

**REGISTERED
SPEED POST**



**F.No. 373/66-67/B/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

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

Date of Issue... 4/4/14

Order No. 41-42/14-cus dated 26.03.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Orders-in-Appeal No.
110/2011 dt. 27-09-2011 & 166/2011 dated 12-10-2011
passed by Commissioner of Custom (Appeals),
Bangalore.

Applicant : Shri Abdul Rahiman Navoor,
R/at Navoor Moola House,
Kannur P.O
Kerala-671321.
&
Shri Mallam Abboacker Yousuf,
Near Jumma Masjid Mallam,
Post Murva Vittal, Via Bantwal,
Taluk-574243.

Respondent : Commissioner of Custom,
Bangalore.

ORDER

These revision applications are filed by applicants Shri Abdul Rahiman Navoor and Shri Mallam Abbobacker Yousuf against the Orders-in-Appeal Nos. passed by the Commissioner of Customs, (Appeals) Bangalore with respect to Orders-in-Original Nos. as detailed in the following Table:-

S.No.	RA No. Name of the Applicant Shri	OIA No. & Date	Order-in- Original No. & Date	Description of Value and Goods (Rs.)	RF/PP/Order As per Order- in- Original (Rs.)	RF/PP/Ord er As per Order-in- Appeal (Rs.)
1	2	3	4	5	6	7
1	373/66/B/12-RA Shri Abdul Rahiman Navoor	110/2011 dt. 27-09-2011	73/11 dt. 24-03-2011	Cigarettes Rs. 76000/-	RF 78000/- PP 100000/-	RF 66000/- PP 76000/-
2	373/67/B/12-RA Shri Mallam Abbobacker Yousuf	166/2011 dt. 12-10-2011	67/11 dt. 17-01-2011	Cigarettes Rs. 75070	RF 10000/- PP 50000/-	Appeal Rejected

2. Brief facts of the case are that the applicants imported Cigarettes as mentioned above as baggage while coming from abroad at Bangalore International Airport. The goods were not declared in commercial quantities were not declared and were in excess of limit prescribed in Baggage Rules. As such said goods were imported in violation of section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provisions of section 3 (1) & 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. Since the cigarettes packages carried the requisite health warning the same were confiscated under section 111 (d) (l) (m) but allowed to be redeemed on payment of redemption fine in lieu of confiscated as stated above under section 125 of Customs Act, 1962. Personal penalty was also imposed under section 112 as stated in above table.

3. Being aggrieved by the said orders-in-original, applicants filed appeals before Commissioner (Appeals), who modified redemption fine and personal penalty of the Order-in-Original No. 73/11 dt. 24-03-2011 as stated in above table and rejected the appeal against Order-in-Original No. 67/11 dt. 17-01-2011.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicants have filed these revision applications under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

4.2 The respondent erred in passing the impugned order levying huge penalty in the facts and circumstances of the cas.

4.3 The respondent erred in observing that the goods are not bonafide baggage and for commercial purpose and confiscating the same.

4.4 The respondent erred in imposing huge penalty taking into consideration the facts and circumstances of the case.

4.5 Applicants pleaded to set aside the order of confiscation redemption fine and penalty in the interest of justice and equity.

5. Personal hearing scheduled in this case 05-06-2012, 08-10-2012, 13-12-2012 and 21-03-2014 was not attended by anybody behalf of the applicants. The respondent department vide letter dated 21-08-2012 reiterated the finding of impugned Orders-in-Appeal and requested to uphold the same.

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

7. It is observed that Import of Cigarettes through baggage mode by the applicants in commercial quantity that too misdeclared, do not constitute bonafide baggage in terms of Section 79 of Customs Act, 1962 and violates the provision of Section 77, 79 and section 11 of Customs Act, 1962 para 2.20 of Exim policy and section 3(3) of Foreign Trade (Development and Regulation) Act 1992. Import of

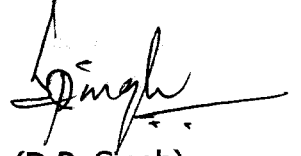
cigarettes into India is regulated by para 21 of chapter 1A of Schedule 1 of the ITC (HS) classification of Export and Import Items 2004-09 containing "General Notes regarding Import Policy". According to the said para 21 "Import of cigarettes or any other tobacco product shall be subject to the provisions contained in 'Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009', as notified by the Ministry of Health and Family Welfare". The said Rules read with paras 2(b) and 3 of the cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 require every person inter alia engaged in import of cigarettes to ensure that every package of cigarette shall carry specified health warning, including pictorial representation of ill effects of tobacco use.

8. Government notes that adjudicating authority has observed in his findings in Order-in-Original that the requisite health warning was printed on the packages of Cigarettes. Therefore he rightly allowed the redemption of said goods. As regards, pleadings of the applicants to reduce redemption fine and personal penalty it is noted that the redemption fine and personal penalty imposed in these cases appear to be harsh and same can be reduced. Redemption fine imposed in case of Mr. Mallam A. Yousuf is quite low as compared to applicant Shri Abdul Rahiman. As such redemption fine in case of second applicant is required to be revised upwards to maintain parity. Keeping in view the overall circumstances of the cases, Government modifies the redemption fine and personal penalty in these cases as under:-

S.No.	RA No. Name of the Applicant Shri	OIA No. & Date	Redemption fine reduced to (Rs.)	Penalty reduced to (Rs.)
1	2	3	4	5
1	373/66/B/12-RA Shri Abdul Rahiman Navoor	110/2011 dt. 27-09-2011	38000/-	10000/-
2	373/67/B/12-RA Shri Mallam Abboacker Yousuf	166/2011 dt. 12-10-2011	37000/-	10000/-

The impugned Orders-in-Appeal are modified to above extent.

9. The revision applications are disposed off in terms of above.
10. So, Ordered.



(D.P. Singh)

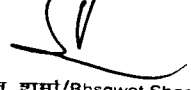
Joint Secretary to the Govt. of India

Shri Abdul Rahiman Navoor,
R/at Navoor Moola House,
Kannur P.O
Kerala-671321.

&

Shri Mallam Abbobacker Yousuf,
Near Jumma Masjid Mallam,
Post Murva Vittal, Via Bantwal,
Taluk-574243.

ATTESTED




(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. ⁴¹⁻⁴² /14-Cx dated 26-03-2014

Copy to:

1. Commissioner of Custom, Custom House, P.B No. 5400, C.R. Building, Queens Road, Bangalore-560001.
2. Commissioner of Customs (Appeals), P.B No. 5400, C.R. Building, Queens Road, Bangalore-560001.
3. Assistant Commissioner of Customs, Bangalore International Airport, Bangalore.
4. Shri K.S Rajan, advocate, 209, 16th Cross, Wilson Garden, Bangalore-560030.
5. PS to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED


(B.P. Sharma)

OSD (Revision Application)