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SPEED POST



**F.No.371/58/B/13-RA-CUS**

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue...4/4/16.....

**ORDER NO. 35/2016-CUS DATED 28.03.2016** OF THE GOVERNMENT OF INDIA, PASSED BY SMT.RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-70/13-14 dated 18.06.2013 passed by Commissioner of Customs(Appeal), Mumbai, Zone-III.

Applicant : Mr. Thoufiq Musaffer

Respondent : Commissioner of Customs, C.S.I. Airport, Mumbai

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## ORDER

This Revision Application is filed by Shri Thoufiq Musaffer (hereinafter referred to as the Applicant) against the Order-in-Appeal No.MUM-CUSTOM-PAX-app-70/13-14 dated 18.06.2013 passed by Commissioner of Customs, (Appeals) Mumbai, Zone-III, with respect to Order-in-Original No. DC/Refund/65-R/2011 dated 17.10.2011 passed by Deputy Commissioner of Customs, CSI Airport, Mumbai.

2. Brief facts of the case are that on 06.01.2009 on the basis of information officers of Customs intercepted and examined in detail the baggage of of Shri Thoufiq Musaffer, holder of Indiana passport bearing no. G-7649979 arrived by flight no. SQ 422 from Singapore with a suspicion of mis-declaration. The examination under panchnama resulted in recovery of non bonafide baggage items such as 2000 pieces of memory cards and 426 pieces of assorted wrist watches which were valued at Rs. 23,11,378/- (CIF) and Rs.38,50,970/- (LMV). It was noticed that the applicant had mis-declared the goods in both quantity and in value and hence the goods were seized under reasonable belief that these constituted non bonafide baggage in trade quantity, and therefore, liable for confiscation under the provisions of the Customs Act, 1962. In his voluntary statement recorded under Section 108 of the Customs Act, 1962 he admitted the he was not the owner of the impugned goods but just a carrier working for a monetary gain.

2.1. A Show Cause Notice was issued to him on 06.07.2009 and subsequently the case was adjudicated vide Order-in-Original No. ADC/KPC/ADJN/59/2010-11 dated 10.01.2011 ordering confiscation of seized goods valued at Rs. 23,11,378/- with an option to redeem the same on payment of redemption fine of Rs. 4,00,000/- which had to be exercised within thirty days from the date of receipt of the order and imposition of personal penalty of Rs. 1,00,000/- on the applicant.

2.2. The applicant through his advocate vide letter dated 27.01.2011 informed the department that he was willing to redeem the confiscated goods on payment of the required redemption fine and personal penalty. The said letter was received by the department on 31.01.2011 but apparently was not responded. The authorized advocate again wrote a letter dated 11.02.2011 reminding about the release of the goods. On enquiry with the Customs staff the advocate learnt that the confiscated goods were disposed off by Airport Disposal Warehouse.

2.3. The applicant filed a refund application dated 29.05.2011 received in the department on 18.07.2011 for refund of the sale proceeds of the confiscated goods less redemption fine and personal penalty with interest.

2.4. Vide letter F. No. APD/861 & 838/2010 dated 23.08.2011 of Airport Disposal Warehouse it was established that the confiscated goods were indeed disposed by the

Disposal Unit for Rs. 18,75,311/- in the month of September 2010 as per the provisions of Section 110 (1B) of the Customs Act, 1962.

2.5. The refund sanctioning authority vide Order-in-Original No.DC/Refund/65-R/2011 dated 17.10.2011 sanctioned an amount of Rs. 5,42,059/- after deducting the fine penalty and duty from the realized amount.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. MUM-CUTM-PAX-app-70/13-14 dated 18.06.2013 rejected the appeal of the applicant.

4. The applicant has now filed this Revision Application under Section 129DD of the Customs Act, 1962 before the Central Government on the following grounds:-

4.1. That the order of the Appellate Authority is against law, weight of evidence and circumstances and probabilities of the case.

4.2. That the department is disposed the goods while pursuing the case is bad and hence the goods is liable to be returned. That the department knows that the case is sub-judice, without giving any care dispose the goods is arbitrary and mockery of justice and also abuse of process of law and also contempt of Court.

4.3. That once goods have been disposed of the authority cannot collect the duty for return of sale proceeds. That as per order of the Additional Commissioner of Customs (Air), Mumbai, the authority not released the goods that there is no actual redemption of goods and hence the authority cannot collect the redemption fine from the applicant.

4.4. The applicant places reliance on the following case laws:

- Shabir Ahmed Abdul Rehman vs Commissioner of Customs, Mumbai -2009 (235) ELT 402 (Bom)
- Yakub Ibrahim Yusuf Vs Commissioner of Customs, Mumbai-2011(263)ELT 685 (Tri-Mumbai)

4.5. That the present case is similar set of facts of the case mentioned above, the judgement is squarely applicable.

4.6. That as per Section 27 A of the Customs Act, 1962 deals with interest on delayed refunds but adjudication authority failed to see the relevant provisions of the Customs Act while passing the impugned order but in the order authority stated that no provisions for interests.

5. A show cause notice was also issued to the Respondent Commissionerate on 18.08.2015, in response to which the following submissions have been made:-

5.1. That the grounds of appeal is unsubstantiated and without any valid basis.

5.2. That the department disposed the seized goods in the very interest of the revenue as provided under Section 150 of the Customs Act, 1962.

5.3. That the applicant has no locus standi to appeal against the refund order since he already filed claim and received the refund of the sanctioned amount in the refund order, indicating that he accepted the same.

5.4. That entry of goods into India from a foreign origin attracts duty as per provisions of Customs Act, 1962, irrespective of whether consumed by the importer or anyone else. That payment of fine is an option that saves the goods from absolute confiscation, where the ownership of the goods is wholly transferred to the Department. That in the present case since Order-in-Original provided an option for redemption but the duty and redemption fine were not paid, the sale proceeds after the deduction of the same were duly returned as stipulated in Section 150 of the Customs Act, 1962 which is a statutory provisions.

