

REGISTERED
SPEED POST



F.No.380/66/DBK/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: ...16/10/2015

ORDER NO.27/2015-CUS DATED 15.10.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject: : Revision Application filed, under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)CUS/AIR/21/2013 dated 22.01.2012 passed by Commissioner of Customs (Appeals), NCH, Delhi.

Applicant : Commissioner of Customs, Import & General, New Delhi.

Respondent : M/s Sanjay Chadha, S5, Security Systems, New Delhi.

ORDER

This revision application is filed by Commissioner of Customs, Import & General, New Customs House, New Delhi. (herein after referred as the Applicant) against the Order-in-Appeal No. CC(A)CUS/AIR/21/2013 dated 22.01.2013 passed by the Commissioner of Customs (Appeals), NCH, New Delhi with respect to Order-in-Original No. 04/2012 dated 26.04.2012, passed by the Deputy Commissioner of Customs (Refund), IGI Airport, New Delhi in the case of Shri Sanjay Chadha (hereinafter referred as the passenger).

2. Brief facts of the case are that Shri Sanjay Chadha, Country Head, India S5 Security Systems Pvt. Ltd, 59/15 Kalkaji Extension, New Delhi arrived into India from Newark by Flight No. CO-022 dated 29.05.2011. He brought certain security items like I.P. Video Camera, New Work Video Server, Explosives Detector valued at Rs. 10,29,550/- for exhibition at Bangalore. As the same were of commercial nature, they were seized and the case was adjudicated vide Order No. 31/2011 dated 01.06.2011. Value of the goods were assessed to Rs. 10,99,350/- attracting Customs Duty of Rs. 3,84,773/-, Cess of Rs. 11,543/-. The adjudicating authority imposed a redemption fine of Rs. 50,000/- and Personal Penalty of Rs. 25,000/-. The Duty, Cess, Redemption Fine and Personal Penalty were deposited by the passenger vide BR No. 22541 dated 01.06.2011.

2.1. The passenger departed from India on 07.09.2011 by Flight No. BA-0256. While leaving India, the said passenger got an endorsement done of the goods imported by him on his ticket signed by an Inspector of Customs as evidence of having exported these goods.

2.2. Thereafter, the passenger filed a refund application with the Deputy Commissioner (Refunds), New Custom House, New Delhi which was forwarded to the Assistant Commissioner (Refunds), IGI Airport, New Delhi. A detailed scrutiny of the refund application by the Assistant Commissioner revealed that the applicant did not fulfil the conditions as laid down under Section 74 of the Customs Act, 1962 in as much as:-

- (i) No order permitting the clearance of the goods for exportation, by the proper officer was issued.
- (ii) The goods exported were not identified to the satisfaction of Assistant Commissioner/Deputy Commissioner of Customs as the goods which were imported.

2.3. A Show Cause Notice dated 27.04.2012 was issued to the passenger asking him to explain as to why refund claim of Rs. 3,84,426/- should not be rejected as per the provisions of Section 74 of the Customs Act, 1962. The case was adjudicated vide Order-in-Original No. 4/IGI/Refund/Re/2012 dated 26.07.2012 by the Deputy Commissioner (Refund), IGI Airport, New Delhi, who rejected the refund claim of the passenger.

3. Aggrieved by the impugned order the passenger filed appeal before the Commissioner (Appeals), who allowed the appeal of the passenger vide Order-in-Appeal No. CCA/CUS/AIR/21/2013 dated 22.01.2013.

4. The order of the Commissioner (Appeals) was reviewed by the Department, who vide Review Order no. 23/2013 dated 20.05.2013 directed the Deputy Commissioner of Customs (Refund) to file Revision Application alongwith condonation of delay, on the following grounds:-

4.1. The Commissioner (Appeals) erred in allowing refund/drawback of the duty paid by the passenger at the time of importation when there was substantive noncompliance with the provisions of Section 74 of Customs Act, 1962 under which the claim was filed and processed. That the passenger did not make any declaration with the declared intention of claiming refund under Section 74 *ibid*. That the above two conditions were not fulfilled at the time of export of the said goods. That no order was issued by the proper officer permitting the clearance of the goods for exportation. That the goods meant for export were not identified to the satisfaction of AC/DC of Customs as the goods which were imported.

