

REGISTERED
SPEED POST



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/24/B/WZ/2018-RA / 7682 : Date of Issue 20.12.2022

ORDER NO. 382/2022 CUS (WZ)/ASRA/MUMBAI DATED 15.12.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

F.No. 371/24/B/WZ/2018-RA

Applicant : Shri. Bina Kishore Chabbria

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Revision Applications filed respectively, under Section 129DD
of the Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-434/17-18 dated 14.08.2017 issued on
18.08.2017 through F.No. S/49-364/2015/AP passed by the
Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri. Bina Kishore Chabbria (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-434/17-18 dated 14.08.2017 issued on 18.08.2017 through F.No. S/49-364/2015/AP passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant had arrived from England after a stay of 20 days and had opted for clearance through the green channel. However, she was intercepted by Officers of Air Intelligence Unit (AIU) before the exit gate and diverted to the red channel. On examination of her checked-in baggage, the undermentioned goods were found. Since, the goods were non-bonafide baggage and not declared by the applicant, appropriate action was initiated. Applicant opted for waiver of a show cause notice.

Sr. No.	Description of goods	Qty	Value
1.	Assorted Perfumes	10	40,000/-
2.	Assorted new wearing apparel	15	1,50,000/-
3.	Assorted Cosmetics	10	20,000/-
4.	Ladies Purses	4	40,000/-
5.	Food Stuffs	-	10,000/-
		Total	2,60,000/-

3(a). The Original Adjudicating Authority, viz Dy. Commissioner of Customs, CSI Airport, Mumbai vide Order-in-Original No. Air Cus/49/T2/84/2015-A dated 29.04.2015, ordered for the confiscation of the goods listed at sr. no. 1 to 5 of Table No. 1 above, valued at Rs. 2,60,000/- under Section 111(d) & (m) of the Customs Act, 1962, but allowed the applicant to redeem the goods on

payment of a fine of Rs. 50,000/-. Also, a penalty of Rs. 10,000/- was imposed on the applicant under Section of 112 (a) of Customs Act, 1962.

3(b). In the OIO, the adjudicating authority has observed as under;

"She admitted that she crossed the green channel and was directed by AIU after B.S.M. She had no intention not to pay duty but due to huge rush, she could not declare it before Customs as she was in hurry. She accepts the value so arrived at for Customs valuation.

She further told that all goods are for her personal use and by mistake it was not declared. She had nothing more to add".

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-434/17-18 dated 14.08.2017 issued on 18.08.2017 through F.No. S/49-364/2015/AP, upheld the order of confiscation of the goods valued at Rs. 2,60,000/- and redemption fine Rs. 50,000/- and reduced the penalty from Rs. 10,000/- to Rs. 7,500/-.

5. Aggrieved with the above order-in-appeal, the Applicant has filed this revision application on the following grounds;

5.01. that the duty-free baggage allowance limit of Rs. 45,000/- was denied to the applicant.

5.02. that when free allowance is denied, the valuation is required to be precise, that in this case, the details of the goods have not been mentioned and the department arrived at its value in an arbitrary and fictitious manner.

5.03. that the value of the goods was not above Rs. 60,000/- and after considering the free allowance of Rs. 45,000/-, duty was chargeable on Rs. 15,000 or Rs, 20,000/- only.

5.04. that on the issue of bonafide baggage, considering the status of the applicant, it was unreasonable to hold that while proceeding on an overseas tour of 20 days, the value of the personal effects would not be Rs. 2,60,000/-; that goods within the free limit of Rs. 45,000/- was bonafide baggage.

5.05. that the findings that goods are 'prohibited goods' on the assumption that they were not personal effects was untenable.

5.06. that the applicant has cited the case of Pushpa Lakhmal Tulani vs. Addl. Commr. Of Customs passed by Division Bench of Bombay High Court [2008 (227) ELT 368 (DEL)] wherein it was held that only such goods which have not been opened or unpacked and can therefore be disposed of as such could prima facie be presumed to be not constituting personal effects of a tourist; that only item no. 2 has been inventorised as new and hence, the other 3 items, having total value of Rs. 70,000/- should be considered as personal effects and excluded from consideration for payment of Customs duty.

5.07. that the round value of the goods itself indicates that it is estimated value.

5.08. that Section 79(1)(a) of the Customs Act, 1962 does not prescribe any value limit for bonafide baggage and personal effects.

