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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/131/B/WZ/2020-RA / 6203 : Date of Issue 18.08.2023

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ORDER NO. 591 /2023 CUS (WZ)/ASRA/MUMBAI DATED 16.08.2023  
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.

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Applicant : Shri. Dashrath Pandurang Jadhav

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-814/19-20 dated 26.12.2019 issued on  
02-01-2020 through F.No. S/49-69/2019 passed by the  
Commissioner of Customs (Appeals), Mumbai – III.

**ORDER**

This revision application has been filed by Shri. Dashrath Pandurang Jadhav (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-814/2019-20 dated 26.12.2019 issued on 02-01-2020 through F.No. S/49-69/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that Shri. Dashrath Pandurang Jadhav, the applicant holding an Indian Passport No. P 5359867 had arrived from Newark by Air India Flight No.AI-144 dated 24-11-2018 and had opted for clearance through the green channel. The applicant was intercepted by Customs Officers at CSI Airport, Mumbai. Personal search and detailed examination of his checked-in baggage, resulted into the recovery of undermentioned assorted dutiable goods valued at Rs. 1,33,400/- 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 (Rs.)
1.	Puffs Cereal Snack	10	7,000/-
2.	Kraft 100% Grated Parmesan Cheese	06	12,000/-
3.	Bengay Pain relieving cream	27	27,000/-
4.	Alka Seltzer Effervescent Tab	21	12,600/-
5.	Fixodent denture adhesive cream	18	10,800/-
6.	Neutrogena Make-up remover	05	2,500/-
7.	Similac baby food	04	10,400/-
8.	Yogurt Melts baby food	02	2000/-
9.	Philadelphia (cream cheese)	06	12,000/-
10.	Oragel teaming toothpaste	17	5100/-

11.	Vicks natural Tabletop Vaporizer	01	3000/-
12.	Cetaphil moisturizing cream	04	1200/-
13.	Desitin Rapid Relief diaper rash cream	09	3600/-
14.	Hershey Chocolate	01	600/-
15.	Hand Gel	49	12,250/-
16.	Chivas Regal	02	6350/-
17.	Centrum Multivitamin	02	1400/-
		Total	*129800

\*The total shown in the file is Rs.1,33,400/- which is a calculation error.

3. The Original Adjudicating Authority (OAA), viz Assistant Commissioner of Customs, CSI Airport, Mumbai vide Order-in-Original No. Air Cus/49/T2/1012/2018-A dated 24-11-2018, ordered for the confiscation of the goods listed above, valued at Rs. 1,33,400/- 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. 14,000/-. Also, a penalty of Rs. 5,000/- was imposed on the applicant under Section of 112 (a) & (b) of Customs Act, 1962.

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-CUSTM-PAX-APP-814/2019-20 dated 26.12.2019 issued 02-01-2020 through F.No. S/49-69/2019, upheld the order of Original Adjudicating Authority.

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

5.1 That the Order-in-Appeal needs to be set aside as the same is passed without considering all the defense made by the Applicant; that the Adjudicating Authority has not considered various submissions and case laws relied by the applicant in their Appeal memo and therefore, passed non-speaking order, which is illegal and unsustainable in law. He relied on various case laws.

5.2 That the total value of goods imported as shown in the Order- in-Original is Rs. 1,33,400/- whereas total of items listed at Sr. No. 1 to 17 worked out to Rs. 1,29,800/- and therefore there was an excess of Rs. 3,600/- in Customs value thereby an excess Customs duty totally Rs. 1,386/-was demanded and paid by the Applicant. The Commissioner (Appeals) has not given any findings or reasoning for not accepting the argument of the Applicant in respect of excess value calculated and thereby excess customs duty demanded and paid by the Applicant as detailed in appeal memo.

5.3 The Applicant submitted that from the list made by the department (as detailed in Order-in-Original) it can be seen that item at Sr. No. 2,6,7,8,9,11,12, 13, 14 & 17 cannot be said to be goods in commercial quantity being less than 10 in Numbers and allowance of Rs. 50,000/- should have been allowed. Board vide Circular No. 64/96-Cus VI dated 17.12.1996 inter-alia clarified that the portion of the Baggage which is not in commercial quantity would be eligible for free baggage allowance. The Applicant also relied on various case Laws wherein it has been held that instruction/circular issued by the Board are binding on the departmental officers. The Applicant submitted that the total value of items mentioned at Sr. No. 2,6,7,8,9,11,12,13,14 & 17 works out to Rs. 48,700/- which the Applicant are entitled to as free allowance and no custom duty can be charged on the said value of Rs. 48,700/-. Therefore the Appellant submit that there is an excess duty demanded and paid by the Appellant of Rs. 18,749/- (Rs.17,045/- customs duty and Rs. 1704/- SWS) which is not sustainable.

