



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - 1, Cuffe Parade,  
Mumbai-400 005

F.No. 373/101/B/14- RA / 1644

Date of Issue 03.03.2021

ORDER NO. 147/2021-CUS (WZ)/ASRA/MUMBAI DATED 26.02.2021 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.

Applicant : Shri Syed Iburam Ali

Respondent : Commissioner of Customs, Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. CUS No. 101/2014 dated 28.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Syed Iburam Ali (herein after referred to as the Applicant) against the Order in appeal No. C. CUS No. 101/2014 dated 28.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that Shri Syed Iburam Ali arrived at the Chennai International airport from Singapore on 31.03.2013. He was found to be in possession of 2 nos. of Canon SLR Camera 1000 D (Kit) both valued at Rs. 40,000/- ( Rupees Forty Thousand). These goods were seized as the Applicant was a frequent passenger and goods were considered as commercial in quantity and therefore non-bonafide baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 334/ Batch B dated 31.03.2013 ordered confiscation of the impugned goods, but allowed redemption of the Cameras on payment of a fine of Rs. 20,000/- ( Rupees Twenty thousand ). A penalty of Rs. 5,000/- ( Rupees Five thousand ) was imposed under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal seeking condonation of delay of 28 days, due to fever, before the Commissioner (Appeals) who vide Order-In-Appeal No. C. CUS. No. 101 dated 28.01.2014 rejected the appeal on the grounds that the Appeal was filed without giving convincing reasons and that just because 30 days condonable period is available does not give automatic condonation to an appellant.

5. Aggrieved with the above order the Applicant, has filed this revision, interalia on the following grounds;

5.1 The rejection of appeal without considering the powers granted to the Appellate authority by the Act is not in line with democratic jurisprudence and hence in violation of principle of natural justice.

5.2 The Applicant has an excellent prima facie case on merits. No loss or prejudice will be caused to the department in case of delay being condoned. On the other hand, if the delay is not condoned, the Applicant would be

deprived of its valuable right of appeal. As per the well settled law, liberal approach should be adopted in the interest of justice for condoning the delay in filing the appeal.

5.3 *The Learned appellate authority ought to have taken note of the fact that the Applicant never brought any restricted or prohibited goods warranting confiscation. Further he never crossed either customs clearance or the green channel with the intention to evade duty. The goods were not mis-declared and there was no Previous Offence case against the Applicant. He ought to have considered the fact that the adjudicating authority did not record the submissions of the Applicant. i.e the goods were brought for his personal use, and hence failed to pass a speaking order only by contending that " Heard the pax. The goods brought by the pax are commercial quantity and liable for confiscation.*

5.4 The adjudicating authority incorrect in coming to the inference that the goods were in commercial quantities and wrongly denied the free Allowance eligible to the Applicant under Notification No.21/2012-Cus NT dated 17.03.2012. In pursuance of Board's Circular No.29/2000-Cus dated 11.04.2000 it has been clarified that portion of the baggage which is not in commercial quantity would be eligible to FREE BAGGAGE ALLOWANCE."

5.5 Learned Applicant authority ought to have considered that the applicant brought only 2 nos Cannon SLR camera which is certainly not commercial quantity/ trade quantities and only meant for his bona fide personal use *On the day of his arrival the Applicant was under the impression that the detained goods would be adjudicated in a justifiable manner and on that good belief only he has signed a letter for waiver of show cause notice and personal hearing in the Airport. However, on the contrary, the adjudicating authority has taken a different view. Therefore the order passed by the adjudicating authority is against principles*

5.6 Learned Appellate authority ought to have considered the fact that the Applicant never brought any restricted or prohibited goods warranting confiscation, that he never attempted to clear the goods either by non declaration or by concealment; that he proceeded voluntarily to red channel with the intention to pay duty after examination by availing eligible free allowance and permissible goods on duty. All goods brought by the Applicant were kept open for examination by the officers and no concealment was detected by the officers.

5.7 Learned appellate authority ought to have considered the fact that the Applicant was eligible for a free allowance in pursuance of Notification No.21/2012-Cus NT dated 17.3.2012, read with the Board's Circular No.29/2000- Cus dated 11.04.2000 in which it has been clarified that portion of the baggage which is not in commercial quantity would be eligible to FREE BAGGAGE ALLOWANCE." For the sake of repetition items cannot be considered as Commercial goods when the goods brought by the Applicant were not prohibited or restricted.

5.4 and in issuing a show cause notice /demand which is against the principle of natural Justice. It is submitted that the adjudicating authority without giving credence to the Baggage Rules inferred that importing mobiles phones a violation and in respect of the remaining goods do not fall under the category of 'goods in Commercial Quantities or trade in nature' under the Exim Policy as discussed in various case laws by the Hon'ble Court/Tribunal/Revision Authorities/Appellate Authorities.

