



REGISTERED
SPEED POST

F.No.375/19/B/13-RA
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 07/03/16

ORDER NO. 25/2016-CUS DATED 02.03.2016 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, 1962, against the Order-in-Appeal No.CC(A)CUS/282/2013 dated 29.04.2013 passed by the Commissioner of Customs (Appeal), New Delhi

Applicant : Mr. Sultan Bahardeen, New Delhi

Respondent : Commissioner of Customs, ICD, Tughlakabad, New Delhi

ORDER

This Revision Application is filed by Mr. Sultan Bahardeen, New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)CUS/282/2013 dated 29.04.2013 passed by the Commissioner of Customs, (Appeals) New Delhi, with respect to Order-in-Original 311/2012 dated 22.08.2012 passed by Additional Commissioner of Customs, (Airport) Bangalore.

2. Mr. Sultan Bahardeen, holder of Indian Passport No.J2003594, resident of G-12, South Extension Part-II. New Delhi, filed Baggage Declaration No. 954 dated 09.07.2012 for clearance of his goods contained in container No.TTNU-3618053 and GATU-1150241 and claimed benefits of Transfer of Residence (TR) under Rule 8 of the Baggage Rules, 1998. The goods and value declared by him in the said Baggage Declaration Form are mentioned as under:

L.C.D. Panasonic	20,000
AC O General	15,000
Old Kitchenware, Crockery Furniture, Miscellaneous household goods	30,000
Sony LCD 46"	20,000

On 18.07.2012 the goods were examined by Custom officer and found as under:-

A. Goods covered under T R Scheme

- (i) Used Personal Effects and Household goods valued Rs.5 lakhs which were exempted under Rule 8 of the Baggage Rules, 1998;
- (ii) TV Plasma 65', AC Panasonic, Panasonic Blue Ray Disc. Theatre(one piece each item) total valued Rs. 86,000/- which were eligible concessional rate of duty amounting to Rs. 13,287/-;
- (iii) LED 3 D TV 46'1 No. and AC Panasonic 2Nos. total valued Rs. 69,750/- which were not eligible concessional rate of duty amounting Rs. 25,145/-

B. Goods not covered under TR Scheme

Crystals 18 Nos (2 pcs broken), LED Panels 15 Nos., Active digital subwoofers 2 Nos., Speakers Opera 405D 2 Nos., DJ Equipment's, Cameras Zenith 7 Nos., Conference Table 2 Nos -total value Rs. 5,97,000/- involving duty Rs. 2,15,219/-.

2.1. The goods were found mis-declared, undervalued and in commercial quantity, therefore, the same were placed under seizure under Section 110 of the Customs Act, 1962. Statement of Shri Sultan Bahardeen was recorded under Section 108 of the Act

ibid wherein he admitted that he was not aware that some of his goods were not covered under TR Scheme.

2.2. The applicant reiterated that he does not want Show Cause Notice in the matter. The Additional Commissioner of Customs, ICD, New Delhi vide Order-in-Original No.311/2012 dated 22.08.2012 -

(i) Allowed duty free clearance of the used personal effects and household goods collectively valued for Rs.5 lakhs under Rule 8 of the Baggage Rules, 1998.

(ii) Ordered for confiscation of the dutiable goods valued at Rs. 7,52,750/- which included goods eligible under TR as well as not covered under TR Rules under Section 111(d) of the Customs Act, 1962, with the option to redeem the same on payment of redemption fine of Rs. 1,25,000/- under Section 125 of the Customs Act, 1962.

(iii) Clearance of goods eligible under TR Rules on payment of appropriate duty in accordance with the provisions of Rule 8 of the Rules, ibid and clearance of non TR goods on payment of full rate of duty.

(iv) Imposed personal penalty of Rs. 75,000/- on Shri Sultan Bahardeen under Section 112 of the Customs Act, 1962.

2.3. The applicant deposited duty of Rs. 2,53,652/- vide TR-6 Challan No. 2996 dated 09.08.2012 and redemption fine of Rs. 1,25,000/- plus penalty of Rs. 75,000/- vide TR-6 Challan No. 2995 dated 09.08.2012 and got clearance of goods.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. CC(A) Cus/282/2013 dated 29.04.2013 reduced the redemption fine to Rs. 25,000/- and penalty to Rs. 5,000/-.

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 That the order is not legal or proper.

4.2 That the appellate authority and adjudicating authority failed to appreciate that the applicant has not imported any items which attract the provisions of Section 111 (2) or Section 111 (d) of Customs Act.

4.3 That the appellate authority and adjudicating authority failed to appreciate that when the invoice value of the goods are acceptable as the transaction value, the presumption is that the goods are in the possession and use of the applicant in abroad and it cannot be alleged that the goods are in commercial quantity of new items.

