

REGISTERED
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F.No.380/95/B/13-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.. 26/5/16.....

ORDER NO. 42/2016-CUS DATED 23.05.2016 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.CC(A)CUS/189/2013 dated 26.03.2013 passed by Commissioner of Customs (Appeals), NCH, New Delhi.

Applicant : Commissioner of Customs, I&G, New Delhi.

Respondent : Mr. Amarjit Singh.

ORDER

This Revision Application is filed by Commissioner of Customs (Import & General), NCH, New Delhi, (hereinafter referred to as the Department) against the Order-in-Appeal No. CC(A)CUS/189/2013 dated 26.03.2013 passed by Commissioner of Customs (Appeals), NCH, New Delhi, with respect to Order-in-Original No.78/2012 dated 08.11.2012 passed by Addl. Commissioner of Customs I.G.I, Airport, New Delhi.

2. Brief facts of the case are that Shri Amarjit Singh (hereinafter referred to as the Respondent) holder of Indian Passport no. E-7509844 dated 28.01.2004 arrived from Hong Kong on 13.12.2011 at IGI Airport, T-3, New Delhi carrying dutiable goods. He was intercepted while walking through the green channel and upon search, one packet containing 0.500 kgs. of Ruthenium Sponge Powder along with delivery note no. 8001245676 and invoice no. 7000426233 both dated 12.12.2011 for HK\$ 18800 equivalent to Indian Rs.1,26,900/- was found and recovered from the back pocket of Shri Amarjit Singh. The said goods were seized under Section 110 of the Customs Act, 1962 under panchnama dated 13.12.2011 drawn on the spot. Also one delivery note no.8001187133 dated 27.07.2011 for 1.00 kg of Iridium Sponge and 0.500 kgs. Ruthenium sponge for HK\$ 306935, equivalent to Indian Rs.17,95,570/- was also found and recovered. Thus the total value of the goods came to Rs. 19,22,470/-. Voluntary statement of the passenger was recorded under Section 108 of the Customs Act, 1962 on 13.12.2011/ 14.12.2011, 16.12.2011 and 06.02.2012. Shri Amarjit Singh inter alia stated that he was carrying 0.500 kg of Ruthenium Sponge Powder bought from Hong Kong for HK \$ 18800; that he was walking through the green channel and did not report to red channel; that on earlier occasion also, he had carried 1.00 kg Iridium sponge powder and 0.500 kg Ruthenium powder and walked through green channel on 30.07.2011 and did not report at the red channel; that he had proprietary interest in two firms viz M/s Chohan Jewellers, Tali Wala Chowk Amritsar and M/s Galaxy Traders, Manley House, Hong Kong; that he had bought these items from M/s Heraeus Ltd., Hong Kong in the name of the Hong Kong firm M/s Galaxy Traders; as they did not sell in the name of any foreign firm; that when he was exiting through green channel, he was asked by the Customs officer to declare any dutiable goods, but he did not declare or even did not mention the value of Ruthenium sponge powder in Customs disembarkation card; that on earlier occasion i.e. on 30.07.2011 he carried one kg of Iridium and 0.500 kgs of Ruthenium powder; that out of these only Ruthenium powder belonged to him and Iridium powder belonged to Mr. Mannu of Hong Kong and he was get a sum of Rs. 20,000/- for carrying this; that he was to hand over it to one person as per direction of Mr. Mannu, outside the Airport; that Ruthenium powder was used to improve the quality of 24 carat gold jewellery; that this was the second time he had brought Ruthenium powder; that the value of 1 kg of Iridium sponge powder was approx. Rs. 15,25 lacs

to Rs. 15.50 lacs; that in total i.e. on 30.07.2011 and 13.12.2011 he had brought 1 kg of Iridium powder and 1 kg of Ruthenium powder; that he did not pay any Customs duty on earlier occasion; that this time he wished to pay the duty; that this was his second mistake; that he had bought Iridium powder in the name of his Hong Kong firm but the payment was made by Mr. Mannu; that he was merely a carrier of Iridium powder; that he was to get Rs. 20,000/- for carrying the goods; that on earlier occasion, he had walked through the green channel and handed over the goods (Iridium powder) to Mr. Mannu's person. After recording of the statement Shri Amarjit Singh suddenly tore out a paper (Delivery note no. 8001187133 dated 27.07.2011) from the case file and swallowed it in a flash of time. Before anything could be done from preventing him from swallowing the said delivery note, he had already swallowed the same. The Consulate General of India, Hong Kong vide their letter dated 06.01.2012 forwarded the copies of delivery note for the supply of 1.00 kg of Iridium sponge and 0.500 kg of Ruthenium sponge and its corresponding invoice no. 7000405058 dated 27.07.2011 for HK\$ 306935 and delivery note no. 8001245676 dated 12.12.2011 and its corresponding invoice no. 7000426233 dated 12.12.2011 for HK\$ 1880 issued by the supplier M/s Heraeus Ltd., Hong Kong in the name of M/s Galaxy Traders, Hong Kong. In their letter Consulate General of India, Hong Kong also informed that M/s Galaxy Traders, Hong Kong commenced its business on 22.03.2010; that at present Shri Amarjit Singh, holder of passport no. E-7509844 and who was intercepted at IGI Airport while smuggling, became the owner of this company since 24.06.2011. They further informed that the declared address of M/s Galaxy Traders, Manley House, Hong Kong was found to be a residential flat.

