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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 4/4/14

Order No. SI-61/2014-Cus dated 31.03.2014 of the Government of India, passed By Shri D.P.Singh, Joint Secretary to the Government of India, under Section 129DD of Customs Act, 1962.

Subject : Revision applications filed, under Section 129 DD of Customs Act 1962 against the orders-in-appeal as stated in Column 3 of the table in para 1 of this order passed by Commissioner of Customs Excise (Appeals), Chennai

Applicant :
Sl. No. 1 - 8 S/Shri S/Shri Abu Saliq Thahir, Rabik Mustafa, Sayed Ahmed, Elaiyaraja Ganesan Sayed Ahmed, Yahiya Khan, Hyder Ali, Ramu Thana Sekaran & Hyder Ali.
C/o. Shri S. Palanikumar,
Advocate,
No. 10, Sunkuram Chetty Street.
Second Floor,
Chennai - 600 001

Sl. No. 9 Shri Sinnathamby Sasikumar
C/o. Shri Ayan Khan
Advocate,
C/o. Shri K. Mohammed Ismail,
Advocate,
New No. 102, Linghi Chetty Street,
Chennai - 600 001

Sl. No. 10 & 11 S/Shri Anantham Vallian & Mohd. Abubackar Jainlabideen
C/o. Shri T.A.Rangarajan,
Consultant,
Old No. 10, New No. 7,
Sri Lakshmi Street, Nanganallur,
Chennai - 600061

Respondent : The Commissioner of Customs (Airport & Aircargo),
Integrated Air Export Complex,
Meenambakkam,
Chennai - 600 027

* * * *

ORDER

These Revision Applications are filed by the applicants against the Orders-in-appeal passed by the Commissioner of Customs (Appeals), Chennai as detailed in the following table :

S. No	R.A.No. Name of the Applicant S/Shri	Against Order-In-Appeal No. & Date	Order-in-Appeal passed by Commissioner of Customs (Appeals)	Order-in-Original No. & Date	Description / Value of goods (Rs.)	Redemption Fine / Personal Penalty imposed in O-I-O (Rs.)	Redemptio Fine / Personal Penalty imposed in O-I-A (Rs.)
1.	2.	3.	4.	5.	6.	7.	8.
1	373/65/B/13- R.A. Abu Saliq Thahir	824/13-Air dated 13.06.2013	Chennai	917/12-Air dated 06.12.2012	Electronic Goods Valuing Rs. 185000/-	95000 20000	Appeal rejected
2	373/66/B/13-R.A. Rabik Mustafa	671/13-Air dated 30.05.2013	Chennai	605/12-Air dated 23.09.2012	Miscellaneous goods Rs.55000/-	27000 8000	Appeal rejected
3	373/83/B/13 R.A. Sayed Ahmed	1112/13-Air dated 19.08.2013	Chennai	485/12-Air dated 16.08.2012	Miscellaneous Electronic Goods Valuing Rs. 274000/-	137000 27000	Appeal rejected
4	373/94/B/13- R.A Elaiyaraja Ganesan Sayed Ahmed	1041 /13-Air dated 30.07.2013	Chennai	656/12-Air dated 06.10.2012	One gold Chain with pendant 65.2 grams Rs. 197445/-	75000 50000	50000 10000
5	373/85/B/13- R.A Yahiya Khan	1189/13-Air dated 28.08.2013	Chennai	835/12-Air dated 20.11.2012	Used Mobile Phones Rs. 31000/-	15000 5000	Appeal rejected
6	373/87/B/13- R.A Hyder Ali	1178/13-Air dated 28.08.2013	Chennai	OS No. 9880/ Dutch D dated 19.12.2012	Miscellaneous Goods Rs. 4800/-	Confiscated absolutely 5000	Appeal rejected
7	373/88/B/13- R.A Ramu Thana Sekaran	1177/13-Air dated 28.08.2013	Chennai	OS No. 934/12 dated 09.12.2012	Miscellaneous Goods Rs. 94000/-	47000 10000	Appeal rejected
8	373/90/B/13- R.A Hyder Ali	1179/13-Air dated 28.08.2013	Chennai	OS No. 638/12 dated 01.10.2012	25 Mobile Phones Rs. 300000/-	150000 15000	Appeal rejected

9	373/42/B/13- R.A. Sinnathamby Sasikumar	343/13-Air dated 12.03.2013	Chennai	OS No. 968/12 dated 18.12.2012	Semi finished gold chain 80 grams Rs. 232400/-	150000 25000	Appeal rejected
10	373/63/B/13- R.A . Anantham Vallian	603/13-Air dated 09.04.2013	Chennai	OS No. 309 / 01.06.2012	Gold Jewellery 65 grams Rs. 184383/-	90000 18000	Appeal rejected
11	373/99-A/B/12 - R.A Mohd. Abubackar Jainlabideen	1052/12 dated 25.09.2012	Chennai	391/11-Air dated 27.07.2011	2 Sony Video Cameras Rs. 410000/-	205000 41000	Value reduced to Rs. 268716/- RF 100000 PP 27000