5.5. That the case of Shabir Ahmed Rehman is still sub-judice in the Department's petition for Special Leave to Appeal ( Civil)-CC6571/2009, the Supreme Court has stayed the Mumbai High Court order and hence the same cannot be relied.

6. Personal hearing was scheduled in this case on 14.09.2015, 13.10.2015 & 04.11.2015. Nobody attended the hearing nor sought any adjournment.

7. Government has carefully gone through the relevant case records available in case file, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

8. On perusal of records, Government observes that on 06.01.2009 the examination of the baggage of Shri Thoufiq Musaffer resulted in recovery of non bonafide items such as 2000 pieces of memory cards and 426 pieces of assorted wrist watches. As the applicant had mis-declared the goods in both quantity and in value the goods were seized under reasonable belief that these constituted non bonafide baggage in trade quantity, and therefore, liable for confiscation under the provisions of the Customs Act, 1962. In his voluntary statement recorded under Section 108 of the Customs Act, 1962 he admitted the he was not the owner of the impugned goods but just a carrier working for a monetary gain. A Show Cause Notice was issued to him and subsequently the case was adjudicated vide Order-in-Original No. ADC/KPC/ADJN/59/2010-11 dated 10.01.2011 ordering confiscation of seized goods valued at Rs. 23,11,378/- with an option to redeem the same on payment of redemption fine of Rs. 4,00,000/- which had to be exercised within thirty days from the date of receipt of the order and imposition of personal penalty of Rs. 1,00,000/- on the applicant. The applicant through his advocate vide letter dated 27.01.2011 informed the department that he was willing to redeem the confiscated goods in accordance with the provisions mentioned in the order. However, the confiscated

goods were disposed off by the Department. Upon claim of the applicant for refund of the sale proceeds of the confiscated goods, the refund sanctioning authority vide Order-in-Original No. DC/Refund/65-R/2011 dated 17.10.2011 sanctioned an amount of Rs. 5,42,059/- after deducting the fine, penalty and duty from the realized amount. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. MUM-CUSTOM-PAX-app-70/13-14 dated 18.06.2013 rejected the appeal of the applicant. Now the applicant has filed this revision application under Section 129 DD of the Customs Act, 1962 before the Central Government on the grounds stated at para 4 above.

9. Government observes that under Section 129 DD of the Customs Act, 1962, a Revision Application against the Order of Commissioner (Appeals) passed under Section 128 A ibid lies with Government only if such orders relate to cases as mentioned in provision to sub-section (1) of Section 129 A of the Act. Sub-section (1) of Section 129 A of Central Excise Act, 1944 reads as under:-

*"(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -*

*(a) a decision or order passed by the Commissioner of Customs as an adjudicating authority*

*(b) an order passed by the Commissioner (Appeals) under Section 128A;*

*(c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;*

*(d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under section 130, as it stood immediately before that day :*

**Provided** that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

*(a) any goods imported or exported as baggage;*

*(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;*

*(c) payment of drawback as provided in Chapter X, and the rules made thereunder "*

Further, Section 129 DD of Customs Act, 1962 states that

*" (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 129A, annul or modify such order.*

**Provided** that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees".

10. Government notes that it is an uncontested fact on record that the Order No. ADC/KPC/ADJN/59/2010-11 dated 10.01.2011 has attained finality. The present proceedings here have originated from the issue of refund Order No. DC/Refund/65-R/2011 dated 17.10.2011 passed by the Deputy Commissioner of Customs, CSI Airport, Mumbai under Section 27 of the Customs Act, 1962 allowing refund of sale proceeds of seized and confiscated goods in lieu of the actual goods after deducting the fine, penalty and duty as applicable.

11. Government thus finds that the case matter primarily pertains to the refund of sale proceeds where the goods were already disposed off under Section 150 of the Customs Act, 1962 and the adjustments that can be made thereagainst. The applicant has challenged the adjustment of duty on goods which are not available for redemption under Section 125. The basic issue for decision is whether duty is chargeable on goods which have been disposed off under Section 150 *ibid* and are not available for redemption and not whether duty is chargeable on goods imported as baggage. Hence, the instant case does not fall within the ambit and scope of provisions contained for Section 129DD read with proviso to Section 129 A(1) of the Customs Act, 1962 under which the instant revision application has been made.

12. In view of above discussions, Government therefore finds that the Revision Application filed before Central Government in terms of Section 129DD of Customs Act 1962 is beyond jurisdiction. As such, this Revision Application is dismissed for being non-maintainable. The applicant is at liberty to file an appeal before the appropriate authority under Section 129A of Customs Act, 1962.

13. So, ordered.



**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

Shri Thoufiq Musaffer,  
136/85, Ramah Street,  
Royapuram,  
Chennai-600013


  
Attested.

**ORDER NO. 35/2016-CUS DATED 28.03.2016**

Copy to:-

1. The Commissioner of Customs , Airport , Mumbai
2. The Commissioner of Customs (Appeals) Mumbai Zone-III, Awas Corporate Point (5<sup>th</sup> Floor) Makwana Lane, Behind S.M. Centre, Andheri, Kurla Road, Marol, Mumbai-400059
3. The Additional Commissioner of Customs, Airport, Mumbai.
4. Shri S. Palani Kumar, Advocate, No. 10, Sunkrama Street, Chennai-600001.
- 4.. PA to JS (RA)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED

  
( SHAUKAT ALI )  
Under Secretary (RA)

28/03/2016  
28/03/2016  
(Under Secretary (RA))  
(Under Secretary (RA))