2.1. A Show Cause Notice was issued to the respondent vide C.No. VIII(AP)10/P&I/74-C/2011 dated 23.05.2012 as to why the impugned goods valued at Rs.1,26,900/- should not be held liable to confiscation under Section 111(d), (l) & (m) of the Customs Act, 1962; Customs duty amounting to Rs. 6,93,050/- on Rs. 19,22,470/-, the total value of goods imported on 30.07.2011 and 13.12.2011 should not be demanded under Section 28(4) of the Act along with interest under Section 28 AB and penalty should not be imposed under Section 112 of the Act *ibid*. After following the due process of law Additional Commissioner of Customs, IGI Airport vide Order-in-Original No. 78/2012 dated 08.11.2012 ordered as under :-

(i) confiscation of 0.500 Kgs. of Ruthenium Sponge Powder imported by the respondent on 13.12.2011 valued at Rs.1,26,900/- under Section 111 (d),(l) & (m) of the Customs Act, 1962 with an option to redeem the same on redemption fine of Rs.50,000/- under Section 125 of the Act *ibid*.

(ii) recovery of Customs duty from the respondent amounting to Rs. 6,93,050/- on Rs.19,22,470/-, the value of the goods imported (0.500 Kgs. of Ruthenium Sponge and 1.00 Kg. of Iridium, collectively valued at Rs. 17,95,570/-, imported on 30.07.2011 and 0.500 Kgs. of Ruthenium Sponge valued at Rs.1,26,900/-, imported on 13.12.2011) under the provisions of Section 28 and Section 28(4) (invoking

extended period clause of five years) of the Customs Act, 1962;

(iii) recovery of interest at appropriate rate from the respondent on the duty evaded, at applicable rates, under section 28AB of the Act *ibid*.

(iv) imposed a penalty of Rs.2,00,000/- upon the respondent under Section 112 of the Act *ibid*.

3. Being aggrieved by the said Order-in-Original, respondent filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal No. CC(A) Cus/189/2013 dated 26.03.2013 modified the Order-in-Original to the extent of reducing penalty under Section 112 (a) of the Customs Act, 1962 to Rs. 40,000/- only and rejecting the duty demand raised and confirmed under Section 28 of Customs Act, 1962 only on the basis of the overseas purchase invoice without evidence of its carriage and disposed in India.

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

4.1 That the respondent in his voluntary statement recorded on 13/14.12.2011, 16.12.2011 and 06.02.2012 admitted that on 30.07.2011 also, he carried 1 Kg of Iridium Sponge Powder and 0.500 Kg. Ruthenium Powder and walked through green channel without paying Customs duty.

4.2 That the respondent also tried to destroy the evidence of purchase of these goods by swallowing the delivery note no. 800118133 dated 27.07.2011, a copy of which was obtained from the Consulate General of India, Hong Kong.

4.3 That the declared address of M/s Galaxy Traders through which the passenger has claimed to sell the impugned goods has been found to be a residential flat.

4.4. That in spite of the above, the Commissioner (Appeal) has mentioned in his order that on the basis of statements, no demand under Section 28 can be raised and confirmed.

4.5. That the order passed by the Appellate Authority is not legal and proper and prayed to stay the order passed by the Commissioner (Appeal), to examine the correctness of the order passed by the Commissioner (Appeal) and to pass such other orders as deem fit in the present circumstances of the present case.

5. A show cause notice was issued to the respondent on 13.11.2013, in response to which the following submissions dated 03.01.2014 has been made:

5.1. That the revision application is not maintainable as no condonation of delay application is filed by the Department.

