



**REGISTERED**  
**SPEED POST**

**F. No. 375/34/B/2013-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue..09./03/16.

**ORDER NO. 27/2016-CUS DATED 04.03.2016** 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/606/2013 dated 25.10.2013.

Applicant : Shri Zaheer Ahmad.

Respondent : Commissioner of Customs IGI, Airport, T-3, New Delhi.

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## **ORDER**

This revision application is filed by Sh. Zaheer Ahmad, (here in after referred to as the applicant) against the Order-in-Appeal No. CC(A)CUS/606/2013 dated 25.10.2013 passed by Commissioner of Customs, (Appeals) NCH, New Delhi, with respect to Order-in-Original No. 13/2013/AK/ADC/IGI dated 14.02.2013 passed by Additional Commissioner of Customs, IGI Airport, New Delhi.

2. Brief facts of the case are that the applicant, an Indian Passport holder arrived at IGI Airport, Delhi from Bangkok on 24.04.2012 by Flight No. TG-323 and was intercepted on suspicion while he was passing through the green channel. In his disembarkation slip it was found that he declared the total value of goods Rs. 23,500/-. He was found to be carrying two bags as checked-in baggage and two hand bags as baggage and was diverted for screening of his baggage. As on screening of his baggage something abnormal was found the four bags were examined before two independent panchas and in the presence of the passenger and were found to contain 80 pieces of jeans of various sizes, plain artificial jewellery made of brass, plated with silver of 22KT weighing 5000gms and studded artificial jewellery of brass studded with glass stones, plated with silver of 22KT weighing 15000 grams. The applicant produced two invoices one each for purchase of artificial jewellery and jeans respectively. The value of invoice pertaining to artificial jewellery found very low was appraised by the jewellery appraiser on whose opinion plain artificial jewellery made of brass plated with silver weighing 5000 grams was assessed to Rs. 1,20,000/- and artificial jewellery studded with glass stones made of brass plated with silver weighing 15000 grams was assessed to Rs.3,75,000/-. The value of 80 pieces jeans was determined as per invoice dated 22.04.2012 to Rs.32185/- by taking exchange rate @ Rs. 1.57 per Bhat. The certificate of appraisal dated 24.04.2012 was also obtained from the jewellery appraiser. The said goods totally valued at Rs. 5,27,185/- were seized under Section 110 of the Customs Act, 1962 on a reasonable belief that the same are liable for confiscation under the Act, *ibid.* Statement of the passenger Shri Zaheer Ahmad was recorded on 24.04.2012 under Section 108 of the Customs Act, 1962. A Show Cause Notice dated 18.09.2012 was issued to the applicant proposing denial of free baggage allowance; confiscation of the impugned goods under the provision of Section 111 of the Customs Act, 1962 for the contravention of Section 77 & 79 of the Act, *ibid.*; demand of Customs duty under Section 28 and interest under 28AB of the Act, and imposition of penalty under Section 112 of the Act, *ibid.* After following due process of law the Adjudicating Authority vide Order-in-Original No. 13/2013/AK/ADC/IGI dated 14.02.2013 adjudicated the case and passed the following order:-

- i) Disallowed free allowance of Rs. 35,000/- on account of non bonafide nature of the goods and contravention of various provisions of the Act, *ibid* done by the passenger as stated *supra*.

- ii) Ordered to confiscate the seized impugned goods (artificial jewellery and jeans) totally valued at Rs. 5,27,185/- under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962. However gave an option to redeem the same on payment of redemption fine of Rs. 1,00,000/- under Section 125 of the Act, *ibid.* on payment of appropriate duty and interest respectively under Section 28 and 28 AB of the Act, *ibid.*
- iii) Ordered confiscation of the packaging material used for concealing the seized goods under Section 118 of the Customs Act, 1962. However, gave an option to redeem the same on payment of redemption fine of Rupees one thousand(Rs.1,000/-) under Section 125 of the Act, *ibid.*
- iv) Imposed a penalty of Rs. 50,000/- upon the applicant under Section 112 of the Customs Act, 1962 for the various acts of omission and commission.

The applicant deposited duty of Rs. 1,90,050/- plus interest Rs. 33,178/- redemption fine Rs. 1, 01,000/- and penalty of Rs. 50,000/- vide BR No. 5036 dated 12.04.2013 and got the impugned goods cleared.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner(Appeals) vide Order-in-Appeal No.CC(A)CUS/606/2013 dated 25.10.2013 who reduced the Redemption Fine to Rs. 55,000/- from Rs.1,00,000/- and Penalty to Rs. 35,000/- from Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962.

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 passed by the Commissioner of Customs (Appeals) is not correct.

