

REGISTERED
SPEED POST



F. No. 372/01/B/2014-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue... 4/1/16.....

ORDER NO. 36/2016-CUS DATED 29.03.2016 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. 26/Cus(Bag)/Kol(AP)/2013 dated 30.10.2013.

Applicant : Shri Jaswinder Singh,

Respondent : Commissioner of Customs, Airport, Kolkata.

ORDER

This Revision Application is filed by Shri Jaswinder Singh, (hereinafter referred to as the Applicant) against the Order-in-Appeal No.26/Cus (Bag), Kol(AP)/2013 dated 30.10.2013 passed by Commissioner of Customs, (Appeals) Kolkata with respect to Order-in-Original No. 23/2012 dated 29.12.2012 passed by Additional Commissioner of Customs, AIU, NSCBI Airport, Kolkata.

2. Brief facts of the case are that on 10.05.2007, Shri Jaswinder Singh travelled from Bangkok to Kolkata with assorted garments, mobile phones with accessories, micro SD adapters with memory card, mobile phone batteries etc along with Indian currency Rs. 25,000/- . Seven other passengers were also intercepted in the green channel and similar items were recovered from their possession. These passenger claimed to be carrying these goods on behalf of Shri Jaswinder Singh. The total value of the goods were valued at Rs. 7,70,459/-. Since none of them could produce licit documents relating to lawful acquisition and importation of the impugned goods recovered the said goods were seized under Section 110 of the Customs Act, 1962. Separate summons were issued to each of the seven passengers but only Shri Jaswinder Singh appeared giving credence to the fact that all the goods belonged to him alone. It was also felt that these goods were brought for commercial benefit.

2.1. Accordingly, the Additional Commissioner of Customs, Kolkata Airport passed the order vide Order-in-Original No. 23/2012 dated 29.12.2012 and ordered:-

- (i) confiscation of the impugned goods under Section 111(d), (i) and (l) of the Customs Act, 1962 with an option to redeem the same against payment of redemption fine of Rs. 50,000/-.
- (ii) imposed personal penalty of Rs. 15,000/- on applicant under Section 112 (a) & (b) of Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal along with stay application before the Commissioner (Appeals). The stay petition was decided by Order-in-Stay No. 27/Cus (Bag)/Kol(AP)/2013 dated 19.08.2013 and stay was granted subject to deposit of an amount of Rs. 15,000/- on or before 19.09.2013 under Section 129 E of the Customs Act, 1962. The applicant failed to comply with the conditions laid down under the Stay Order. Therefore the Commissioner (Appeals) vide Order-in-Appeal No. 26/Cus (Bag)/Kol(AP)/2013 dated 30.10.2013 disallowed the appeal filed by the applicant for non-compliance of the conditions of stay granted.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

- 4.1. That the rejection of the applicant's appeal for failure to deposit the penalty of Rs. 15,000/- prior to hearing of the appeal on its merits was most uncalled for and bad in law inasmuch as a sum of Rs. 25,000/- plus baggage items valued at Rs. 1,92,725/- was in the custody of the department which had been allowed to be redeemed on a fine of Rs. 50,000/- .
- 4.2. That the non-consideration of the applicant's stay petition which is very clear unequivocal language explained the undue hardship that the applicant was having to arrange the sum of Rs. 15,000/- coupled with the fact that the applicant was facing prosecution under Section 135 of Customs Act, 1962 before a Court of Law for baggage valued at Rs. 2,17,725/- should by itself been a ground for the Commission of Customs (Appeals) to waive the condition of pre-deposit of the penalty prior to hearing of the appeal on its merit.
- 4.3. That Commissioner (Appeals) being an appellate authority should have ensured that justice should not only be done but manifestly and undoubtedly should have been done as the applicant being aggrieved by the injustice done by the adjudicating authority who failed to have the baggage of the applicant revalued had been compelled to file an appeal to ensure that justice was metted out, since the applicant on the basis of the arbitrary valuation determined had resulted in the fixation of the unreasonable redemption fine and penalty by the adjudication authority.
- 4.4. That the refusal of the Commissioner (Appeals) to take up the applicant's appeal on its merits goes to portray a likely hood of a bias and impartiality towards the department and was interested in obtaining a particular result.
- 4.5. That the Commissioner (Appeals) prior to rejection of the applicant's appeal for non compliance of the pre deposit of the penalty was however legally and morally bound to examine the legality, propriety and correctness of the said order made by the adjudicating authority and having failed to do so called for setting aside of the said order.
- 4.6. The applicant prayed that the Revision Application be taken up for hearing on the merits by waving the condition of making the pre-deposit of the penalty of Rs. 15,000/-.
5. A show cause notice was also issued to the Respondent Commissionerate on 12.01.2016, in response to which the following submissions have been made:
- 5.1. That the contention of the applicant is not correct in as much as the settled position of law is that appeal as a whole is liable to be dismissed for failure of the applicant to deposit the amount of penalty. That there is no specific provision in

Section 129E that in the case where the applicant fails to pre deposit the amount of penalty, the appeal should be dismissed.

