



REGISTERED
SPEED POST

F.No.380/72/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.....22/3/16.....

ORDER NO. 31/2016-CUS DATED 21.03.2016 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.907/2013 dated 28.06.2013 passed by Commissioner of Customs (Appeals), Chennai.

Applicant : Commissioner of Customs (Airport & Air Cargo), Chennai.

Respondent : Mohammed Rafick Bin Samsudeen.

ORDER

This Revision Application is filed by Commissioner of Customs (Airport & Air Cargo), Chennai(hereinafter referred to as Department) against the Order-in-Appeal No. 907/2013 dated 28.06.2013 passed by Commissioner of Customs (Appeals), Chennai, with respect to Order-in-Original No.550/Batch 'B' dated 06.05.2013 passed by Assistant Commissioner of Customs (Airport), Chennai.

2. Briefly stated facts of the case are that the passenger Shri Mohammed Rafick Bin Samsudeen (hereinafter referred to as Respondent), a Singapore national had arrived at the Chennai Airport on 06.05.2013. After collecting his baggage, the passenger walked through Green channel and on interception on way to exit he was intercepted by the Customs officer and interrogated. He confessed to have carried one Sony Camera DCR-VX2200E valued at Rs. 1,00,000/- for someone and therefore the adjudicating authority having secured the waiver of Show Cause Notice passed the spot adjudication order dated 06.05.2013 and confiscated the goods absolutely under Section 111(d),(l),(m) &(o) of the Customs Act, 1962 read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, 1992 and Section 79 of the Customs Act,1962 and the Baggage Rules made there under. Penalty of Rs. 10,000/- was also imposed upon the pax under Section 112(a).

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal dated 28.06.13 set aside the Order-in-Original and gave option to the pax to redeem the impugned goods on payment of duty and redemption fine of Rs. 10,000/- under Section 125 of the Customs Act, 1962 . He also reduced the penalty from Rs. 10,000/- to Rs. 5000/- under Section 112 of the Act, *ibid*.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has field this revision application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds:

4.1 That the order of Commissioner (Appeals) does not discuss why the concession of redemption is being given in spite of the passenger acting as a carrier which is recorded in the record of personal hearing as well as stated in the cross objections during appeal. This fact of the passenger being a carrier has been ignored and not taken into consideration resulting in granting an unintended benefit to the passenger at the cost of revenue.

4.2 That the adjudicating authority at Chennai Airport in its Order-in-Original No. 31/10 dated 03.05.2011, 32/10 dated 03.05.2011, 33/10 dated 03.05.2011 and in several other orders has ordered absolute confiscation in carrier cases. The said orders were upheld by Commissioner (Appeals) in Order-in-Appeals No. 480/11 dated

29.07.2011, 479/2011 dated 29.07.2011 and 481/11 dated 29.07.2011. Finally, the absolute confiscation was also upheld by Government in these cases vide GOI order No. 352-354/12 dated 28.08.2012. Similarly, Government in its Revision Order No. 401-406/12-Cus dated 11.10.2012 and 407-409/12 Cus dated 12.10.2012 pertaining to Chennai cases has upheld the absolute confiscation of goods brought by carrier passenger.

4.3 Absolute confiscation in such cases is upheld in the judgements of Hon'ble Tribunal order No. 1980-1995/09 dated 24/12/2009 in the case of G.V Ramesh and others Vs CC Air Chennai 2010 (252) ELT 0212 (T-Mad.).

4.4 Hon'ble High Court of Bombay in the case of UOI Vs Mohamed Aijaj Ahmed WP No. 1901/2003 decided on 23.07.2009 reported in 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT allowing redemption of gold and upheld the order passed by Commissioner of Customs ordering absolute confiscation of gold. In this case the gold did not belong to the passenger Mr Mohamed Aijaj who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reported in 2010 (253) ELT E83(SC.). It is apprehended that the impugned Order-in-Appeal if implemented would jeopardize revenue interests irreparably since the passenger is a foreign national and the likelihood of securing the revenue interests as per original order in the event of its restoration during this revision process would be grim.

4.5 In view of the above, it is prayed that the order in appeal be set aside absolute confiscation and penalty be upheld and such an order be passed as deemed fit.

5. A show cause notice was issued to the Respondent on 12.11.2013, in response to which the following submissions dated 09.03.2013(received on 18.03.2013) has been made:

5.1. That the revision application filed is not maintainable as the person who has filed the said application has not been authorized by the Commissioner of Customs (Airport & Aircargo) to file the said application in terms of Section 129 DD (1A) of the Customs Act, 1962. That the authority who has filed the present application has used the powers solely vested with the Commissioner of Customs, which ought not to be permitted to be sustained by the Revisionary Authority without prejudice.