5.09. that a few baggage items brought by the applicant were not in commercial quantity and these constituted bonafide baggage and were within permissible duty free baggage allowance; that Customs duty should have been charged on differential value after determining the value of the baggage items in a proper and lawful manner and in consultation with the applicant.

5.10. that a sworn statement of admission of the applicant is not available.; that a mere reference in the personal hearing to 'mistake' as well as 'applicant's inability to declare the goods due to huge rush' was not sufficient to hold a person guilty.

5.11. that the provisions of clause (m) of Section 111 of the Customs Act, 1962 was not attracted as the applicant was not carrying any of the 10 prohibited items listed on the declaration and hence, applicant had not mis-declared the goods.

Under the circumstances, the applicant prayed to the revisionary authority stating that she was eligible for duty free clearance upto value of Rs. 45,000/-, Customs duty was chargeable on excess value of Rs. 20,000/-, that excess duty paid be refunded; that unjust enrichment was not attracted; that redemption fine of Rs. 50,000/- and penalty of Rs. 7,500/- be refunded.

6(a). Personal hearing in the case through the video conferencing mode was scheduled for 14.08.2022, 26.08.2022, 13.09.2022. Shri. Vipin Kumar Jain, Advocate appeared online on 13.09.2022 and submitted that most of the goods were used personal effects. He contended that admissible free allowance has not been given to them. He further submitted that the applicant bonafide believed that no duty was chargeable. Therefore, he requested to drop the penalty. He informed that a written submission is being made on the matter today.

6(b). In the written submission received via email dated nil received on 15.09.2022, the applicant has reiterated her earlier submissions and has laid emphasis on the following;

- (i). Value limit under Baggage Rules was not applicable to personal effects,
- (ii). Entire baggage was bonafide baggage,
- (ii). Used personal effects only excludes such articles which are in original package of the kind ready for sale in the market,
- (iv). None of the impugned goods were new.
- (v). The impugned goods were not prohibited under EXIM Policy.
- (vi). Admission of knowledge and non-declaration of the goods are totally misconceived and not supported with evidence.
- (vii). Provisions of Section 111(d) and (m) of the Customs Act, 1962 were not attracted as applicant was not carrying any of the 10 prohibited items.

Under the circumstance, applicant has prayed that the OIA may be set aside.

7. The applicant has filed an application praying for condonation of delay. Government notes that the OIA was passed by the AA on 14.08.2017 which had been issued on 16.08.2017. In the FORM CA-8 filed by the applicant she has revealed that the OIA was communicated to her on 18.08.2017. Government notes that the revision application was filed on 23.11.2017. Government finds that the revision application is filed within the extension / condonable period of 3 months available to the applicant over and above the statutory period of 3 months. i.e. 3 months + 3 months. Since, the revision application has been filed within the condonable period, Government condones the delay.

8. The Government has gone through the facts of the case and notes that the applicant had passed through the green channel and had been intercepted at the exit gate of the CSMI Airport, Mumbai. Customs duty was payable on the goods found in the possession of the applicant by virtue of being of high-value. The applicant had clearly failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. In her submissions too, the applicant has attached duty payment challans pertaining to her earlier visits for goods of similar type and crockery etc. This indicates that the applicant was aware that Customs duty was payable on the goods in her possession but in the instant case, she chose not to discharge Customs duty thereon. Hence, the confiscation of the impugned goods was justified being non-bonafide baggage. Also, besides the duty payment on the same, the applicant had made herself liable to penalty.

9. The applicant has alleged that by virtue of her stay abroad for a period of 20 days, she was entitled to free baggage allowance [FBA] of Rs. 45,000/- which had been denied to her. In this respect, at para 5 of the OIA no. MUM-CUSTOM-PAX-APP-434/17-18 dated 14.08.2017 issued on 18.08.2017 through F.No. S/49-364/2015/AP, the AA has observed the following;

"5. I have gone through the facts of the case and considered the submissions. It is evident from the record that the appellant had returned from England to India with the impugned goods worth of Rs. 2,60,000/- and these goods cannot be treated as bonafide baggage in terms of section 77 and 79 of the Customs Act, 1962. As per Baggage (Amendment) Rule, 2006, the appellant was eligible to import duty free goods upto Rs. 45,000/-. As the imported goods exceeded the limit of free allowance she was required to opt Red Channel on arrival at CSI Airport. However, it is evident on record that the appellant opted Green Channel but was diverted to Red Channel. The offence committed by the appellant was explained by the adjudicating authority at the time of adjudication. The appellant admitted her mistake. I find that the appellant was fully aware of the

contents of her baggage and she should have voluntarily gone to the red channel for the customs official to ascertain, if she was carrying any dutiable goods”.

