

**REGISTERED
SPEED POST**



F.No. 380/73/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. 30/01/14

Order-No. 21/14-cus dated 28.01.2014 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. 262/13 dated 23-05-2013 passed by the Commissioner of Customs, (Appeals), New Delhi.

Applicant : Commissioner of Customs, New Customs House, Near I.G.I. Airport & Cargo Complex, New Delhi.

Respondent : Shri Nirvair Singh
C/o S.S. Arora Advocate,
B-1/71, Safdarjung Enclave,
New Delhi-110029.

ORDER

This revision application is filed by the Deputy Commissioner of Customs, New Customs House, Near I.G.I. Airport & Cargo Complex, New Delhi on authorisation from Commissioner of Customs (I&G) New Delhi, against the Order-in-Appeal No. 262/13 dated 23-05-2013 passed by the Commissioner of Customs (Appeals), New Delhi with respect to Order-in-Original No. 28/2013 dated 29-04-2013 passed by Additional Commissioner of Customs, IGI Airport, New Delhi. Shri Nirvair Singh is the respondent in this case.

2. Brief facts of the case are that the respondent passenger arrived at IGI Airport, New Delhi from abroad. The movement of the respondent being found suspicious, the customs intelligence officers intercepted him at arrival hall. His baggage was examined. As result Misc. goods including silver jewellery and semi precious synthetic stones collectively valued at Rs. 19,41,050/- were recovered. The value of goods was assessed after allowing abatement of 40% on the value of goods. The respondent in his initial statement recorded under section 108 of Customs Act, 1962 had interalia stated that only few items were purchased by him i.e. goggles and spectacles frames, all the other items only were given to him in Bangkok by one Afghan national named Padhshah on carrying basis @ Rs. 1500/- per Kg., that he had to deliver these goods at Janpath on the direction of Padhshah; that he has brought these commercial items for the first time and he was paid money to carry these goods; that all the goods do not belong to him and one bag belongs to someone who could not get the flight with him; that he was waiting for him in the arrival hall thinking that he may come by morning flight. But in his subsequent statement recorded under section 108 of Customs Act, 1962 has stated that all the goods belong to him and the same have been brought in India for sale and earn profit. The respondent was a frequent visitor and has past history of offence. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine of Rs. 4,00,000/- was given to the said passenger under section 125 of Customs Act, 1962 and on payment of appropriate duty and interest under section 28 and 28 AB of Customs Act, 1962. A

penalty of Rs. 4,00,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who allowed redemption of goods listed at Sl. No. 3 to 7 Sl. No. 14 to 16 of valued at Rs. 9,61,000/- lakh on payment of redemption fine of Rs. 1,25,000/-. A penalty of Rs. 1,00,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962. Misc. goods valued at Rs. 980050/- were allowed to be abandoned.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant department has filed this revision application under Section 129 DD of Customs Act, 1962. The respondents were issued notice to file their reply. The applicant department has filed this revision application mainly on the following grounds:

4.1 The Commissioner (Appeals)'s order is non-speaking in the sense that he has not given any reason for reducing redemption fine from Rs. 4 lakhs to Rs. 1.25 lakhs and penalty from Rs. 4 lakhs to Rs. 1 lakh.

4.2 He has not given any finding with regard to pax being frequent visitor and having history of past offences.

4.3 Under section 23 of the Customs Act, 1962, the owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon shall not be liable to pay the duty thereon.

Provided that the owner at any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this act or any other law for the time being in force.

Therefore, after confiscation, the pax has an option to redeem the goods or not to redeem the goods. But the question is as to whether he can part redeem the

goods, while not redeeming certain part and confiscated goods. It appears that law does not give such a choice to importer/pax neither such a choice is available to the adjudicating authority.