2. Brief facts of the case are that the applicants arrived at Chennai International Airport from abroad and imported gold jewellery / gold / miscellaneous goods in commercial quality as shown in the column No. 6 of above table. The passengers were frequent travellers and did not declare the goods before customs as required under section 77. The said goods were also in commercial quantity. As such, it cannot be treated as bona fide baggages in terms of section 79 of Customs Act read with para 2.20 of FTP 2009 – 2014. The said goods were imported in violation of provisions of Section 77, 79, 11 of Custom Act read with provisions of para 2.20 of FTP 2009 – 2014 and Section 3(3) of Foreign Trade (Development & Regulation) Act 1992. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine as shown at column No. 7 of the above table was given to the applicants under section 125 of Customs Act, 1962. Penalty as shown at column No. 7 of the above table was also imposed on the said applicants under section 112 of Customs Act, 1962.

3. Being aggrieved by the said Orders-in-Original, applicants filed appeals before Commissioner (Appeals) who modified the Orders-in-Original as stated in the above table.

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

- (i) Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.
- (ii) The jewellery was bought for personal use. They have stated before Customs that said gold was being imported for personal use.
- (iii) The valuation of goods was made on higher side.
- (iv) There is no proof that applicant walked through green channel without declaring the goods in the declaration form.
- (v) The applicants further submit that the Hon'ble Supreme Court (full bench) has delivered a judgement on 30.09.2011 in OM Praksah's case vs. Union of India wherein it is categorically stated that the main object of the enactment of the said act was the recovery of excise duties and not really to punish for infringement of its provisions. Further held that the offences are compoundable under section 137 of the said act and summary proceedings under Section 138 of Customs Act.
- (vi) The adjudicating authority failed to consider their pleadings while passing the order. The authority ought to have passed an order to re-export the goods imposing lesser redemption fine and personal penalty. The appellant further submits that the adjudicating authority clearly mentioned in the adjudication order that no previous offence. Finally, applicants requested that the fine and penalty may be reduced substantially or re-export, may be allowed on reduced redemption fine and penalty.

5. Personal hearing scheduled in these cases on 20.03.2014 and 21.03.2014 at Chennai was attended by the Advocates on behalf of the applicants as detailed below :

S. No.	Name of the Advocate	Hearing attended on the date	Hearing attended in respect of Revision Applications
1.	Shri Palani Kumar	20.03.2014	Sl. No. 1 – 8 of the table
2.	Shri Ayan Khan	21.03.2014	Sl. No. 9 of the table
3.	Shri T. A. Ranga Rajan	21.03.2014	Sl. No. 10 – 11 of the table

All Advocates appearing on behalf of the applicants have reiterated the grounds of revision application as mentioned above and requested to reduce redemption fine / penalty and also to allow re-export of goods.

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

7. On perusal of records, Government observes that applicant passengers did not declare the said goods to the Customs as required under section 77 of Customs Act. The said goods were also in commercial quantity. As such, the said goods cannot be treated as bona fide baggage in terms of section 79 of Customs Act read with para 2.20 of FTP 2009 – 2014. The said goods were imported in violation of provisions of Section 77, 79, 11 of Custom Act read with provisions of para 2.20 of FTP 2009 – 2014 and Section 3(3) of Foreign Trade (Development & Regulation) Act 1992. The adjudicating authority confiscated the goods under section 111 of Customs Act but allowed the same to be redeemed on payment of redemption fine as shown at column no. 7 of above table in lieu of confiscation, under section 125 of Customs Act, 1962. Personal penalty as shown at column no. 7 of above table was also imposed on the applicants.

Applicants in their revision applications have not disputed the confiscation of said goods but requested to reduce redemption fine and penalty. As such order for confiscation of goods and imposition of penalty cannot be assailed.

8. As regards the pleading of applicants regarding re-valuation of goods, Government notes that the applicants were frequent visitors, they have brought goods in commercial quantity and did not declare the same before customs office under section 77 of Customs Act, 1962. They could not provide valid documentary evidence in support of their claim of re-valuation of goods and therefore appellate authority has upheld the valuation done by the original authority. Government do not find any reason to interfere with the valuation done by lower authorities. Applicants have also requested to allow re-export of goods. In this regard, it is noted that passenger have not made true declaration of goods under section 77 of Customs Act and therefore re-export of goods cannot be allowed. Further the goods valuing at Rs. 4800/- in the case at Sl. No. 6 of the table are some TV accessories and remote/adapters and keeping in view circumstances of the case, absolute confiscation of goods is not warranted. As such Government allows these goods to be redeemed on payment of redemption fine of Rs.2000/- in lieu of confiscation under section 125 of Customs Act, 1962.