5.2. That there is nothing wrong in the order of the Commissioner of Customs (Appeals) in permitting redemption of the one unit Sony Camera which by no stretch of imagination could be considered as 'Prohibited Goods'.

5.3. That at the time of personal hearing before the Commissioner of Customs (Appeals) that other than the camera the respondent did not carry with him nor had with him in his possession anything dutiable other than the Sony Camera. That the respondent himself went up to the Customs Authorities to ascertain whether any duty

was payable for the import of the said camera that he was asked by the Customs authorities, whether the camera belonged to the respondent he stated that he had brought the said camera to gift it to his friend in India.

5.4. That the customs authorities immediately made an issue as if the respondent had admitted that the camera did not belong to him and that he was carrying the camera for someone else. That the respondent had urged before the adjudicating authority that by no stretch of imagination can 1 unit Sony Camera be considered 'Prohibited Goods' and that the option to redeem the said goods ought to be permitted under the provisions of Section 125 of the Customs Act, 1962.

5.5 That the grounds raised in the revision application exhibits total non-application of mind and also ignorance of knowledge of the provisions of the Customs Act, 1962.

5.6. That the case laws relied upon in support of this revision application have no bearing on the facts of the present case and in all those cases the item under import was gold, which was either concealed or not declared before the customs authorities at the time of import.

5.7. That under Section 125 of the Customs Act, 1962 there is no discretion vested with either the adjudicating authority or with the appellate authority to refuse permission to redeem goods on payment of a redemption fine when the goods are not 'prohibited' for their import and admittedly one unit Sony Camera is not prohibited for its import.

5.8. It is prayed that the revision application filed by the applicant may be dismissed and the order of the appellate authority be upheld.

6. Personal Hearing scheduled in this case on 07.09.2015, 05.10.2015 and 05.11.2015. Shri S. Aravindh (Advocate), M/s Aum Associates attended hearing on behalf of the respondent and reiterated his written submissions. None from the Department attended the hearing.

7. Government has carefully gone through the relevant case records, oral & written submissions and perused Order-in-Original and Order-in-Appeal.

8. Upon perusal of records, Government observes that the applicant, a Malaysian national has arrived at the Chennai Airport on 06.05.2013 by flight No. AI 343. He walked through Green channel and was intercepted on his way to exit by Customs Officer and on being interrogation he confessed to have carried one Sony camera (model DCR-VX2200E) valued at Rs. 1,00,000/- for someone else. As the respondent attempted to smuggle one Sony high end camera without declaring it to Customs, in contravention of Section 77 of the Customs Act, 1962 and during the course of hearing before the adjudicating authority the passenger admitted the fact that he had

brought the impugned goods for somebody else. The impugned Order-in-Original ordered the absolute confiscation of the goods under Section 111 (d),(l),(m) & (o) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & regulations) Act, 1992. Penalty of Rs.10,000/- under Section 112(a) of the Act, ibid was also imposed upon respondent. Aggrieved by the said order, the respondent filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. 907/2013 dated 28.06.2013 allowed redemption of the impugned goods on payment of redemption fine of Rs.10,000 and reduced the penalty to Rs.5,000. Now the Department has filed this Revision Application under Section 129 DD of the Customs Act, 1962 on the grounds at para 4.

9. Government observes that the main contention of the Department is the fact that respondent is a carrier and brought the goods for someone else and this fact has been ignored by the Commissioner (Appeals) who has allowed the unintended benefit to redeem the goods on payment of redemption fine.

10. Government notes that in the impugned Order-in-Original the record of personal hearing reads as under:-

"Heard the pax. Pax intercepted at green channel and when interrogated he confessed to have carried camera for someone else and item is not his own. Hence item valued at Rs. 1,00,000/- not bonafide and liable for absolute confiscation under Section 111(d), (l), (m) & (o) of the Customs Act, 1962 read with the Section 3(3) of Foreign Trade (D&R) Act, 1992"

11. From the above, it is seen that it is an admitted fact by the respondent that he had carried the impugned item for someone else and there is nothing on record to show that any invoice was produced before the original authority or any claim made that the item was for gifting purpose.