4.2. That no interest is leviable under Section 28 AB on the goods seized under Section 110 of the Customs Act, 1962;that Section 28 AB is applicable only in the case of recovery of duties not levied or short levied or erroneously refunded under Section 28 of the Act, *ibid.* That the goods were seized by the Customs Department and were with the Customs Department. There is no question of short levied or not levied or erroneously refunded under Section 28 of the Act.

4.3. That Section 28 of the Customs Act, 1962 may be read as:-

*Recovery of duties not levied or short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts-*

- A. *the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to Show Cause why he should not pay the amount specified in the notice;*

Explanation- For the purpose of this Section, "relevant date" means,-

- a) In a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- b) In a case where duty is provisionally assessed under Section 18 of the Act, *ibid*, the date of adjustment of duty after the final assessment or reassessment, as the case may be, thereof;
- c) In a case where duty or interest has been erroneously refunded, the date of refund;

From the above said language of Section 28 of the Customs Act, 1962 it is clearly established without any doubt that Section 28 is applicable only when there is order of clearance passed by the proper officer and the proper officer has to issue a Show Cause Notice for duties not levied or short levied or erroneously refunded within one year from the date of passing of the order by the proper officer. That neither their case, is of provisional assessment under Section 18 of the Customs Act, 1962 nor their case is the case of refund of Customs Duty. That in their case no order of clearance has been passed by the proper officer. Therefore, Section 28 of the Customs Act, 1962 is not applicable.

4.4. The applicant placed reliance on the decision of CESTAT in the case of Essar Oil Ltd Vs. Commissioner of Customs (Prev), Jamnangar-2006 (197) ELT 450 (Tri-Mumbai) as under:-

*Demand-short levy-Section 28 of the Customs Act, 1962 is applicable when duty has been short-levied or non-levied pursuant to an order of assessment and since no order of clearance under Section 47 *ibid* issued, no short levy or non-levy of duty can arise for recovery in terms of Section 28 *ibid*.*

4.5. Section 44 of the Customs Act clearly stated that Section 47 of the Customs Act is not applicable to the goods imported under baggage and goods imported by post. There is no question of payment of interest under Section 28AB.

4.6. The applicant prayed for setting aside the Order passed in respect of demand of interest under Section 28AB or any other relief as deem fit.

5. Personal hearing in this case held on 07.09.15 was attended by Shri S. S. Arora, Advocate on behalf of the applicant, who reiterated the grounds of revision

application. He contended that Section 28 of the Customs Act, 1962 is applicable only to goods cleared for home consumption under Section 47. That this Section is clearly not applicable to cases of baggage, so question of interest does not arise.

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

7. On perusal of records, Government observes that the applicant upon arrival at IGI Airport, Delhi from Bangladesh on 24.4.2012 had misdeclared the impugned goods carried by him which vide impugned Order-in-Original dated 14.02.2013 were confiscated under Section 111(d),(i),(l) &(m) ibid with option to redeem the same on payment of redemption fine of Rs. 1,00,000/- under Section 125 and payment of appropriate duty and interest under Section 28 & 28AB ibid. Packing material used for concealing the said goods was confiscated under Section 118 ibid with the option to the applicant to redeem the same on payment of Rs. 1000/- under Section 125 ibid. A penalty of Rs. 50,000/-(Rs. Fifty thousand only) was also imposed upon the applicant under Section 112 ibid. Aggrieved by the said order, the applicant filed appeal before Commissioner (Appeals), who vide impugned Order-in-Appeal reduced the quantum of redemption fine and penalty. Now the applicant has filed Revision Application on the grounds stated in para 4.

8. Government observes that the limited issue on which the present application has been filed by the applicant is regarding the applicability of Section 28AB i.e. charging of interest in the present case. Applicant has contended that interest under Section 28AB of the Customs Act, 1962 is not leviable in the instant case as the Section 28 invoked for the demand of duty is not applicable in this case in as much that no order for clearance of goods was passed under Section 47 of the Act, ibid for home consumption by virtue of Section 44 of the Act, ibid; that Sections 46 & 47 of the Customs Act, 1962 are not applicable in baggage cases; that demand/recovery of duty not levied can be done under Section 28 of the Act, ibid if the order is passed by the proper officer for clearance of goods under Section 47 of the said Act; therefore, when Section 28 of the Customs Act, 1962 is not applicable then demand of interest under Section 28AB is also not maintainable. Moreover, the confiscated goods were in possession of the department. Reliance has been placed by the applicant on the decision of the CESTAT in the case of Essar Oil vs. Commissioner of Customs(Prev.), Jamnagar reported in 2006 (197) ELT 450 (Tri-Mumbai).