4.2. That the requirement that goods have to be established to the satisfaction of AC/DC cannot be treated as mere procedural requirement as the critical requirement for eligibility to drawback under Section 74 is establishment of identity of goods exported. That the condition for filing of proper declaration under Section 74 and making of an order permitting exportation are also substantive requirements. That these provisions are stipulated to ensure that there is no misuse of the drawback facility. That non-compliance of these provisions disentitles the passenger drawback under Section 74 of the Customs, Act, 1962. That in the present case, the only document produced by the passenger is the air ticket with an endorsement which is neither a proper document nor does it contain particulars of the goods imported or exported.

4.3. That the Commissioner (Appeals) has also failed to appreciate that the proper officer for filing claim of drawback was not Assistant Commissioner (Refund) at passenger Terminal of IGI Airport but Deputy Commissioner (Drawback) located at Air Cargo Exports, New Delhi.

5. A prayer for condonation of delay was also made by the applicant on the following grounds:-

5.1. That the subject order was taken up for examination for the purpose of review and at the same time the Review Branch received simultaneous orders for review to different matters, and after processing at different levels which took time due to official exigencies also, the Department took the decision to file appeal only on 18.04.2013; accordingly a review order was passed on 20.05.2013.

5.2. That the power to condone the delay may be exercised in favour of the applicant, considering the public interest involved and appreciate the genuine difficulties which prevented filing of Revision Application.

5.3. That the delay in filing the appeal is not intentional or deliberate.

6. Personal hearing scheduled in this case on 15.09.2015 was attended by Ms. Priya Gulliya, Advocate, on behalf of the passenger who stated that the case may be decided based on facts and merits of the case. Nobody attended hearing on behalf of the Applicant.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government first proceeds to take up the application for condonation of delay in filing the Revision Application by the Department. The Department has submitted that the order of the Commissioner (Appeals) was taken up for examination for the purpose of review and due to simultaneous receipt of several orders for review and time taken due to official exigencies the Department took the decision to file appeal against the order of Commissioner of Customs (Appeals) only on 18.04.2013, accordingly a review order was passed in this regard on 20.05.2013. It is seen that the impugned Order-in-Appeal was received by the applicant on 20.02.2013 while the Revision Application was filed on 27.05.2013, i.e. after a delay of 5 days. The Department filed this revision application in 5 days after initial 90 days period, which falls within condonable limit of 90 days. Hence, Government condones the said delay and proceeds to examine the case on merits.

9. On perusal of case records, Government observes that the Passenger, arrived into India from Newark by Flight No. CO-022 dated 29.05.2011. He brought certain security items like I.P. Video Camera, New Work Video Server, Explosives Detector valued at Rs. 10,29,550/- for exhibition at Bangalore. The goods were seized being commercial in nature. The case was adjudicated vide Order No. 31/2011 dated 01.06.2011. Value of the goods were assessed to Rs. 10,99,350/- attracting Customs Duty of Rs. 3,84,773/-, Cess of Rs. 11,543/-. The adjudicating authority imposed a redemption fine of Rs. 50,000/- and personal penalty of Rs. 25,000/-. The duty, cess, redemption fine and personal penalty were deposited by the passenger vide BR No. 22541 dated 01.06.2011. The passenger departed from India on 07.09.2011 by Flight No. BA-0256. While leaving India, the said passenger got an endorsement done of the goods imported by him on his ticket signed by an Inspector of Customs as evidence of having exported these goods.