5.2. That Section 28 of the Customs Act, 1962 may be read as:-

"Recovery of duties not levied or short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts-

A. *the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to Show Cause why he should not pay the amount specified in the notice;"*

Explanation- For the purpose of this Section, "relevant date" means,-

- a) *In a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*
- b) *In a case where duty is provisionally assessed under Section 18 of the Act, ibid, the date of adjustment of duty after the final assessment or reassessment, as the case may be, thereof;*
- c) *In a case where duty or interest has been erroneously refunded, the date of refund".*

That from the above said language of Section 28 of the Customs Act, 1962 it is clearly established without any doubt that Section 28 is applicable only when there is order of clearance passed by the proper officer and the proper officer has to issue a show cause notice for duties not levied or short levied or erroneously refunded within one year from the date of passing of the order by the proper officer. That neither their case is of provisional assessment under Section 18 of the Customs Act, 1962 nor their case is the case of refund of Customs Duty. That in their case no order of clearance has been passed by the proper officer. Therefore, Section 28 of the Customs Act, 1962 is not applicable.

5.3. The respondent placed reliance on the decision of CESTAT in the case of Essar Oil Ltd Vs. Commissioner of Customs (Prev), Jamnangar-2006 (197) ELT 450 (Tri-Mumbai) as under:-

"Demand-short levy-Section 28 of the Customs Act, 1962 is applicable when duty has been short-levied or non-levied pursuant to an order of assessment and since no order of clearance under Section 47 ibid issued, no short levy or non-levy of duty can arise for recovery in terms of Section 28 ibid".

5.4. Section 44 of the Customs Act clearly stated that Section 47 of the Customs Act is not applicable to the goods imported under baggage and goods imported by post. There is no question of payment of interest under Section 28AB.

5.5. The respondent prayed for setting aside the revision application filed by the department.

6. An application for condonation of delay in filing Revision Application is also filed by the department on the following grounds:-

6.1. That the applicant is preferring an appeal against the Order-in-Appeal No. CCA/Cus/AIR/189/2013 dated 26.03.2013 passed by the Commissioner of Customs(Appeals),New Delhi vide which the Commissioner (Appeals) has modified the Order-in-Original

6.2. That the revision application was filed on 08.10.2013 against the Commissioner (Appeals) order communicated on 14.06.2013 and direction for filing revision application was issued by the Commissioner of Customs on 09.09.2013. Therefore, it appears that there is a delay of 25 days in filing the revision application.

6.3. That due to administrative exigencies which were beyond control, the appeal could not be filed in time. It is requested that the delay may be condoned in terms of proviso to Section 129 DD of the Customs Act, 1962.

7. Personal hearing was scheduled in this case on 04.08.2015, 02.09.2015 & 15.09.2015 was attended by Shri S.S. Arora (Advocate) on behalf of the respondent and stated that the date of issue of Order-in-Appeal is 17.04.2013, that endorsement on copy of Order-in-Appeal shows its received on 23.04.2013 whereas date of receipt of order in RA has been shown on 13.09.2013; that the application is therefore clearly time barred. Nobody attended the hearing on behalf of department.

8. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

9. At the outset Government takes up the issue of delay in filing of Revision Application.

9.1. Government observes that Rule 129DD (2) reads as under:-

"(2) An application under sub-section (1) shall be made within three months from the date of communication to the applicant of the order against which the application is being made;

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months allow it to be presented within a further period of three months".

From a plain reading of the above proviso it is clear that subject to satisfaction of the Central Government that the department was prevented by sufficient cause in presenting the application within time, delay may be condoned upto 3 months under Rule 129 DD(2).

9.2 The department vide their letter C. No. VIII(AP) 10/P&I/74C/2011/pt/ dated 06.05.2016 filed for seeking condonation of delay of 25 days in filing the appeal against the impugned Order-in-Appeal No.CCA/Cus/AIR/189/2013 dated 26.03.2013

on the grounds that they were engaged in other administrative exigencies which were beyond control, the appeal could not be filed in time.

9.3. As such, the department filed this revision application in 25 days after initial 03 months period if date of receipt of Order-in-Appeal is considered as 14.06.2013 as claimed by the department and after 78 days if date of receipt of Order-in-Appeal is considered as 23.04.2013 as contested by the respondent. In any case both these periods falls within condonable limit of 3 months under Section 129 DD (2) of the Customs Act, 1962. Hence, Government condones the said delay and proceeds to decide the issue on merits.

