. Therefore Customs duty is not chargeable on such goods reliance is placed on the following case law:-

- (i) 2006 (196) ELT 441
- (ii) 2001 (1360) ELT 1159

4.4 In view of the above it is respectfully prayed that the goods mentioned at SL No. 2,3& 7 may be allowed without customs duty items no. 1 may be allowed without duty under duty free allowance of Rs. 35,000/- and on the rest duty may be charged.

5. Personal hearing was scheduled in this case on 03.09.2015, 18.09.2015 &13.10.2015 . Nobody attended the hearing on any of the dates mentioned above nor sought adjournment.

6. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the passenger carried the impugned goods as baggage and attempted to walk through the green channel without either declaring the goods on payment of duty. He was intercepted by Customs officers and diverted to red channel counter where on detailed examination his baggage was found to contain the impugned goods which were detained for appraisal and clearance as per rules. As the passenger had contravened the provisions of Section 77 and 79 of Customs Act, 1962 read with the Baggage Rules, 1998 and para 2.1 and 2.20 of the Foreign Trade Policy 2009-14, the goods were held to be liable for confiscation under Section 111(l) and (m) of the Act and the passenger liable for penal action under Section 112. The Adjudicating Authority ordered for the confiscation of the impugned goods valued at Rs. 5,12,757/- giving the option to redeem the said goods on payment of fine of Rs. 10,000/- under Section 125, applicable rate of Customs duty at the baggage rate of duty and denying duty free allowance, penalty of Rs. 5,000/- on the passenger was imposed under Section 112 of the Act. Aggrieved by the order, the applicant filed appeal before Commissioner (Appeals) who vide the impugned Order-In-Appeal partially allowed the appeal by allowing 40% abatement in the value. Now, the applicant has filed the Revision Application on grounds in para 4 above.

8. Government observes that there is no dispute about the fact that goods were undeclared as are not bonafide baggage and that the passenger opted for the green channel. The main contention of the passenger is that some of the goods (watch, chowki and lahanga) were carried by the passenger at the time of departure and were brought back to India and there is no justification for charging duty on goods exported from India. It is therefore, pleaded that while these items may not be

charged to duty, the television may be allowed under duty free allowance and on rest of the goods duty be charged.

9. In this regard Government notes that adjudicating authority has rightly confirmed the duty payable on applicable Baggage rate under Baggage Rules, 1998 read with provisions of Section 20 of the Act, ibid of the Customs Act, 1962 which reads as under:-

Re-importation of goods--- *"If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof."*

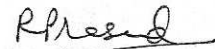
In the instant case, the passenger produced local purchase invoices which were not in his name thus he failed to prove the identity of the impugned goods as per Section 20 of the Act, ibid and it also proved that the goods carried by the passenger did not constitute his bonafide baggage under the provisions of Section 79 of the Customs Act, 1962, as the goods did not belong to him and he carried the same on others' behalf. The case laws relied upon by the applicant are not found to be applicable to the facts and circumstances of the present case.

10. Government also notes that it has been conclusively established that the applicant has clearly contravened the provisions of Section 77, 79 & 20 of the Customs Act, 1962 read with the Baggage Rules, 1998 and the Foreign Trade Policy Rules on the grounds that the impugned goods were not declared, did not constitute his bonafide baggage and he failed to establish identity of goods with duty paying documents. Therefore, the passenger has rightly been denied the free baggage allowance by both the lower authorities.

11. In view of the above Government finds no reason to interfere with the Order-in-Appeal and upholds the same.

12. The Revision Application is rejected as devoid of merit.

13. So ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

Shri Manoj Kumar Jain
3 Rama Park, Kishanganj,
Old Rohtak Road, Sadar Bazar,
New Delhi.

Attested. 

ORDER NO. 19/2016-CUS DATED 26.02.2016

Copy to:

1. The Commissioner of Customs (Airport), IGI Airport, Terminal No.3, New Delhi
2. The Commissioner of Customs (Appeal), New Customs House, IGI Airport, New Delhi
3. The Additional Commissioner of Customs (Airport) IGI Airport, New Delhi
4. Shri S.S.Arora, Advocate B-1/71, Safdarjung Enclave, New Delhi-110029
5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED

(Shaukat Ali)

Under Secretary