

**REGISTERED**  
**SPEED POST**



**F.No.380/68/B/13-RA**  
**F.No.373/105/B/13-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. 14/3/16.....

**ORDER NO. 29-30/2016-CUS DATED 08.03.2016** 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.C.CUS/58/2013 dated 16.05.2013 passed by Commissioner of Customs, (Airport), Trichy.

**F.No.380/68/B/13-RA**

Applicant : Commissioner of Customs, Tiruchirapalli  
Respondent : Shri M. Kudubdeen,

**F.No.373/105/B/13-RA**

Applicant : Shri M. Kudubdeen,  
Respondent : Commissioner of Customs, Tiruchirapalli

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## ORDER

These Revision Applications are filed by Shri M. Kudubdeen (here in after referred as "applicant") and by the Commissioner of Customs, Trichy (here in after referred as "department") against the Order-in-Appeal No. C.CUS/58/2013 dated 16.05.2013 passed by Commissioner of Customs (Appeals), Trichy with respect to Order-in-Original No.89/2013 dated 19.03.2012 passed by Assistant Commissioner of Customs ( Airport), Trichy as detailed below:-

S.NO.	R.A.No.	R.A.Filed by	Order-in-Appeal No. /date	Order-in-Original No. /date
1.	380/68/B/15-RA	Assistant Commissioner of Customs (Airport) Tiruchirapalli	C.CUS/58/2013 Dated 16.05.2013	89/2013 dated 19.03.2013
2.	373/105/13-RA	Mr. M. Kudubdeen	-Do-	-DO-

The two cases are being disposed off by this common order as they are from a common Order-in-Appeal.

2. The brief facts of the case are that the Shri M. Kudubdeen arrived at Trichy Customs Airport from Bangkok by Flight No. UL133 and attempted to cross through green channel. He was intercepted by the Customs officer and was enquired by the officer about the contents of his baggage, to this the passenger answered that he was having some electronic goods, liquor bottles and one Samsung TV. On verification of his Customs card it was found that the passenger had not declared the value of dutiable goods and intentionally left blank the value column. On a reasonable belief that the passenger might be carrying goods in commercial quantity his baggage was subjected to detailed examination. On examination of his baggage it was found that passenger had brought with him two Pioneer car decks valued at Rs. 8,000/- ; one Sony home theatre valued at Rs. 8,000/- ; one Samsung 55" TV- Slim Smart 8 series valued at Rs. 1,30,000/- ; two DVD Players valued at Rs. 8,000/- ; two liquor bottles valued at Rs. 1,000/-; 3 Cigarette cartons valued at Rs. 1,500/- and 12 T-shirts valued at Rs. 1,200/- (Total=Rs. 1,57,700/- only) as his personal effects. Since the passenger failed to produce any documentary evidence or otherwise in support of his value claimed, the valuation of the recovered goods was done on the basis of market survey and assessable value arrived at keeping in mind of permissible deductions from the market price. The profile of the passenger was checked through his passport and it was found that the passenger was a frequent visitor and used to carry commercial quantities of goods. It was also found from the records of the Customs that the

passenger is a habitual offender and has two cases booked against him in the past. In the instant case also passenger had brought commercial quantity of goods with intention to be sold in India for monetary consideration. Being a carrier of the goods it attracts the provisions of Section 2(39) of the Customs Act, 1962 and made the goods liable for confiscation under Section 111(i),(l) and (m) of the Customs Act, 1962 and render the passenger liable for penalty under Section 112 of the Act, ibid. The adjudicating authority after following due process of law adjudicated the case vide his Order-in-Original no. 89/2013 dated 19.03.2012 and confiscated the impugned goods under the relevant provisions of Section 111 of the Customs Act, 1962 with the option to redeem the goods on payment of redemption fine of Rs.51,000/- under Section 125 of the Customs Act, 1962 along with Customs duty as applicable and also imposed a penalty of Rs. 15,000/- under Section 112 of the Act, ibid and denied the free allowance.