5.5 Learned appellate authority ought to have considered the fact it is a well settled principle in law that the quantum of penalty has to be proportionate to the role played by an Individual in commission of an offence invoking section 112 of C.A. 1962 and the fine has to be under the provisions of section 125 of the Customs Act 1962 . There are plethora of case laws, in which the authorities were considerate in reducing the fine and penalty.

5.6 Learned appellate authority seems to be oblivious of the fact that the goods allowed and cleared by the Applicant were not in trade quantities and therefore the Applicant is eligible for a Baggage Free Allowance under the Notification read with the CBEC Circular cited supra.

5.7 Placing reliance in the case law wherein Honourable Revision Authority, Government of India, in a Revision Application (2012 (277) E L T 141 GOI) has confirmed the redemption fine less than 20% and penalty less than 10% imposed by the Lower Adjudicating Authority, in the case of non declaration of baggage. It is further submitted that the Revision Authority, Government Of India, in a Revision Application (2012 (275) ELT 272 001) has taken a lenient view in reducing the fine and Penalty.

5.8 Learned appellate authority ought to have considered the fact that the Applicant is a law abiding citizen and brought the goods for his

personal use and 2 nos of camera do not mean as commercial quantity and when he was not offender and he was not arrested/prosecuted under the Customs Act 1962 on previous occasions to brand him as a repeat offender and hence the fine and penalty imposed by the Adjudicating Authority is harsh and not proportionate when there is no import of restricted/prohibited goods.

5.9 The Applicant accordingly prays to take this memorandum of appeal on record and pass such order or orders as may be deemed fit and proper in the facts and circumstances of the case.

6. Personal hearings in the case were scheduled online on 05.12.2017, 18.12.2017, 29.08.2018 and again on 03.02.2021. Shri B. Kumar the Advocate of the Applicant in his letter dated 14.02.2021 requested for dispensing of the personal hearing as he did not have the technical facility to attend the online personal hearing. He submitted that the case may be decided on merits based on the grounds of Appeal of the Revision Application. The Respondents also did not attend the hearings.

7. The Government has gone through the facts of the case. It is observed that the Appeal contesting the order of the original adjudicating authority was filed before the Appellate authority within the condonable limits of 90 days on the ground that the Applicant was unwell. Government therefore, taking a reasonable view condones the delay, sets aside the impugned Appellate order and proceeds to decide the case on merits.

8. The facts of the case do not indicate that the Applicant was intercepted at the green channel or that the impugned goods were not declared or for that matter the said goods ie two cameras were prohibited or restricted. The Applicant had brought two Cameras totally valued at Rs. 40,000/-. It would not be appropriate to call them commercial in quantity, the goods are also not very high value goods. The facts of the case also suggest that even though the Applicant is a frequent traveller there are no allegations suggesting that he is an habitual offender.

9. Government opines that even if the impugned goods brought by the Applicant were in commercial quantity and merited confiscation, the portion of the baggage which is not in commercial quantity was eligible for free baggage

allowance as clarified by the Board vide their circular No.29/2000- Cus dated 11.04.2000. It is also observed that the redemption fine imposed is Rs. 20,000/- ie 50% of the value of the goods under import. The penalty imposed is also on the higher side. In view of the above facts the Government is of the view that the redemption fine and penalty imposed requires reconsideration and is therefore inclined to take a reasonable view in the case.

10. The Government keeping in view the overall circumstances of the case reduces the redemption fine of Rs. 20,000/- (Rupees Twenty thousand) imposed in lieu of confiscation of the goods valued at Rs. 40,000/- ( Rupees Forty thousand ) under section 125 of the Customs Act, 1962 to Rs. 10,000/- ( Rupees Ten thousand). The penalty imposed is also reduced from Rs. 5,000/- ( Rupees Five thousand ) to Rs.3,000/- ( Rupees Three thousand) under section 112(a) of the Customs Act, 1962.

11. The impugned Order is modified as detailed above. Revision Application is partly allowed.

*Shrawan*  
26/02/21  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

DATED 26.02.2021

ORDER No. 117/2021-CUS (WZ) /ASRA/

To,

1. Shri Syed Iburam Ali, S/o Shri Asmath Batcha, 3H, Manikavasaga Nagar, Iyayangudi, Sivaganga-630 702.

Copy to:

1. The Commissioner of Customs, New Customs House, Meenambakkam, Chennai.

2. Sr. P.S. to AS (RA), Mumbai.

3. Guard File.

4. Spare Copy.