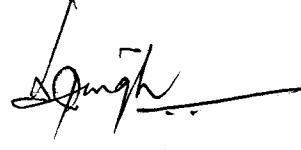
9. As regards the pleadings of the applicants to reduce redemption fine and personal penalty, Government notes that keeping in view the overall circumstances of cases, the redemption fine and penalty is on higher side and same can be reduced in these cases except a case at Sl. No. 4 where Commissioner appeals has already reduced the fine and penalty. The penalty in cases at Sl No. 5, 6, 10 & 11 is quite reasonable and same is upheld. Government therefore reduces the redemption fine and penalty in these cases as mentioned in following table and modifies the impugned Orders-in-Appeal to this extent.

S.No.	R.A.No. Name of the Applicant S/Shri	Against Order- In-Appeal No & Date	Order-in- Original No. & Date	Redemption Fine reduced to (Rs.)	Personal Penalty reduced to (Rs.)
1.	2.	3.	4.	5.	6.
1	373/65/B/13- R.A. Abu Saliq Thahir	824/13-Air dated 13.06.2013	917/12-Air dated 06.12.2012	46250/-	18500/-
2	373/66/B/13- R.A. Rabik Mustafa	671/13-Air dated 30.05.2013	605/12-Air dated 23.09.2012	13750/-	5500/-
3	373/83/B/13 R.A. Sayed Ahmed	1112/13-Air dated 19.08.2013	485/12-Air dated 16.08.2012	68500/-	27000/-
4	373/94/B/13- R.A Elaiyaraja Ganesan Sayed Ahmed	1041 /13-Air dated 30.07.2013	656/12-Air dated 06.10.2012	No Change	No Change
5	373/85/B/13- R.A Yahiya Khan	1189/13-Air dated 28.08.2013	835/12-Air dated 20.11.2012	7500/-	No Change
6	373/87/B/13- R.A Hyder Ali	1178/13-Air dated 28.08.2013	OS No. 9880/ Dutch D dated 19.12.2012	2000/-	No Change
7	373/88/B/13- R.A Ramu Thana Sekaran	1177/13-Air dated 28.08.2013	OS No. 934/12 dated 09.12.2012	23500/-	9400/-
8	373/90/B/13- R.A Hyder Ali	1179/13-Air dated 28.08.2013	OS No. 638/12 dated 01.10.2012	75000/-	30000/-
9	373/42/B/13- R.A. Sinnathamby Sasikumar	343/13-Air dated 12.03.2013	OS No. 968/12 dated 18.12.2012	59000/-	23000/-
10	373/63/B/13- R.A . Anantham Vallian	603/13-Air dated 09.04.2013	OS No. 309 / 01.06.2012	46000/-	No Change
11.	373/99-A/B/12 - R.A Mohd. Abubackar Jainlabideen	1052/12 dated 25.09.2012	391/11-Air dated 27.07.2011	102500/-	No Change

The impugned orders-in-appeal are modified to the above extent

10. These revision applications are disposed off in terms of the above.

11. So, ordered.




(D.P. SINGH)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

S/Shri S/Shri Abu Saliq Thahir, .Rabik Mustafa, Sayed
Ahmed, Elaiyaraja Ganesan Sayed Ahmed, Yahiya Khan,
Hyder Ali, Ramu Thana Sekaran & Hyder Ali.
C/o. Shri S. Palanikumar,
Advocate,
No. 10, Sunkuram Chetty Street.
Second Floor,
Chennai - 600 001

Shri Sinnathamby Sasikumar
C/o. Shri Ayan Khan
Advocate,
C/o. Shri K. Mohammed Ismail,
Advocate,
New No. 102, Linghi Chetty Street,
Chennai - 600 001

S/Shri Anantham Vallian &
Mohd. Abubackar Jainlabideen
C/o. Shri T.A.Rangarajan,
Consultant,
Old No. 10, New No. 7,
Sri Lakshmi Street, Nanganallur,
Chennai - 600061

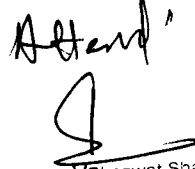


(भागवत शर्मा/Bhagwat Sharma)
सहायक आसुबत/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (संशोधन विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

GOI Order No. SI-61/14-Cus dated 31-03-2014

Copy to:

1. The Commissioner of Customs (Airport & Aircargo), Integrated Air Export Complex, Meenambakkam, Chennai - 600 027
2. The Commissioner of Customs (Appeals), Custom House, 60, Rajaji Salai, Chennai - 600 001
3. The Additional Commissioner of Customs (Airport), Integrated Air Export Complex, Meenambakkam, Chennai - 600 027
4. Guard File.
5. PS to JS (RA)
6. Spare Copy


(भगवत 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
चेन्नई विश्वविद्यालय/Chennai University