10. On perusal of records, Government observes that Shri Amarjit Singh, on specific intelligence was intercepted while exiting the green channel upon arrival from Hong Kong on 13/14.12.2011 by Flight No. CX 695. Upon personal search 0.500 kg of Ruthenium sponge powder not declared by him was recovered and seized under Section 110 of the Customs Act, 1962. In his voluntary statement tendered by Shri Amarjit Singh on 13/14.12.2011, 16.12.2011 and 06.02.2012 he admitted that he was carrying 0.500 kg Ruthenium sponge powder bought from Hong Kong; that he was walking through the green channel and did not report to red channel; that on earlier occasion on 30.07.2011 he had carried 1.00 kg Iridium sponge powder and 0.500 kg Ruthenium powder and walked through the green channel and did not report at red channel. Delivery note no. 8001187133 date 27.07.2011 and Invoice no. 7000405058 dated 27.07.2011 were also recovered from him. Further he tore the delivery note no. 8001187133 dated 27.07.2011 from Government file and swallowed it. Copies of the delivery notes and related documents were obtained from the Consulate General of India, Hong Kong. A show cause notice was issued to the respondent proposing confiscation of the seized goods; duty demand along with interest on the goods imported without payment of duty on 30.07.2011 and 13.12.2011 and imposition of penalty. The Additional Commissioner vide Order-in-Original dated 08.11.2012 confiscated the impugned goods under Section 111 (d), (l) & (m) ibid with option to redeem the same on payment of redemption fine of Rs.50,000/- under Section 125 and payment of appropriate duty and interest under Section 28 & 28AB ibid on goods imported on 30.07.2011 and 31.12.2011. A penalty of Rs. 2,00,000 was also imposed upon the pax under Section 112 ibid. Aggrieved by the said order, the pax filed appeal before Commissioner (Appeals), who vide impugned order dated 26.03.13 modified the Order-in-Original to the extent of rejecting the duty demand raised and confirmed under Section 28 of Customs Act, 1962 as a consequences of the recovered past overseas purchase invoices from the respondent and reduced the penalty under Section 112(a) to Rs. 40,000/- only. Now the department applicant has filed Revision Application on the grounds stated in para 4.

11. Government observes that main issues of contention are whether penalty under Section 112 (a) of the Customs Act, 1962 on the respondent has been rightly

reduced from Rs. 2,00,000/- to Rs. 40,000/- and whether duty under Section 28 along with interest under Section 28 AA of the Act can be raised and confirmed on goods imported on 30.07.2011 based on the facts and circumstance of the present case.

12. Besides attempting to smuggle the impugned goods viz 0.500 kg of Ruthenium sponge powder on 13.12.2011, Government observes, that it is an admitted fact on record that on 30.07.2011 also the respondent had carried 1.00 kg of Iridium sponge powder and 0.500 kg of Ruthenium powder and walked through the green channel without paying any Customs duty. Further he tried to destroy the evidence of purchase of these goods by tearing the delivery note from the case file and swallowing it. Voluntary statements of the respondent were recorded under Section 108 of the Act on 13.12.2011/14.12.2011, 16.12.2011 and 06.02.2012 and he consistently held that on earlier occasion i.e., 30.07.2011 he had brought the said goods with him and walked through the green channel without payment of duty. On that occasion also the Ruthenium powder brought by him belonged to him and he had also brought Iridium powder on behalf of one Mr. Mannu of Hong Kong for a consideration of Rs.20,000/- and handed over the same to his person. Also in the admission statement, it is clearly stated that he had brought the goods from supplier in Hong Kong in the name of his firm in Hong Kong as these goods were not sold by them in the name of foreign firms. Therefore, the role of Shri Amarjit Singh in smuggling of the impugned goods is clearly established.

13. Government also places reliance on the following judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

13.1. The Apex Court in the case of Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC) has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.

13.2 In the case Collector of Customs, Madras and Ors vs D. Bhoormull-1983(13)ELT1546(S.C.) the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.

13.3. Kanwarjeet Singh & Ors Vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri) wherein it is held that strict principles of evidence do not apply to

a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.

13.4. Hon'ble High Court decision in the case of Assistant Collector of Customs Madras-I Vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.) wherein it was held by the Hon'ble Court 'confessional statement under Section 108 even though later retracted is a voluntary statement and was not influenced by threat, duress or inducement etc. is a true one'.

13.5. In the case of Govind Lal Vs. Commissioner of Customs Jaipur {2000(117) E.L.t. 515(Tri)}- wherein Hon'ble Tribunal held that—' Smuggling evidence-statement-retraction of confessional statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice-retraction of the statement at later stage not to affect their evidence value.'