5.2. That the appeal filed before Commissioner (Appeals) was against Order-in-Original issued after adjudication under quasi judicial proceedings. That the criminal proceeding launched before a Court of law has little or no relevance to the appeal against the quasi judicial proceedings.

5.3. That the appeal before Commissioner (Appeals) is a stage provided by the statute for the person aggrieved by the decision of the adjudicating authority. That the charges of bias and impartiality alleged in the ground of appeal are without any substance and lacks substantial evidences.

5.4. That the contention of the applicant that the Commissioner (Appeals) should have in his own indiscretion, dispensed with such deposit of the penalty is very much in violation of the conditions laid down in terms of Section 129E .

5.5. That the hearing memo of the Commissioner (Appeals) states that waiver of pre deposit will be considered before hearing of the petition and in the present case, Commissioner after considering the waiver application rejected the petition, which is in accordance with law.

6. Personal hearing was scheduled in this case on 11.01.2016 and 27.01.2016. The applicant vide his letter dated 05.01.2016 informed that neither his authorized Advocate nor himself are in a position to attend the hearing and written submission furnished with the said letter may be considered and he does not require personal hearing in the matter. In his written submission he submitted as under:-

6.1. That the applicant along with this revision application has also filed a stay application praying for stay of the pre deposit of penalty of Rs. 15,000/- on the grounds that the applicants baggage of Rs. 2,17,725/- is lying in the custody of the Customs authorities under D/R no. 28/07 AIU dated 10.05.2007 in which a sum of Rs. 25,000/- Indian currency is also in the custody of the department. That the revision application be taken up for hearing on its merits for final disposal.

6.2. That the applicant during the adjudication proceedings had requested for having his seized baggage examined and value thereafter to be re-determined but the same was not acceded to by the then adjudicating authority.

6.3. That due to the fictitious and illogical valuation on the basis of the internet and market enquiry with details and evidence of the valuation obtained through the internet and from the market was never made available to the applicant as such the

same should not have been used for the purpose of determination of such an arbitrary valuation when no such valuation should have been so determined.

6.4. That from the evidence and documents submitted it is clear that the none of the items imported by the applicant in the mode of baggage were banned or prohibited in nature nor notified in terms of Chapter -IV A of the Customs Act, 1962 or did attract the provisions of Section 123 of the statute, so as to invoke Section 104 of Customs Act, 1962 for his arrest and ultimately for the sanction of the prosecution under Section 135 (1) a & b (i) of the Customs Act, 1962.

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

8. On perusal of records, Government observes that on 10.05.2007, the applicant travelled from Bangkok to Kolkata and with assorted garments, mobile phones with accessories, micro SD adapters with memory card, mobile phone batteries etc along with Indian currency Rs. 25,000/-. Seven other passengers were also intercepted in the green channel and similar items were recovered from their possession. These passenger claimed to be carrying these goods on behalf of Shri Jaswinder Singh. Since none of them could produce licit documents relating to lawful acquisition and importation of the impugned goods, the said goods were seized under Section 110 of the Customs Act, 1962. The Additional Commissioner of Customs, Kolkata Airport passed the Order-in-Original No. 23/2012 dated 29.12.2012 and ordered for confiscation of the impugned goods under Section 111(d), (i) and (l) of the Customs Act, 1962 with an option to redeem the same against payment of redemption fine of Rs. 50,000/- and imposed personal penalty of Rs. 15,000/- on applicant under Section 112 (a) & (b) of Customs Act, 1962. The applicant filed appeal along with stay application before the Commissioner (Appeals). The stay petition was decided by Order-in-Stay No. 27/Cus(Bag)/ Kol(AP)/2013 dated 19.08.2013 and stay was granted subject to deposit of an amount of Rs. 15,000/- on or before 19.09.2013 under Section 129E of the Customs Act, 1962. The applicant failed to comply with the conditions laid down under the Stay Order. Therefore the Commissioner (Appeals) vide Order-in-Appeal No. 26/Cus (Bag)/ Kol(AP)/2013 dated 30.10.2013 disallowed the appeal filed by the applicant for non-compliance of the conditions of stay granted. Now the applicant has filed this Revision Application before Central Government under Section 129DD of the Customs Act, 1962 on the grounds mentioned at para 4 above.