5. Personal hearing was scheduled in this case on 29-10-2013 and 02-01-2014. Shri S.S.Arora, Advocate attended hearing on 02-01-2014 on behalf of the respondent. He has pleaded that the Order-in-Appeal passed by the Commissioner (Appeals) is legal and proper hence the same may be upheld. He has cited the case laws in this case of J.J. Electronics Vs. CC (Prev.), New Delhi reported in 2011 (268) ELT 281 (T.Del.). Nobody appeared for hearing for the department.
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.
7. On perusal of records, Government observes that the respondent passenger had imported Misc. goods/silver jewellery in commercial quantity through baggage mode which cannot be considered as bonafide baggage in terms of section 79 of Customs Act, 1962 the said goods are imported in violation of provisions of Baggage Rules, 1998, section 77 & 79 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provision of section 3 (1) & 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine of Rs. 4,00,000/- was given to the said passenger under section 125 of Customs Act, 1962 and on payment of appropriate duty/ interest. A penalty of Rs. 4,00,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962. In appeal the Commissioner (Appeals) as per the request of the respondent allowed partial release of goods valued at Rs. 10,61,000/- on payment of redemption fine of Rs. 1,25,000/- and penalty of Rs. 1,00,000/-. Now in this revision application the applicant department has challenged the order in appeal passed by the Commissioner (Appeals) on the grounds state above and pleaded to set the same aside and restore the Order-in-Original. The applicant department has

contended that the respondent was a frequent offender having past history of offence; that Under section 23 of the Customs Act, 1962, the owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon shall not be liable to pay the duty thereon; Provided that the owner at any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this act or any other law for the time being in force; that Commissioner (Appeals) has not given any reasons for reducing the redemption fine and penalty.

9. Government notes that department has mainly objected to part release of goods. In this regard it is observed that respondent passenger was intercepted by Customs Officer at arrival duty free shop even before customs declaration point i.e. red channel. He had been contesting right from beginning that he had been denied opportunity to declare the goods and value of goods was assessed very high by customs. In view of these circumstances passenger opted to redeem part goods valuing Rs. 1061000/-. Commissioner (Appeals) considered the said request and allowed part release of goods on payment of reduced redemption fine and penalty, as there is no specific bar on allowing part release of goods. Government notes that Hon'ble CESTAT in the case of J.J Electronics Vs CC (Prev.) New Delhi has held as under:

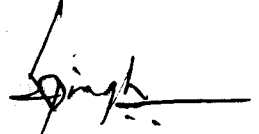
" We note that the department has not taken any action to dispose of these perishable goods under section 110 A of the Customs Act. We also note that the applicant is giving up the option to redeem the goods which prima facie suggests that the values fixed and redemption fine imposed is exorbitantly high. This type of problem is caused quite often by the seizing officers who show very high seizure values to boost up their performance figures and thereafter the department also is not able to sell the goods at the price assessed by them. This is a fit case for granting immediate relief.

*In facts and circumstances as above we pass the following orders:
The applicant has to intimate the department in writing stating the confiscated goods which they do not want to redeem. All such goods shall be taken over by the department within 10*

days of such intimation to free the business premises of the applicant of such worthless goods."

Government notes that as per principle laid down in above said judgment, and in the absence of any specific bar in chapter XI of Customs Act, 1962 relating to baggage, the order for allowing part release of goods cannot be assailed. Since the part goods are released the reduction in redemption fine and penalty is in order. Keeping in view the overall circumstances of the case and the principles as laid down by the Hon'ble CESTAT in above case, Commissioner (Appeals) has rightly allowed partial clearance of goods on payment on modified redemption fine and personal penalty. Government do not find any infirmity in said order and therefore upholds the same.

10. Revision Application is thus rejected being devoid of merit.
11. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

The Commissioner of Customs,
New Customs House,
Near I.G.I. Airport & Cargo Complex,
New Delhi.

ATTESTED

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

Order No. 21 /14-Cx dated 21.1.2014

Copy to:

1. The Commissioner of Customs, (Appeals), New Customs House, Near I.G.I. Airport & Cargo Complex, New Delhi.
2. The Additional Commissioner of Customs, IGI Airport, New Delhi.
3. Shri Nirvair Singh, C/o S.S. Arora Advocate, B-1/71, Safdarjung Enclave, New Delhi-110029.
4. ✓ PS to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)