9. Government further observes that Chapter V of the Customs Act, 1962 deals with levy of, and exemption from, Customs duties and Section 12 which is the charging Section reads as under:-



*"Section 12: Dutiable goods- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from India.*

*(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.*

From the plain reading of the Section it is clear that at the time of import, duty is chargeable on all the goods imported into the country irrespective of mode of import viz cargo, baggage, post etc. How these goods will be cleared upon import is provided for in separate Sections. While clearance of imported goods is covered under Chapter VII, clearance of baggage and post articles are covered under Chapter XI of the Act.

10. Section 28 of the Customs Act, 1962 on the other hand provides for the recovery of any duty which has not been paid, short paid or erroneously refunded and reads as under:-

*"Section 28-Recovery of duties not levied or short-levied or erroneously refunded-(1) Where any duty has not been, levied or short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-*

*(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to Show Cause why he should not pay the amount specified in the notice;*

*(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of*

*(i) his own ascertainment of such duty; or*

*(ii) the duty ascertained by the proper officer*

*the amount of duty along with the interest payable thereon under Section 28AA or the amount of interest which has not been so paid or part- paid".*

11. Section 28 AA (now 28AB) of the Customs Act, 1962 provides for the interest on delayed payment of duty and reads as under:-

*"Section 28AA-Interest on delayed payment of duty- (1) Notwithstanding anything contained in any judgment decree, order or direction of any Court, Appellate Tribunal or any authority or any authority or in any other provisions of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if*

*any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

*(2) Interest at such rate not below ten per cent and not exceeding thirty-six percent, per annum, as the Central Government may, by notification in the official gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.*

*(3) Notwithstanding anything contained in sub-section (1) no interest shall be payable where-*

*(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 151 A ; and*

*(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment”.*

12. Further, Government notes that Chapter XI of the Customs Act, 1962 specifies the special provisions regarding baggage, goods imported or exported by post and stores. Section 77 and 78 of the said Act read as under:-

*‘Section 77-Declaration by owner of baggage- The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contentions to the proper officer.*

*Section 78-Determination of rate of duty and tariff valuation in respect of baggage- The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on date on which a declaration is made in respect of such baggage under Section 77”.*

13 Government finds that in the present case the applicant failed to declare the impugned goods imported as baggage thereby violating the provisions of Section 77 of the Customs Act, 1962. The said goods were undisputedly chargeable to appropriate duty under Section 12 read with Section 78 of the Act. The applicant has imported the impugned goods chargeable to duty as baggage as laid down under Section 12 of the Customs Act, 1962 and failed to pay the duty at the time of import. He carried the said goods with an intention to evade payment of the Customs duty leviable on these goods. Therefore duty was rightly demanded under Section 28 of the Act *ibid* and the demand confirmed after following due process of law. When duty was not paid at the time of import, the interest is chargeable on the duty amount where duty has not been paid on the goods in terms of Section 28 AA (now 28AB) of the Act, *ibid*. Hence interest is also rightly held to be payable by the impugned order on the duty demanded.

14. Government also finds no merit in the argument of the applicant that no interest is leviable on goods placed under seizure. Section 110 the Act ibid provides for seizure of goods liable for confiscation for improper importation into the country in terms of Section 111. Seizure and confiscation of goods does not absolve such goods from levy of duty and interest in turn is charged on such duty not paid.

15. Government observes that the order of CESTAT in the case of Essar Oil Ltd. vs Commissioner of Customs(Prev.) Jamnagar, 2006 (197) ELT 450 (Tri-Mumbai) relied upon by the applicant is not applicable to the facts of the present case as the case law relates to an order of assessment under Section 47 which is not applicable to baggage.

16. In view of above discussions, Government does not find any infirmity in the impugned Order-in-Appeal and upholds the same.

17. The Revision Application is rejected as being devoid of merits.

18. So ordered.



**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

Shri Zaheer Ahmad,  
S/o Shri Raees Ahmad,  
R/o 277/A, Krishna Marg Colony,  
Surkhpur Road, Najafgarh,  
Delhi-110043.



Attested



**ORDER NO. 27/2016-CUS DATED 04.03.2016**

Copy to:-

1. The Commissioner of Customs Airport, New Delhi-110037.
2. Shri Zaheer Ahmad C/o Shri S.S. Arora(Advocate), B-1/71, Safdarjung Enclave, New Delhi-110029.
3. The Commissioner of Customs (Appeals), NCH, New Delhi.
4. The Additional Commissioner of Customs, IGI Airport, New Delhi.
5. PA to JS (RA).
- ✓ 6. Guard File.
7. Spare Copy.

Attested



(Shaukat Ali)  
Under Secretary (RA)