Thereafter, the passenger filed a refund application with the Deputy Commissioner (Refunds), New Custom House, New Delhi which was forwarded to the Assistant Commissioner (Refunds), IGI Airport, New Delhi. The Deputy Commissioner (Refund), IGI Airport, New Delhi, rejected the refund claim of the

Commissioner (Appeals), who vide Review Order no. 23/2013 dated 20.05.2013 directed the Deputy Commissioner of Customs (Refund) to file Revision. Now, the Department has filed this revision application on grounds mentioned in para (4) above.

10. Government observes that the passenger Shri Sanjay Chadha filed the refund claim under the provisions of Section 74 of the Customs Act, 1962. The said provisions of Section 74 read as under:-

"SECTION 74. Drawback allowable on re-export of duty-paid goods. -

(1) When any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation, -

(i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or

(ii) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation; or

(iii) are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation, ninety-eight per cent of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if -

(a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;"

10.1. The above provisions permit drawback on re-export of duty paid imported goods only if the said goods are easily identifiable to the goods which had been imported on payment of duty. The condition under which such drawback is permitted is that such goods are entered for export under proper declaration to the proper officer who makes an order permitting such export and the goods are identifiable to the satisfaction of the Assistant Commissioner as those which were imported.

11. Government notes that it is an undisputed fact that the passenger Shri Sanjay Chadha has not followed the requirements of law as laid down under Section 74 of the Customs Act, 1962 to the extent that no declaration under Section 77 was made by the respondent nor any order permitting the clearance of the goods for exportation, by the proper officer was issued. Neither were the goods exported identified to the satisfaction of Assistant Commissioner/Deputy Commissioner of Customs as the goods which were imported. In this regard Government notes that these are substantive requirements of law and have been stipulated to ensure that there is no misuse of the drawback facility. Non-compliance of these provisions will disentitle the respondent to any benefit of drawback.

11.1 It is in this spirit and this background that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani – (AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple

technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory.

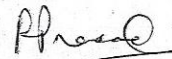
11.2 It is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.).

12. Government further notes that it is an established fact that the identity of exported goods with regard to imported goods could not be established to the satisfaction of Assistant Commissioner/Deputy Commissioner as required under law. In this case the only document produced by the passenger was the air ticket with an endorsement which is neither a proper document nor does it contain particulars of the goods imported and exported. Further, no declaration under Section 77 was made by the respondent nor any order permitting the clearance of the goods for exportation, by the proper officer was issued. Therefore, it was not feasible to establish the identity of the impugned goods as the same which were imported to entitle them to drawback. This view also finds support in the order of the Hon'ble High Court of Madras in the case of Perfetti Van Melle India Pvt. Ltd Vs UOI 2009 (243) ELT 654 (Mad) wherein it is held that for claiming drawback under Section 74 ibid identity of goods is the prime criteria.

13. In view of above circumstances, Government finds that Commissioner (Appeals) has erred in allowing drawback of the duty paid by the passenger at the time of importation when there was substantive non-compliance with the mandatory provisions of Section 74 of the Customs Act, 1962. Therefore, Government rejects the order of the Commissioner (Appeals) being devoid of merits and upholds the Order-in-Original.

14. The revision application is therefore allowed.

15. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

The Commissioner of Customs,
IGI Airport, Terminal 3,
New Delhi.

Attested.
Shaukat Ali
Under Secretary (RA)

ORDER NO. 27/2015-CUS DATED 15.10.2015

Copy to:

1. The Commissioner of Customs , IGI Airport, T-3, New Delhi.
2. The Commissioner (Appeals), Customs, NCH , New Delhi.
3. Shri Sanjay Chadha,S5 Security Systems Pvt. Ltd.,C-83, DDA Shed, Okhla Indl. Area, Phase-I, Behind Crowne Plaza, New Delhi-110020.
4. Ms. Priya Gulliya, Advocate, 18, Lawyers Chamber, Delhi High Court, New Delhi-110003.
5. Guard File.
6. PA to JS (RA)
- ✓ 7. Spare Copy


ATTESTED
शौकत अली
Shaukat Ali
अध्यापक (उ.आ.)
Under Secretary (RA)