10(a). The applicant has raised the issue that the value of the goods have been considered by the department without any documentary evidence. Government notes that this aspect has been dealt with at para 6 of the OIA;

“6. The appellant’s plea is that value of goods arrived at by the customs is not supported by any documentary evidence. I find that the appellant has accepted the value of the impugned goods ascertained by the Customs official at the time of personal hearing. Accordingly, she paid appropriate duty, fine and penalty vide receipt no. 696637 dated 29.04.2015. Further, in support of the said plea, the appellant has not submitted any documentary evidence, i.e. purchase invoice. Hence, I find that disputing the value of the goods in question before the appellate authority is baseless and considered as afterthought.”

10(b). Government notes that the applicant had admitted the value arrived at by Customs which has been recorded in the OIO. Having done so, the applicant now at this stage cannot question the same. Value adopted, even otherwise, looks quite reasonable. In this regard, the Government relies on the judgement of the Apex Court in the case of Commissioner of Customs, Mumbai v/s. M/s. Virgo Steels reported in 2002(141) ELT 0598 SC, wherein, it was held that once a voluntary submission had been made, the same cannot be resiled after a lapse of time. Government notes a similar situation in the instant case that only before the appellate authority the applicant raised issue of value of goods and goods being used personal effects, etc. This is clearly an afterthought. Therefore, Government does not find enough reasons to doubt the same at this stage.

11. The fact remains that the applicant had not declared the goods in her possession at the time of arrival and that the value of the goods was in excess of the free baggage allowance [FBA]. Hence, Government finds that the confiscation

of the goods in excess of the FBA was justified and the same were chargeable to customs duty. The fact also remains that the applicant had failed to produce any invoice of the goods in her possession and hence, the OAA had taken contemporaneous value as deemed fit which had not been resiled by the applicant at the relevant time.

12. Government notes that in the OIA, the AA had observed that free baggage allowance of Rs. 45,000/- had not been allowed to the applicant. Also, having observed the same, the AA had not allowed the same to the applicant. Government notes that by virtue of applicant having stayed in England for 20 days as also noted in the OIO, the free baggage allowance of Rs. 45,000/- should have been allowed to the applicant. Government is inclined to allow the free baggage allowance of Rs. 45,000/- to the applicant.


13. Government notes that after allowing the said FBA, the total value of the goods chargeable to duty gets reduced, accordingly. Hence, Government observes that it would be fair and just to reduce the redemption fine as the same has been considered on the entire goods. Government is inclined to modify the OIA passed by the AA.

14. The penalty of Rs. 10,000/- imposed by OAA under Section 112(a) of the Customs Act, 1962 has been reduced to Rs. 7,500/- by the AA. Government finds no scope for further reduction of penalty in the matter. Government finds the same commensurate with the omissions and commissions committed.

15. In view of the above, Government finds that the applicant was entitled for free baggage allowance of Rs. 45,000/- (as prevalent at the relevant time) by virtue of her continuous stay abroad for a period of 20 days. Government modifies the OIA passed by AA to the extent that FBA of Rs. 45,000/- is allowed to the applicant on the impugned goods and as a consequence, the redemption fine on the remaining goods (i.e. less value of Rs. 45,000/-) is reduced from Rs.

50,000/- to Rs. 40,000/- (Rupees Forty Thousand only). The reduced penalty of Rs. 7,500/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 by the AA is commensurate with the omissions and commissions committed and Government does not find it necessary to interfere in the same.

19. Accordingly, the revision application filed by the applicant is decided on the above terms.


(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 382/2022-CUS (WZ) /ASRA/MUMBAI DATED 5.12.2022

To,

1. Shri. Bina Kishore Chabbria, 111, Casa Grande, Little Gibbs Road No. 2, Malabar Hill, Mumbai - 400 006.
2. Pr. Commissioner of Customs, CSI Airport, Terminal - 2, Level - 2, Sahar, Andheri East, Mumbai - 400 099.

Copy to:

1. Shri. Vipin Kumar Jain, Advocate, TLC Legal Advocates, 1st Floor, Nirmal, Nariman Point, Mumbai - 400 021.
2. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board. he