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F.No. 372/05/B/13-RA
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. 23/4/14

Order No. 93/2014-Cus dated 21.04.2014 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 Application filed under Section 129DD of Customs Act, 1962 against order-in-appeal No. 21/CUS(Baggage)/KOL/AP/12 dated 31.12.12 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Shri Bidyut Dutta, C/o Shri Punam Chand Jain, Consultant, 64 Burtolla Street, Kolkata-700007

Respondent : Commissioner of Customs (Airport), Kolkata

ORDER

This revision application is filed by Shri Bidyut Dutta, C/o Shri Punam Chand Jain, Consultant, 64 Burtolla Street, Kolkata-700007 against the order-in-appeal 21/CUS(Baggage)/KOL/AP/12 dated 31.12.12 passed by the Commissioner of Customs (Appeals), Kolkata with respect to order-in-original No.ASA No.561/12 dated 25.06.12 passed by the Assistant Commissioner of Customs, NSCB Airport, Kolkata.

2. Brief facts of the case are that the applicant arrived from Singapore on 25.06.2012 at N.S.C.B.I. Airport by flight No.MI-488. On arrival the applicant was intercepted near the conveyor belt of the arrival hall by the officers of Revenue Intelligence Unit (DRI), Kolkata. The officers then checked and examined the baggage of the passenger. DRI officers also made the inventory and valuation of the goods brought by the applicant and subsequently handed over the same to the Customs Officers (Baggage) at Red Channel. The officers then re-examined his baggage, the goods and, as per A.S.A. No. 561/2012 dated 25.06.2012 i.e. (1) 01 piece Electronic Key Board, (2) 480 pieces of Sony Video Cassette, (3) 58 pieces of Cordless Telephone and (4) 6 bottles of Black Label Whisky, total goods worth of Rs.2,97,000/- (Rupees two lakh ninety seven thousand only) were found. As the goods are commercial in nature, and are not bonafide baggage and imported in violation of provisions of the Customs Act, 1962, Foreign Trade Policy 2009-14, the passenger was informed about the same and a personal hearing was granted and he was heard. The Assistant Commissioner, Airport (adjudicating authority) held the impugned baggage as non bonafide one and commercial in nature and confiscated the goods for Foreign Trade Policy (FTP) and Baggage Rules violations and allowed to redeem the same on payment of fine of Rs.60,000/- (Rupees sixty thousand only) and also imposed a personal penalty of Rs.30000/- (Rupees thirty thousand only). The applicant cleared the goods on payment of the appropriate duty, fine and penalty, amounting to Rs.226817/-

(Rupees two lakh twenty six thousand eight hundred seventeen only), under Baggage Receipt No.2831 dated 25.6.2012.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who modified the said order and reduced the redemption fine and penalty to Rs.50000/- and Rs.20000/- respectively.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129DD of Customs Act, 1962 before Central Government on the following grounds:

4.1 That as per the provision of Baggage Rules 1998, I am entitled to get free allowance which has been denied to me. The item Nos.1 i.e. pc keyboard & 2 bottles of whisky from item No.4 are reasonable in quantity which may be allowed under F/A as per Rule.

4.2 That the officer of DRI is not a valuer or has any knowledge about the valuation of the goods they just completes the formalities and has over valued the goods which is too much, wrong and bad in law. The valuation done is baseless i.e. without any proper valuation method or as per current valuation Rule. Kindly revalue the same as per invoice submitted at the time of PH. The CC (A) has also clearly mentioned in the discussions and findings that the goods has been over valued but did not gave effect, revalued the goods as per purchase invoice while passing the Order.

(a) The item No.1 Electronic Keyboard is of SGD 784 i.e. Rs.32,000/- as per purchase Invoice. The same should be revalued after deducting the margin of profit 30% from the purchase invoice which comes to Rs.22,400/-.Therefore the goods should be revalued as per the purchase invoice submitted at the time of PH.

(b) Item No.3 i.e. 58 pcs. Cordless telephone Model No.KX-TG3611 is of Rs.2,200/- per piece as per current market rates available on internet. The CIF value of the same would be 50% less than its market value then the total comes to (Rs.1100 X 58 pcs) Rs.63,800/-. The same should be revalued to Rs.1100/- per piece as per the purchase invoice submitted at the time of PH.