- 4.4 That the appellate authority and adjudicating authority failed to appreciate that when a beneficial legislation is made by the law makers, the respondent have no right to deny the rules of such benefit on technical grounds.
- 4.5 That the appellate authority and adjudicating authority failed to appreciate that the carton no.188CRYS01 and 189CRYS02 are declared as only 2 crystal items, the word crystal items clearly means that there are a set of crystal pieces, it never convey a message that there is only one piece. That when applicant admitted the invoice value as basic value for said items, allegation of these goods as mis-declared goods are unsustainable.
- 4.6 That the appellate authority and adjudicating authority failed to appreciate that the golden bird mentioned in panchnama, was a showpiece item brought from a flower shop and the time of packing it was kept in the box supplied by the flower shop. That both the items are falling under the category of goods under TR where no duty is payable as admitted by respondents.
- 4.7 That appellate authority and the adjudicating authority failed to appreciate that the Baggage Rules, 1998 allows a person who on transferring his residence to India to import his bonafide baggage items as duty free items in addition to articles included in Annexure-2 of Appendix F to the above Rule. That in the present case, the entire goods should have cleared as duty free items, hence the impugned orders are liable to be set aside.
- 4.8 That the appellate authority and adjudicating authority arbitrary determines the so called interim value of the goods and discarded the declared value for some of the goods contrary to the provision of Customs Valuation Rules.
- 4.9 That the adjudicating authority has not given any reason for holding that the seized goods were not bonafide baggage items.
- 4.10 That the adjudicating authority having seized the goods for valuation has failed to determine the value in accordance with law.
- 4.11 That the appellate authority and adjudicating authority has failed to appreciate that this was not a case calling for imposition of fine and penalty in as much as the goods were not concealed nor mis-declared and the goods are for the bonafide use of the Passenger itself.
- 4.12 That the appellate authority and adjudicating authority failed to appreciate the fact that the redemption fine cannot be fixed without considering the margin of profit. That quantum of fine and penalty can be fixed only after considering margin of profit and accrued demurrage charge in such cases. That the items are not brought for any trading purpose therefore, the question of profit doesn't arise.

4.13 That the adjudicating authority arbitrarily determined the value at higher rate and the appellate authority the same hence applicant is entitled to get refund of excess duty with interest from the date of payment.

4.14 That the applicant has not imported any prohibited goods for imposing heavy amount as penalty. That the appellate authority and adjudicating authority has failed to distinguish the difference and imposed heavy amount as fine and as penalty. Thus the impugned orders are liable to be set aside.

4.15 That the appellate authority and adjudicating authority failed to appreciate the fact that the applicant has imported the goods for his bonafide personal use. That where the imported items are for the actual use of the importer and where the import is not for profit motive, penalty cannot be imposed. {1998 (102) ELT 746 Tribunal}. Thus the impugned orders are liable to be set aside.

5. Personal hearing in this case held on 03.09.2015 and 18.09.2015 was attended by Mr. P.A. Augustian, Advocate on behalf of the applicant who reiterated the grounds of revision application and stressed that the valuation of the goods is on the higher side and the value as declared be accepted and duty may be assessed accordingly. Shri R. Singh, Appraiser, ICD attended the personal hearing on behalf of the department who handed over a written submission which is as under:-

5.1. That the applicant did not declare the exact description and quantity of the goods. That vide his letter dated 30.07.2012 he admitted that he had mistakenly declared a show piece-golden bird as flower since it was packed in a box of flower shop. That he also did not declare the actual number of crystals on the plea that the word crystal item clearly means a set of crystal pieces. That his version of keeping a show piece in the box of a flower shop and then declaring it as flowers and presumption of set of crystals by declaring it crystal item is not convincing and legally tenable.

5.2. That the value of goods not covered under Transfer of Residence Rules has been worked out at Rs. 5,97,000/- which the applicant had failed to declare on the baggage declaration form. That vide his statement dated 07.08.2012 and also consistent with the principles of natural justice at the time of personal hearing granted to him by the adjudicating authority on 07.08.2012 he accepted the value so arrived at and also agreed to pay the duty on the goods so assessed. That the value of the goods as assessed by the officers has not been disputed by him, undervaluation of goods is established.

5.3. That most of the goods totally value at Rs. 5,97,000/- were found not eligible to be cleared under TR Rules. That the applicant's contention that he was not aware that some of the goods are not covered under TR scheme is against the settled law that ignorance of law is no excuse.