12. There is nothing on record to show that the said submission has been made under any pressure or duress. In fact it is undeniably a voluntary statement made by the respondent during the course of personal hearing granted in the interest of natural justice, clearly admitting that the Sony camera was brought by the respondent to handover someone else in India. From the said statement of passenger it becomes amply clear that he brought the impugned goods to handover to someone else, thus the impugned goods does not constitute his bonafide baggage covered under Rule 7 of Baggage Rules. In the counter to Revision Application once again claimed that the pax did not contravened the Section 77 of the Act, ibid as he reported to the Red channel to enquire about the duty liability of the impugned goods and it is to be given as gift to his friend in India. Any contrary claim regarding ownership of the impugned goods made before the Commissioner (Appeals) and in counter reply to the Revision Application is clearly an afterthought.

13. Government opines that any oral submission made before the adjudicating authority will be a material piece of evidence, in view of the specific admission made by the respondent before adjudicating authority. Government is inclined to hold that the respondent is a carrier of the impugned goods.

14. Government observes that the Section 79 (1) of the Customs Act, 1962 provides that the proper officer may, subject to any rules made under sub-section (2) pass free of duty any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules. In this case, the respondent walked through the green channel without declaring the goods he possessed much in excess of the prescribed baggage allowance which clearly shows that he wished to evade duty involved on the impugned goods brought by him for someone else. The goods are clearly not bonafide baggage and rightly held as liable for confiscation.

15. In the present case as the passenger has brought the goods for someone else and acted as a carrier. Therefore, the impugned goods cannot be allowed to be redeemed on payment of redemption fine. Government places reliance on the following decisions of the higher courts the ratio of which is squarely applicable to the instant case:

15.1 The Apex Court in the case of Om Prakash Bhatia Vs. Commissioner of Customs Delhi reported in 2003(155) ELT 423 (SC) has categorically held that if there is any prohibition of import or export of goods under the Customs Act, 1962 or any other law for the time being in force the goods would be considered to be prohibited goods and this prohibition would also operate on such goods the export or import of which is subject to certain prescribed conditions if the conditions are not fulfilled. Further in the case of Samyanathan Murugesan vs Commissioner reported in 2010(254) ELT A15 (SC) the Hon'ble Supreme Court has held that where the passenger did not fulfill the eligibility criteria it makes the imported goods prohibited goods.

15.2. Hon'ble High Court of Bombay in its judgment in the case of UOI vs. Mohammed Aijaj Ahmed 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT ordering to allow redemption of gold and upheld the absolute confiscation of gold ordered by Commissioner of Customs. In this case the gold did not belong to passenger Mr. Mohammad Aijaj Ahamed who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reports as 2010 (253) ELT E83 (SC). Further the Hon'ble High Court of Chennai in the case of S. Faisal Khan Vs Joint Commissioner of Customs(Airport) Chennai 2010 (259) ELT 541 (Mad) upheld absolute confiscation of goods carried on behalf of someone else for a monetary consideration. In the case of Ram Kumar vs Commissioner of Customs

2015 (320) ELT (Del) also the Hon'ble High Court of Delhi has held that carrier is not entitled to benefit of Section 125 of Customs Act, 1962. Government, therefore, holds that in the present case the goods imported by the passenger as a carrier are liable for absolute confiscation as rightly pleaded by the Department.

16. Government further finds that in view of the facts and circumstance of the case penalty under Section 112(a) of the Act *ibid* has been rightly imposed on the respondent. The quantum of penalty as imposed by the original authority is reasonable and commensurate with the nature of the offence to the extent that neither the goods were declared and were in excess of the admissible baggage allowance but were also meant for someone else.

17. From perusal of records, Government finds that the Assistant Commissioner has been duly authorized by the Commissioner of Customs (Airport & Air cargo) to file a Revision Application on his behalf. Therefore, there is no merit in the objection of respondent that the Revision Application is not maintainable on this ground.

18. In view of the above circumstances, Commissioner (Appeals)'s order is therefore set-aside and the impugned Order-in-Original is restored in toto.

19. Revision Application thus succeeds in above terms.

20. So, ordered



(**RIMJHIM PRASAD**)

Joint Secretary to the Government of India

Commissioner of Customs
Chennai Airport & Aircargo
Meenambakkam, Chennai-600027



ATTESTED



ORDER NO. 31/2016-CUS DATED 21.03.2016

Copy to:

1. Mr. Mohamed Rafick Bin Samsudeen, 5/3, New Street, Avaniapuram, Thanjavur Distt., Tamilnadu.
2. The Commissioner of Customs (Appeal), 60, Rajaji, Salai, Customs House, Chennai-600001.
3. M/s. Aum Assosicates (Legal Consultant) suite No. 25, 1st Floor, R.R. Complex, No.1, Murthy Lane, Rattan Bazaar, Chennai-600003.
4. Guard File.
5. PA to JS (RA)
6. Spare Copy

ATTESTED


(Shaukat Ali)
Under Secretary (RA)