

REGISTERED  
SPEED POST



F.No. 380/35/B/14-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue... 4/4/18

Order No. 57/18-Cus dated 2-4-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional 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 Order-in-Appeal No.CC(A)Cus/608/2013 dated 28.10.2013 passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : Deputy Commissioner of Customs, IGI Airport, New Delhi

Respondent : Mr. Sanjay Nangia, New Delhi

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**ORDER**

A Revision Application No.380/35/B/14-RA dated 20.1.14 is filed by the Deputy Commissioner of Customs, IGI Airport, New Delhi, against the Order-in-Appeal CC(A)Cus/608/2013 dated 28.10.2013, passed by the Commissioner of Customs, (Appeals) New Delhi, whereby the appeal of the respondent, Mr. Sanjay Nangia, has been allowed and the Order of the original authority demanding custom duty and imposing fine and penalty have been reduced.

2. The brief facts of the case are that the respondent arrived on IGI Airport on 24.3.11 from Singapore and a trolley loaded with several baggages was diverted from the arrival area of the airport to the departure area of the airport with the help of Mr. Mohit Bhandari, Sub-Assistant Commercial Officer of Air India, Shri Kishore Kumar, an employee of the of Air India and the loader Shri Ram Avadh Singh to evade customs duty by escaping normal customs checks. The tags of the baggages were changed to project as if the passenger had missed flight and as a result thereof the passenger was exiting from the departure area of the airport. However, before the respondent could exit from the airport, he along with imported goods was intercepted by CISF Officers on suspecting the activities of the respondent and others and they were handed over to Customs authorities. On being searched the baggages, several imported goods such as video cameras in commercial quantity valued at 2697498/- were recovered from the baggages and after carrying out detailed investigation, proceedings were initiated against the respondent and others. A common Order-in-Original dated 3.5.13 was passed by the Additional Commissioner of Customs confiscating imported goods absolutely and allowing redemption of confiscated goods on payment of a fine of Rs.5.00 lakhs and penalty of Rs.5.00 lakhs. In addition, personal penalty was imposed on other persons also namely Mohit Bhandari, Kishore Kumar and Ram Avadh Singh. On the appeal of the respondent before the Commissioner (Appeals), the Order of the Additional Commissioner has been modified to the extent the value of the goods taken by the Additional Commissioner, after reducing 30% from internet prices, has been further reduced by the Commissioner (Appeals) resulting into lowering of customs duty and the redemption fine and personal penalty have also been drastically reduced to

Rs.130000/- and Rs.145000/- from Rs.5.00 lakh and Rs.5.00 lakh respectively. In addition, it is also held by the Commissioner (Appeals) that interest is not payable by the respondent until the goods are released by the Department to him.

3. Being aggrieved with the Commissioner (Appeals)'s above Order, the applicant has filed the present revision application mainly on the grounds that the steep reduction in the value of the goods, redemption fine, penalty and setting aside of interest liability on the respondent are not supported by any legal provision and any sound reason.

4. A personal hearing was earlier fixed on 29.08.17. But it was not availed either by the applicant or the respondent. Hence, next hearing was fixed on 8.3.18 and it was availed by Shri A.S.Hasija, Consultant, on behalf of the respondent who contested the Revenue's revision application for the reasons given in the reply dated 3.6.14 whose copy was produced during the present hearing also. However, no one appeared for the applicant for the second time and no reason for non-availing of the hearing is also received from which it is implied that the applicant is not interested in availing the personal hearing in this case.

5. The Government has examined the matter and it is observed that there is no dispute with regard to Commissioner (Appeals)'s Order upholding confiscation of goods which were brought in violation of provision of Customs Act and the Order-in-Appeal has been challenged by the Revenue only to the extent that the value, fine and penalty have been erroneously reduced and interest has been waived wrongly. However, the respondent has challenged the Revenue's revision application both for a procedural reason and on merit. A preliminary objection has been raised that the Deputy Commissioner of Customs is not legally competent to file a revision application against the Order of the Commissioner (Appeals) and no Review Order of the Commissioner of Customs directing the proper officer to file the present revision application has been placed before the Government. But this objection is found to be baseless as a Review Order No.121/2013 dated 18.12.13 has been issued by the Commissioner of Customs directing and authorizing the Deputy Commissioner of

Customs to file the present revision application and thus the applicant has properly filed the revision application before the Government. On merit, the respondent has pleaded that the Commissioner (Appeals) has considered all relevant facts and the Order passed by him is as per Law.