3. Being aggrieved by the said Order-in-Original, passenger filed appeal before Commissioner (Appeals) who vide his Order dated 16.05.2013 set aside the lower adjudicating authority order dated 19.03.2013 and granted the full free allowance as per Rule 3 of Baggage Rules 1998 on the TV only and directed the adjudicating authority to recalculate the applicable duty, after giving full eligible free allowance to the passenger and impose redemption fine and penalty as per the law.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant and respondent have filed these Revision applications under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 **Grounds for Revision tendered by the Applicant**

4.1.1 That the order of the Commissioner (Appeals) is contrary to law.

4.1.2 That the Appellate Authority has concluded that the applicant is eligible for full free allowance on the TV only, that the goods brought by the applicant are not the prohibited/restricted goods. After arriving at the above conclusion, the Commissioner (Appeals) has ordered to release the said goods on payment of fine and penalty which is contrary to law. The applicant has brought bona fide goods as held by the Commissioner (Appeals) on which the question of taking penal action does not arise. That the order of the Commissioner (Appeals) is confusing on imposition of fine and penalty on the said goods. The applicant has brought bona fide baggage. This has been accepted by the Commissioner (Appeals). As such all the goods need to be released unconditionally on payment of duty.

4.1.3 That the Commissioner (Appeals) has concluded that the value fixed by the Department is based on the prevailing market prices. The applicant plea is also the same. It is an accepted norm that assessment cannot be done on the basis of

prevailing market price. The market price includes the duty element. This has to be deducted from the market price. Further, the market price includes profit margin, which also has to be deducted. The normal practice is around 40% deduction from the market price for arriving at the assessable value, which is done in all international airports. This has not been examined by the Commissioner (Appeals). The Appellate Authority has also remarked that the applicant has not produced any documentary evidences that prove that his value is correct. This is also factually incorrect. For the TV, copies of 7 Baggage Receipts and one Order-in-Original was produced. These were not looked into by the Commissioner (Appeals).

4.1.4 That in view of the above the Order-in-Appeal should be set aside in respect of imposing fine and penalty and revaluation of the impugned goods should be done after granting abatement of 40% on the market price to arrive at assessable value for purpose of levying duty. Applicant prays that the Hon'ble Revisionary Authority may order favorably the relief claimed and thus render justice.

#### 4.2 **Grounds for Revision tendered by the Department**

4.2.1 That the passenger Shri M. Kudubdeen, has made at least two other trips prior to the present trip. The adjudicating authority, Assistant Commissioner of Customs, Trichy Airport, has rightly identified him to be a frequent traveller/trader and has booked an offence against him in the past for contravention of provisions of Customs Act, 1962. In the present case this time applicant also brought trade goods consisting one high-end TV and other electronic goods totally valued Rs.1,57,700/-. As per Notification No.30/1998-Customs (N.T.) dated 02.06.1998 read with Board's letter F.No.495/19/99-Cus.VI dated 11.04.2000 and F.No.520/67/2000-Cus.VI dated 22.02.2011, the passenger, being a trader, cannot be equated with a genuine passenger for grant of free allowance. In the circumstances, it is not proper on the part of the Appellate authority to allow full free allowance on the goods brought by the offender.

4.2.2 That further, the Commissioner (Appeals) has not at all discussed about the fact that the passenger is repeat offender, even though the fact has been brought out in the Order-in-Original.

4.2.3 That as the Passenger is a frequent traveller, involved in previous offence cases and was penalized earlier also, the goods brought by him cannot be considered as bonafide baggage in terms of section 79 of the Customs Act, 1962. Therefore, he is ineligible for the free allowance wrongly allowed by the Commissioner (Appeals), Trichy.

4.2.4 That in view of above the Applicant Department prays for modification of the order to the extent of denying the free allowance considering the facts of the case

that applicant is a habitual offender and a short visitor and the goods brought by the applicant cannot be considered as bonafide baggage in terms of Section 79 of the Customs Act, 1962 or pass such any other order as deem fit.

5. The applicant has also filed an application dated 27.09.2013 for condonation of delay of 37 days in filing the Revision Application on the following grounds:

5.1 That he is an Indian national and having passport and permanently residing at Tamilnadu and he brought the electronics goods but the officers seized the same as if he brought the goods for commercial and adjudicate the case.

5.2 That aggrieved by the order he prefer this appeal. That he has no source of income to make pre-deposit and he is struggling for survival and hence the Hon'ble Commissioner of Customs (Appeal) consider his financial hardship.

5.3 That the impugned order does not contain the preamble. So, he was not known that where appeal has to be filed. That he approached his counsel on 27.09.2013 and aggrieved by this order, he prefer the appeal before the Revisionary Authority.

6. Personal hearing scheduled in this case on 03.09.2015, 18.09.2015 & 13.10.2015 was attended by Shri Para Siva Murthy, Deputy Commissioner of Customs, Trichy on behalf of the department, who reiterated the grounds of Revision Application and on behalf of the applicant his counsel Shri S. Palanikumar vide his letter dated 07.09.2015 requested Revisionary Authority to pass the order on the basis of available records.