5.4 The Applicant submitted that the list of items inventoried clearly shows that the liquor bottles 02 units (Chivas Regal) has also been confiscated and customs duty of Rs. 9525/- + SWS of Rs. 635/- has been paid by the Applicant. The Applicant further submitted that as per the provisions of Customs Baggage Declaration (Amendment) Regulation, 2016 issued under Notification No. 31/2016-Customs (N.T.) dated 01.03.2016, all the passengers coming to India are allowed free of customs duty Two liters of Alcohol. Commissioner (Appeals) upheld the confiscation of two units of liquor bottles without giving any finding and reasoning for not accepting the above argument put forth by the Applicant that no benefit of the provisions of Notification No. 31/2016 -Customs (N.T.) dated 01.03.2016 in respect of two liters of Alcohol was allowed by the Adjudicating Authority

5.5 The Applicant submitted that Commissioner (Appeals) has relied on the decision of GOI in case of Hemal K Shah in support of his decision regarding the confiscation of goods and imposition of penalty, the same is not applicable in this case.

5.6 The Applicant relied on GOI order in case of Sushil Sham Chanchlani as reported in 2014(307) ELT 619 (GOI).

5.7 In view of the above discussion the applicant requested to set-aside the OIA and grant them the consequential refund of i) Excess Customs duty of Rs. 17,045/- & SWS of Rs. 1,704/- on account of not allowing benefit of free allowance; Totally Rs.18,749/-; ii) Excess Customs duty of Rs. 9,525/- & SWS of Rs. 635/- on account of not allowing the benefit of free allowance of Two liquor bottles: Totally Rs.10,160/- & iii) Excess Customs duty of Rs. 1260/- & SWS of Rs. 126/-Totally Rs. 1,386/-on account of excess value of Rs.3600/-.

6. Personal hearing in the case was scheduled for 11-05-2023 and 18-05-2023. The Applicant vide their letter dated 17-05-2023 submitted that he is out of India for office work on deputation and is not likely to visit India within a period of one year. He requested to decide the case on merits.

7. The applicant has filed an application praying for condonation of delay. Government notes that the OIA was passed by the AA on 26-12-2019 which had been issued on 02.01.2020. The applicant has revealed that the OIA was communicated to him on 09-01-2020. Government notes that the revision application was filed on 10-07-2020 and the applicant has submitted that the delay was due to the lockdown in the country. Government notes that the delay occurred due to the lockdown, hence the prayer for condonation of delay is accepted and 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 which they had failed to declare. 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. 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 himself liable to penalty.

9. Government notes that the applicant has disputed the impugned Order in respect of the confiscation of all the goods mentioned in the Order without verifying whether the same is in commercial quantity or otherwise. Government observes that the applicant's grievance against the Commissioner Appeal's order is only on the following grounds:

- a) the value of goods shown in the Order in original is Rs.1,33,400/- whereas the actual value is Rs. 1,29,800/-. The duty and penalty is charged on the value of Rs.1,33,400/- which is not correct;
- b) The goods mentioned at Sr.No.2, 6, 7, 8, 9, 11, 12, 13, 14 & 17 are not in commercial quantity, all being less than 10 and valued at Rs.48,700/-, were eligible for free allowance and hence no custom duty can be charged on the same, they were not given the benefit of free baggage allowance of Rs.50,000/-;
- c) As per the provisions of Notification no. 31/2016-Customs (N.T.) dated 01-03-2016, all the passengers coming to India are allowed free of Customs duty on two litres of alcohol and they had brought the same. Hence confiscation and customs duty charged on the same is not correct.