- 5.4. That the applicant had knowingly mis-declared the goods w.r.t. value and quantity with malafide intention tried to seek clearance of non TR goods without payment of duty in the guise of household goods by declaring all the goods collectively valued at Rs. 85,000/-. That the appellate authority had already reduced the amount of fine and penalty considerably and a very lenience view had already been taken.
6. Government has carefully gone through the relevant case records available in case file, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.
7. On perusal of records, Government observes that the applicant filed the baggage declaration form no. 954 dated 09.07.2012 for clearance of his goods claiming the benefit of Transfer of Residence (TR) under Rule 8 of the Baggage Rules, 1998. On examination the goods were found mis-declared, undervalued and in commercial quantity, therefore, the same were placed under seizure under Section 110 of the Customs Act, 1962. Statement of Shri Bahardeen was recorded under Section 108 of the Act ibid wherein he admitted that he was not aware that some of his goods were not covered under TR Scheme. As the applicant did not want Show Cause Notice in the matter, therefore, the Additional Commissioner of Customs, ICD, New Delhi vide Order-in-Original No.311/2012 dated 22.08.2012 ordered duty free clearance of the used personal effects and household goods collectively valued for Rs.5 lakhs under Rule 8 of the Baggage Rules, 1998; confiscation of the dutiable goods valued at Rs. 7,52,750/- which includes goods eligible under TR as well as not covered under TR Rules under Section 111(d) of the Customs Act, 1962, with the option to redeem the same on payment of redemption fine of Rs. 1,25,000/- under Section 125 of the Customs Act, 1962; clearance of goods eligible under TR Rules on payment of appropriate duty in accordance with the provisions of Rule 8 of the Rules, ibid and clearance of non TR goods on payment of full rate of duty and imposed personal penalty of Rs. 75,000/- on Shri Sultan Bahardeen under Section 112 of the Customs Act, 1962. Aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. CC(A) Cus/282/2013 dated 29.04.2013 reduced the redemption fine to Rs. 25,000/- and penalty to Rs. 5,000/-. Now the applicant has filed this revision application on grounds mentioned in para 4 above.
8. Government notes that the applicant in his grounds of appeal has contended that valuation of the goods was not based on the invoices provided by him. Government observes that the valuation of the goods has been done by the officers of import shed in consultation with the Appraising Officer on the basis of invoices produced by the passenger and by physical examination of the goods. The applicant

failed to declare the true value of the goods brought by him as required under rules and also in his voluntary statement dated 07.08.2012 has accepted the value arrived by the appraising officers and also agreed to pay duty on the goods so assessed. Since value of the goods as assessed by the officers has not been disputed by the applicant, undervaluation of the goods declared by him is established. Also no supporting document to substantiate the value of the goods has been produced, Government finds no infirmity in the method of valuation adopted by the Customs authorities. Hence, the plea of over valuation is not acceptable and the value adopted by the adjudicating authority and upheld by Commissioner(Appeals) is sustained as per law and does not warrant interference.

9. Government further observes that the applicant did not declare the exact description and quantity of the goods in as much as he has declared a show piece – golden bird as flowers on the plea that it was packed in a box of flower shop. Also he did not declare the actual numbers of crystals on the plea that the word crystal item clearly means that there are a set of crystal pieces. The fact that the applicant claims to be the owner of the goods, the applicant's version of keeping a show piece in the box of a flower shop and then declaring it as flowers instead of a golden bird and presumption of set of crystals by declaring it crystal item is not convincing and tenable.

10. Government observes that on detailed examination of the goods it was noticed by the examining officers that the goods brought by the applicant were either not covered as bona fide baggage to the extent mentioned in Appendix of the said rule or were misdeclared hence were ineligible to be cleared under TR Rules. Therefore, the contention of the applicant that the entire goods should have been cleared as duty free items is not correct.

11. Moreover, the explanation given by the applicant that due to ignorance of law the proper procedure was not followed by them, also does not appear to be genuine and creditworthy. In any case ignorance of law is no excuse not to follow something which is required to be done by the law in a particular manner. This principle has been recognized and followed by the Apex Court in a catena of its judgements.

12. As regards pleading of applicant that heavy amount as fine and penalty has been imposed, Government finds that Commissioner (Appeals) has already taken a very lenient view and considerably reduced the redemption fine from Rs.1,25,000/- to Rs.25,000/- and personal penalty from Rs.75000/- to Rs.5000/- . As such there is no need to reduce the amount further and Government finds no reason for interference.

13. In view of above circumstances, Government finds no infirmity with the impugned Order-in-Appeal and, therefore, upholds the same.
14. Revision Application is thus rejected being devoid of merit.
15. So, ordered.



(RIMJHIM PRASAD)
Joint Secretary to the Government of India

Mr. Sultan Bahardeen,
G-12, 2nd Floor
South Extension Part-II,
New Delhi-110029

ATTESTED



Joint Secretary to the Government of India
Ministry of Labour and Employment
New Delhi

ORDER NO. 25/2016-CUS DATED 02.03.2016

Copy to:

1. The Commissioner of Customs, ICD Tughlakabad, New Delhi
2. The Commissioner of Customs (Appeal), New Delhi
3. The Additional Commissioner of Customs, ICD Tughlakabad, New Delhi
4. Mr. P.A.Augustian, Advocate, Faizel Chambers, Pullepady Cross Road, Cochin-682018
- ✓ 5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED

(Shaukat Ali)
Under Secretary to the Government of India

शुकात अली
Shaukat Ali
अन्वयकारी (रा. अ.)
Under Secretary (RA)