(c) The item No.4 i.e. 6 bottles of whisky 1 ltr. each is also wrongly overvalued. The value of each bottle is Rs.1000/- which means the total (Rs.1000 X 6 pcs) Rs.6000/- out of which 2 bottles are allowed duty free as per Rule. Therefore revalue the same to Rs.6000/- and allow 2 bottles of whisky under F/A as per Rule.

4.3 That since the goods are not prohibited nor restricted and I have made a bonafide declaration to this effect under Sec 77 of this C.A' 62, the imposition of heavy penalty of Rs.20,000/- may kindly be waive or reduce to a reasonable amount.

4.4 Under the facts and circumstances of the case I pray to your good self kindly look into the matter sympathetically and allow free allowance on item No.1 and 2 bottles of whisky as per Normal Baggage Rule, revalue item Nos.1, 3 & 4 as per purchase invoice and current valuation Rule of CA'62. Redemption fine of Rs.50,000/- & penalty of Rs.20,000/- imposed may be waived or reduced to a reasonable amount.

5. Personal hearing scheduled in this case on 29.3.14 at Kolkata was attended by Shri Poonam Chand Jain, Consultant on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

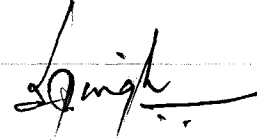
7. On perusal of records, Government observes that applicant has mainly contended that one electronic keyboard PA50SD Brand Korg is overvalued and submitted on invoice No.INV.1233232 dated 23.8.12 issued at Singapore for said product mentioning the value as Singapore dollars 784=INR35035 (@1\$=44.70 at that time). Applicant has pleaded that said item may be allowed in baggage free allowance which has been denied to him. Government notes that the Commissioner (Appeals) has also recorded his findings that applicant had submitted documents claiming lesser value of items. But no finding was given on this issue. Since the value as per said invoice is Rs.35050/-, and only one key board cannot be treated as commercial in nature, so, the said item may be allowed in baggage free allowance and by charging duty on value, in excess of baggage allowance limit.

8. Applicant has further contended that black label whisky was over valued @6000/- per litre bottle whereas its value is only Rs.1000/- per bottle. The black label (one litre) whisky was sold @USD34=Rs.1870 @1USD=Rs.55/-, on 25.6.12 at the duty free shop, Kolkata as informed by Deputy Commissioner of Customs, Airport, Kolkatta on telephone. As such this contention of applicant merits acceptance and therefore the black label whisky one litre bottle is to be valued @Rs.1870/-. Since applicant passenger is eligible to import two litre of whisky duty free in terms the baggage rules, the two litre whisky is allowed to be cleared duty free as per his entitlement in terms of Baggage Rules. The value of 4 bottles works out to Rs.1870 x 4=7480/- on which appropriate duty is to be charged. Government notes that redemption fine and penalty of Rs.50000/- and Rs.20000/-imposed by lower authorities is quite reasonable and cannot be called harsh. Therefore,

Government do not find any reason to interfere with the same. The impugned order is modified to this extent.

9. The revision application is disposed off in terms of above with consequential relief.

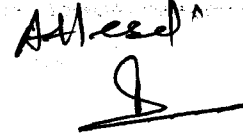
10. So, ordered.



(D P Singh)

Joint Secretary (Revision Application)

Shri Bidyut Dutta,
C/o Shri Punam Chand Jain,
Consultant, 64 Burtolla Street,
Kolkata-700007



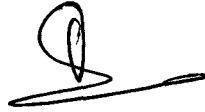
(Poojwal Sharma)
सहायक सचिव/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

GOI Order No. 93/14-Cus dated 21.04.2014

Copy to:

1. Commissioner of Customs, Air Cargo Complex, NSCBI Airport, Kolkata-700 052
2. Commissioner of Customs (Appeals), 15/1, Strand Road, Custom House, Kolkata-700 001.
3. The Assistant Commissioner Customs, Drawback Department, Air Cargo Complex, NSCBI Airport, Kolkata-700 052.
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)