10. The Pointwise findings in this case is as under:

- a) On going through the Order in Original the total value of the goods is found to be Rs 1,29,800/- and not Rs.1,33,400/- which is a calculation error. Hence Government finds that the applicant has paid excess Customs duty amounting to Rs1260/- + Rs.126/ (SWS) on the excess value of Rs.3600/-.
- b) The Applicants have submitted that the goods mentioned at Sr.No.2, 6, 7, 8, 9, 11, 12, 13, 14 & 17 brought by them are for personal use and not in commercial quantity and therefore requested to allow free baggage allowance as admissible under Baggage Rules for the said goods valued at Rs. 48,700/. Government observes that Baggage Rules, 2016 as amended by Notification No. 43/2016-Customs (N.T)dated 31.3.2016 reads as under:

*".....3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar.-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -*

*(a) used personal effects and travel souvenirs; and*

*(b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger."*

Government finds that the goods mentioned in at Sr.No.2, 6, 7, 8, 9, 11, 12, 13, 14 & 17 are not in commercial quantity and the said goods are other than those mentioned in Annexure-I. Government notes that in the OIA, the AA had observed that "*the applicant was eligible to import duty free goods upto Rs.50,000/- in terms of Baggage Rules. However, he imported the impugned goods of worth Rs. 1,33,400/-, exceeding the limit of free allowance, hence, these imported goods cannot be treated as bonafide baggage.*".

Government does not agree to the Appellate Authority's above observation as C.B.E. & C had issued clarification vide Circular No. 64/96-Cus., VI, dated 17-12-1996 on admissibility of free baggage allowance to passengers when the whole of the goods or a part of the goods of their baggage is treated to be imported in commercial quantity which is as under:

*"..... The present problem is where a part of the goods are in the commercial quantity and that part attracts adjudication and penalty, whether free baggage allowance can be allowed to the other part of the goods which is not in commercial quantity. The matter has been examined and it is found that the entire baggage imported by a passenger does not become non-bona fide or tainted because some articles in the baggage are held liable to confiscation being in commercial quantity. Therefore, the portion of the baggage which is not in commercial quantity would be eligible to free baggage allowance."*

In view of the above Government is inclined to allow the free baggage allowance of Rs. 48,700/- to the applicant and holds that the Customs duty



and SWS paid amounting to Rs 17,045/- and Rs.1704/- respectively, on the said value needs to be refunded.

- c) Government observes that Notification No.31/2016-Cus(N.T.) has allowed all passengers for duty free allowance for two litres of Alcohol, Liquor or Wine. Hence Government holds that the applicant is eligible for duty free allowance for the two litres of Alcohol (valued at Rs. 6350/-) brought by him and hence the Customs duty and SWS paid amounting to Rs.9525/- and Rs.635/- respectively on the said value needs to be refunded.

11. Government therefore holds that free baggage allowance are eligible for the goods mentioned at Sr.No. 2, 6, 7, 8, 9, 11, 12, 13, 14 & 17 of the Order in Original and the applicant is also entitled for duty free clearance of two liquor bottles mentioned at Sr. No. 16, as per baggage Rules. The remaining goods valued at 74,750/-, being in commercial quantity would not qualify under bonafide baggage and are liable for confiscation.

12. In view of the above Government sets aside the impugned Order in Appeal and modifies the OIA passed by AA to the extent that the value of Rs.3600/- (Miscalculation), Rs.48700/- (Goods not in commercial quantity) and Rs.6350/- (Two bottles of liquor) is allowed to the applicant on the impugned goods and as a consequence, the redemption fine on the remaining goods valued at Rs.74,750/- is reduced from Rs. 14,000/- to Rs.10,000/- (Rupees Ten Thousand only).

13. The penalty of Rs. 5,000/- imposed under Section 112(a) and (b) of the Customs Act, 1962 is appropriate and commensurate with the omissions and commissions of the Applicant, Government does not feel it necessary to interfere with the imposition of the same and is sustained.

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

*Shrawan*  
16/8/23  
( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

**ORDER No. 591 /2023-CUS (WZ) /ASRA/MUMBAI DATED 16.08.2023**

To,

1. Shri. Dashrath Pandurang Jadhav, B-3, Swarup CHS Ltd. Subhash Nagar, Pandurangwadi Road No. 4, Joggers Park, Goregaon (East), Mumbai 400063.
2. Pr. Commissioner of Customs, CSI Airport, Terminal - 2, Level - 2, Sahar, Andheri East, Mumbai - 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S. M. Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.
2. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.