6. With regards to valuation of goods, it is an accepted fact that the respondent did not have any purchase invoices in respect of the imported goods at the time of his arrival in Delhi and as a result the Revenue was compelled to adopt the internet based value for the goods in this case. But while adopting the internet based value the Additional Commissioner has been fair enough to reduce the internet value by 30%, apparently because internet based values are further bargained and discounts upto 30% are generally given by the sellers in Singapore or other countries. However, the Commissioner (Appeals) has questioned the validity of the internet based value in the first place. But at the same time he has accepted the same internet based value after allowing reduction to the extent of 55% in the internet prices by giving the reason of duty incidence and other elements inbuilt in the internet value of the goods. Thus the Commissioner (Appeals)'s view on the acceptability of the internet price of the goods is self contradictory. Moreover, he has not suggested any other method of valuation in this case. Further, even the above reason given for reduction in fine and penalty is not factually and legally tenable since internet prices are the quoted prices for sale of the goods over the counter and no element of custom duty is involved therein because the overseas sellers are not liable for paying any custom duty on sale of goods and payment of custom duty is the responsibility of the buyer only in his country depending on applicable law and different rates of duties. Thus, even when the Commissioner (Appeals) has accepted internet based value of the goods, abatement of 55% in the internet price of the goods for the above stated reason is entirely illogical and unreasonable. Since the Additional Commissioner had already reduced the internet price of goods by 30% considering the element of trade discount etc., Commissioner (Appeals) did not have any reason to further reduce it and that too without providing any convincing reason. The Commissioner (Appeals) has further accepted the respondent's claim to justify reduction in value of goods on the ground that he had

purchased the imported goods with 35000 Singapore dollars only. But this claim is entirely based on the statement of the respondent and it is not corroborated by any other evidence whatsoever. Whereas the value of the goods is to be determined by the quantity, quality and prevalent sale price of the goods in Singapore market during the relevant time and it cannot be determined by the amount of Singapore dollars taken by the respondent from India particularly when arranging of extra amount abroad by the person like the respondent is not a difficult task for smuggling the goods for commercial purpose. From the OIA it is also evident that interest on duty of customs has been set aside in just one sentence and without giving any proper justification. The Commissioner (Appeals) has only stated that since the goods are not released the issue of interest does not arise. But his conclusion is completely misplaced as the payment of interest has nothing to do with the redemption of the goods by the respondent and it is automatically payable on custom duty from the date the custom duty was payable by the respondent to the Department. Undoubtedly in this case the custom duty was payable by the respondent on 24.3.11 when the goods were illegally brought from Singapore to Delhi Airport. But as the duty of customs has not been paid on these imported goods since 24.3.11, interest is liable to be paid for the delay in paying the custom duty. This view does not require any further elaboration in the light of Section 28AA of the Customs Act as per which a person who is liable to pay duty under Section 28 is also liable to pay interest at the rate fixed under Sub-Section(2) whether such payment is made voluntary or after determination of the duty under Section 28. The Government also finds that while the Commissioner (Appeals) has drastically reduced the redemption fine and penalty, no cogent reason has been given for doing so and he has just stated that the redemption fine and penalties are reduced by keeping in view the specific circumstances of this case etc. But factually the Commissioner (Appeals) has not considered the specific circumstance of this case at all in as much as despite it being a manifest case of brazen smuggling of the goods for commercial purpose in violation of various provisions of Customs Act and other Laws, a very lenient view has been taken while reducing fine and penalty. Reduction in value of the goods and consequent lowering of duty liability cited by the Commissioner (Appeals) in his Order to justify drastic reduction in fine and

penalty is also not found to have any legitimate basis. Accordingly, considering all the above discussed facts and particularly the modus-operendi adopted by the respondent for smuggling of the goods, the Government upholds the redemption fine and penalty imposed by the Additional Commissioner in his Order and set aside the Commissioner (Appeals)'s Order in toto.

7. In view of the above discussions, the revision application is allowed.

*(R.P. Sharma)*  
2.4.18

Additional Secretary to the Government of India

The Deputy Commissioner of Customs,  
Office of the Joint Commissioner of Customs,  
IGI Airport, Terminal-3,  
New Delhi-110037

Order No. 57/18-Cus dated 2-4-2018

Copy to:

1. Mr. Sanjay Nangia, Vishnu Garden, New Mandir, New Delhi-110018
2. Commissioner of Customs (Appeals), New Custom House, New Delhi
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-37
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

*(Debjit Banerjee)*  
2.4.2018

(Debjit Banerjee)  
STO (Revision Application)