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

8. At the outset, Government notes that the Revision Application is filed by the applicant beyond the stipulated period of 03 months. The impugned order was received by the applicant on 23.05.2013 whereas the date of receipt of Revision Application is 01.10.2013. The application is, therefore, filed after a delay of 41 days. However he has requested the Revisionary Authority to condone the delay on the ground that he was not aware as to where the appeal would lie. As the delay is within condonable limit, Government in exercise of powers vested in Section 129 DD (2) of the Customs Act, 1962 condones the delay and now proceeds to take up the Revision Applications for decision on merit.

9. Upon perusal of the case records, Government observes that main issue which forms the basis of these Revision Applications is the valuation of the impugned goods and granting of benefit of free allowance by the Appellate Authority to the passenger.

10. The Department has contested in its grounds of revision that the applicant passenger is a habitual offender and frequent traveler. He has two previous cases booked against him. The goods brought by him are trade goods commercial in nature and do not constitute bonafide baggage as per Section 79 of the Customs Act, 1962 read with Rule 3 of the Baggage Rules, 1998. The Commissioner ( Appeals) has erred in ignoring this vital point while extending the benefit of free allowance to passenger, which should not have been given to the passenger in view of the Board's Circular/instructions issued under F.No. 495/19/99-Cus VI dated 11.4.2000 and reiterated in Board's letter in F.No.520/67/2000-Cus. VI. It has been further pleaded by the Department that the passenger failed to produce any documentary evidence for the purchase value of the impugned goods, whatever documents produced by the applicant in support of his claim for the value, bear the different models of the impugned electronic goods. Hence Department was compelled to resort to market survey and arrived at assessable value by deducting permissible deductions from the market price of the impugned goods. Therefore, request to grant 40% abatement in lieu of permissible deductions for calculating duty would be contrary to the law and should not be allowed.
11. Upon perusal of the case records available on the case file, Government observes that the applicant attempted to walk through green channel and was intercepted by Customs officer on his way. On being asked by the officer about contents of his baggage, he replied that it contains few electronic goods and Samsung slim TV of 55"( 8-series). On verification of his Customs Declaration Card, the officer found that the passenger has not fulfilled the value column and left it blank. On suspicion detailed examination of his baggage was conducted and the goods commercial in nature as per details mentioned in Para 2 were found and confiscated on reasonable belief that the impugned goods indented to be smuggled out by the passenger without payment of duty. Government further observes that it is a material fact on record that passenger is a frequent traveller and habitual offender and has two previous cases booked against him. From the facts of the case Government notes that the applicant not only contravened the provisions of Section 79 of the Customs Act, 1962 but also contravened the provisions of Section 77 of the Act, ibid by not giving the true declaration as required under the Act, ibid which makes him ineligible for grant of baggage allowance as the impugned goods cannot be treated as bonafide baggage. Hence, Government opines that granting the benefit of free allowance by Appellate Authority is not proper and correct.
12. As regards the valuation issue the applicant has relied upon value of electronic goods of different make and model. Government notes that in absence of any documentary evidence produced by the applicant relevant for the television set such as purchase invoice etc. in support of his claim for the value, Department has rightly

resorted to arrive at assessable value of the impugned goods on the basis of market value after granting permissible deductions as per Customs valuation Rules, 2007.

13. Government further notes that not only has the applicant attempted to smuggle the impugned goods in substantial quantity without declaring it to the Customs but it is an uncontested fact on record, he is also a habitual offender. Government, therefore, finds no merit in the plea of the applicant to set aside the redemption fine and penalty.

14. In view of the above discussion and material facts on records, Government sets-aside the impugned Order-in-Appeal and restores the Order-in-Original in toto.

15. Revision Applications are disposed off in above terms.

16. So, ordered.

  
( **RIMJHIM PRASAD** )

Joint Secretary to the Government of India

Shri M. Kudubdeen,  
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7<sup>th</sup> Street, Ashok Nagar,  
Chennai-600083, Tamilnadu

Commissioner of Customs,  
No. 1, Williams Road Cantonment,  
Tiruchirapalli- 620001

  
ATTESTED

**ORDER NO. 29-30/2016-CUS DATED 08.03.2016**

Copy to:

1. The Commissioner of Customs (Appeal), No. 1, Williams Road Cantonment, Trichy.
2. The Assistant Commissioner of Customs, (Airport) Trichy-6200007.
3. Shri S. Palnikumar, Advocate No. 10, Sunkuama Street, Second Floor, Chennai-600001.
4. ✓ Guard File.
5. PA to JS (RA).
6. Spare Copy.

ATTESTED



(Shaukat Ali)  
Under Secretary (RA)