



**REGISTERED
SPEED POST**

F.No. 373/ 60, 79 & 80 / B /13 -R. A.
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 4.11.14

Order No. 62-64/2014-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), Trichy.

Applicant : 1 & 2. S/Shri A. Vellaisamy & A. Aswin
C/o. Shri S. Palanikumar,
Advocate,
No. 10, Sunkuram Chetty Street.
Second Floor,
Chennai - 600 001

3. Shri M. Pandi,
Old No. (13), 1/59A, New No. 37A,
A. M. Street, Pudhuvail Post,
Karaikudi Taluk, Sivagangai Distt.,
Tamil Nadu - 630 108

Respondent : The Commissioner of Customs,
No. 1, Williams Road,
Cantonment,
Tiruchirapally - 620001

* * * *

ORDER

These Revision Applications are filed by the applicants against the Order-in-appeal numbers passed by the Commissioner of Customs (Appeals), Trichy 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.)	Redemption Fine / Personal Penalty imposed in O-I-A (Rs)
1.	2.	3.	4.	5.	6.	7.	8.
1	373/60/B/13- R.A A. Vellaisamy	15 - 18/13 dated 28.01.2013	Trichy	15/12- ADC dated 11.10.201 2	Gold Jewellery 525.900 grams Rs. 1361555	425000 250000 (re-export allowed)	200000 100000
2	373/79/B/13- R.A . A. Aswin	66/13 dated 30.07.2013	Trichy	6/13-ADC dated 29.04.201 3	2 Fish Finder and 6 Sony Nxcam Rs.1340000/ -	475000 150000	Appeal rejected
3	373/80/B/13- R.A M. Pandi	56/13 dated 30.04.2013	Trichy	36/13 dated 14.02.201 3	Gold Jewellery 155.6 grams Rs. 442837/- -	221420 44500	200000 45000 (re-export Allowed)

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 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. In cases at Sl. No. 1 & 3, re-export of goods was allowed.

3. Being aggrieved by the said Order-in-Original, applicants filed appeal 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 the 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.

5. Personal hearing scheduled in these cases on 20.03.2014 at Chennai was attended by Shri Palani Kumar, Advocate on behalf of the applicants mentioned at Sl. No. 1 & 2 of the table. Hearing in case at Sl. No. 3 of the table was attended by the applicant Shri M. Pandi himself. They reiterated the grounds of revision application as mentioned above and requested to reduce redemption fine / penalty.
6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-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 have brought goods in commercial quantity and did not declare the same before customs office as required 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.
9. As regards the pleadings of the applicants to reduce redemption fine and personal penalty, Government notes in the case at Sl. No. 1, the fine/penalty imposed is quite low and cannot be considered harsh. So the redemption fine and penalty imposed in the case

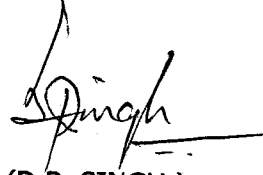
at Sl. No. 1 of the table is upheld. In the other cases, fine/ penalty appears on higher side and the same can be reduced. Keeping in view the overall circumstances of cases; Government reduces redemption fine and penalty as under :

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	373/60/B/13- R.A A. Vellaisamy	15 - 18/13 dated 28.01.2013	15/12-ADC dated 11.10.2012	No Change	No Change
2	373/79/B/13- R.A A. Aswin	66/13 dated 30.07.2013	6/13-ADC dated 29.04.2013	335000/-	134000/-
3	373/80/B/13- R.A M. Pandi	56/13 dated 30.04.2013	36/13 dated 14.02.2013	10000/-	25000/-

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

1 & 2. S/Shri A. Vellaisamy & A. Aswin
C/o. Shri S. Palanikumar,
Advocate,
No. 10, Sunkuram Chetty Street.
Second Floor,
Chennai - 600 001

3. Shri M. Pandi,
Old No. (13), 1/59A, New No. 37A,
A. M. Street, Pudhuvail Post,
Karaikudi Taluk, Sivagangai Distt.,
Tamil Nadu - 630 108



(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

GOI Order No. 62-6414-Cus dated 31.03.2014

Copy to:

1. The Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirapally – 620001
2. The Commissioner of Customs (Appeals), C/o. the Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirapally – 620001
3. The Additional Commissioner of Customs, C/o. the Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirapally – 620001
4. Guard File.
5. PS to JS (RA)
6. Spare Copy



(भारतेश शर्मा/Phsowet Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Appellate)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/NEW DELHI