9. Government further observes that at the material time, Section 129 E of the Customs Act, 1962 which deals with deposit, pending appeal, of (duty and interest) demanded or penalty, read as under:-

'Where in any appeal under this Chapter the decision or order appealed against relates to any [duty and interest] demanded in respect of goods which are not under the control of the Customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the [duty and interest] demanded or penalty levied;

***Provided** that where in any particular case, the [Commissioner (Appeals)] or the Appellate Tribunal is of opinion that the deposit of [duty and interest] demanded or penalty levied would cause undue hardship to such person, the [Commissioner (Appeals)]; or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interest of revenue."*

A plain reading of the provisions of Section 129 E of the Customs Act, 1962 as above makes the position crystal clear that for filing appeal before the appellate authority, the appellant shall pending the appeal, deposit the duty demanded or penalty imposed unless specifically dispensed with by the Appellate Authority.

10. Upon perusal of the records, Government observes that appeal was filed before Commissioner (Appeals) and the Stay Petition was decided by Order-in-Stay no. 27/Cus(Bag)/Kol(AP)/2013 dated 19.08.2013 and stay was granted, subject to deposit of an amount of Rs. 15,000/- towards the penalty amount on or before 19.09.2013 under Section 129 E of Customs Act, 1962. The applicant was informed that subject to compliance with the above direction, the appeal will be heard on merits and was further informed that in case they fail to comply with the aforesaid conditions of stay on or before the due date, their appeal is liable to be disallowed in terms of Section 128A of the Customs Act, 1962 without any further reference. As the applicant admittedly failed to comply with these directions which were in the nature of precondition for hearing the case on merits, Government holds that the Commissioner (Appeals) has rightly dismissed the applicant's appeal.

11. In this regard, Government besides the case laws referred to in the impugned Order-in-Appeal also finds support in the decision of the Hon'ble High Court of Delhi in the case of Lindt Export Vs UOI reported in 2011 (269) ELT 53 (Del) wherein the Order of the Tribunal dismissing appeal of the applicant for the failure to pay pre-deposit amount under Section 129E of the Customs Act, 1962 was upheld.

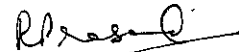
12. Further, Government finds nothing on record to show that the said stay order of Commissioner (Appeals) for depositing an amount of Rs.15000/- towards the penalty amount has been challenged before any forum and has thus attained finality and needs to be complied with. The applicant failed to comply with the directions of the Commissioner (Appeals) under Section 129E.

13. Government observes that the Order of Hon'ble High Court of Calcutta in the case of M/s Ambika Nahar Exports and Anr. vs. Commissioner of Customs (Port) dated 21.02.2014 relied upon by the applicant is not applicable to the facts of the present case as in the said petition, the stay order itself was challenged whereas in the present case, the final order passed by the appellate authority is being contested.

14. In view of above facts and circumstances, Government without going into merits of the case, finds that Commissioner (Appeals) has rightly rejected the appeal for non-compliance of the conditions of stay granted under the provisions of proviso to Section 129E of the Customs Act, 1962. There is no infirmity in the said Order-in-Appeal and therefore, the same is upheld.

15. This Revision Application is, therefore, rejected in view of the above.


16. So ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

Shri Jaswinder Singh,
Village & P.O. Tharaj,
Tahsil Bagha Purana,
District Mogra,
Punjab-142057.



Attested.

श्रीजगत अली
श्रीजगत अली
अधीनस्थ (प. अ.)
Under Secretary (P.A.)

ORDER NO. 36/2016-CUS DATED 29.03.2016

Copy to:-

1. The Commissioner of Customs , Airport , Kolkata.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, Strand Road, Kolkata -700001.
3. The Additional Commissioner of Customs, Airport, Kolkata
4. PA to JS (RA)
5. ✓ Guard File
6. Spare Copy.

ATTESTED



(SHAUKAT ALI)
UNDER SECRETARY (RA)

शुकेत अली
Shaukat Ali
अध्यापक (रा. अ.)
Under Secretary (RA)