13.6. In the case of Surjeet Singh Chabra Vs. UOI 1997 (84) ELT (646) SC. Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

14. Government also finds no force in the finding of the Commissioner (Appeals) that the said goods were never imported into India but were rather sold in Hong Kong itself vide invoice dated 28.07.2011. The respondent at no stage during the course of investigation (upto issue of show cause notice) has produced these sale invoices neither were they received from the Consulate of India in Hong Kong when they were requested to provide copies of delivery note and other related documents. On the other hand the respondent swallowed the delivery note itself. His claim that he sold the goods in Hong Kong and did not bring them to India is nothing but an afterthought. Government further notes that the address of M/s Galaxy Traders through which the respondent claimed to sell these goods has been found to be a residential flat. The firm was being used as a front to bring these goods into India which as mentioned in his statement would otherwise not be sold to any foreign firm by the supplier in Hong Kong.. Thus the duty demanded by the original authority on these goods is correct and legal.

15. In view of the above, Government holds that the Commissioner (Appeals) has erred in holding that the impugned goods have not been imported into India and demand under Section 28 is not maintainable. It is an established fact on record that Shri Amarjit Singh had imported and smuggled the impugned goods viz 1 kg Iridium sponge powder and 0.500 Ruthenium sponge powder without payment of duty rendering the goods liable for confiscation and made Section 28 along with interest under Section 28 AB also rightly held to be recoverable by the original authority.

16. Government observes that the respondent has contended that demand of duty plus interest is not maintainable as in their case no order of clearance under Section 47 has been passed by the proper officer and therefore Section 28 of the Act is not applicable with the result Section 28 AB is inapplicable. Also Section 47 is not applicable to cases of baggage and no demand can be raised under Section 28/28 AB ibid.

17. In this regard, Government observes that Chapter V of the Customs Act, 1962 deals with levy of, and exemption from, Customs duties and Section 12 which is the charging Section reads as under:-

"Section 12: Dutiable goods- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

From the plain reading of the Section it is clear that at the time of import, duty is chargeable on all the goods imported into the country irrespective of mode of import viz cargo, baggage, post etc. How these goods will be cleared upon import is provided for in separate Sections. While clearance of imported goods is covered under Chapter VII, clearance of baggage and post articles are covered under Chapter XI of the Act.

18. Section 28 of the Customs Act, 1962 on the other hand provides for the recovery of any duty which has not been paid, short paid or erroneously refunded and reads as under:-

"Section 28-Recovery of duties not levied or short-levied or erroneously refunded-(1) Where any duty has not been, levied or short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to Show Cause why he should not pay the amount specified in the notice;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer the amount of duty along with the interest payable thereon under Section 28AA or the amount of interest which has not been so paid or part-paid".

19. Section 28 AA of the Customs Act, 1962 provides for the interest on delayed payment of duty and reads as under:-

"Section 28AA-Interest on delayed payment of duty- (1) Notwithstanding anything contained in any judgment decree, order or direction of any Court, Appellate Tribunal or any authority or any authority or in any other provisions of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six percent, per annum, as the Central Government may, by notification in the official gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1) no interest shall be payable where-

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 151 A ; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment".

20. Further, Government notes that Chapter XI of the Customs Act, 1962 specifies the special provisions regarding baggage, goods imported or exported by post and stores. Section 77 and 78 of the said Act read as under:-

"Section 77-Declaration by owner of baggage- The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contentions to the proper officer.

Section 78-Determination of rate of duty and tariff valuation in respect of baggage- The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on date on which a declaration is made in respect of such baggage under Section 77".

21. Government finds that in the present case the applicant failed to declare the impugned goods imported as baggage thereby violating the provisions of Section 77 of the Customs Act, 1962. The said goods were undisputedly chargeable to appropriate duty under Section 12 read with Section 78 of the Act. The applicant has imported the impugned goods chargeable to duty as baggage as laid down under Section 12 of the Customs Act, 1962 and failed to pay the duty at the time of import. He carried the said goods with an intention to evade payment of the Customs duty leviable on these goods. Therefore duty was rightly demanded under Section 28 of the Act *ibid* and the demand confirmed after following due process of law. When duty was not paid at the time of import, the interest is chargeable on the duty amount

where duty has not been paid on the goods in terms of Section 28 AA (now 28AB) of the Act, ibid. Hence interest is also rightly held to be payable by the impugned Order-in-Original on the duty demanded.

22. Government observes that the order of CESTAT in the case of Essar Oil Ltd. vs Commissioner of Customs(Prev.) Jamnagar, 2006 (197) ELT 450 (Tri-Mumbai) relied upon by the applicant is not applicable to the facts of the present case as the case law relates to an order of assessment under Section 47 which is not applicable to baggage.

23. As regards the penalty imposed under Section 112 of the Customs Act, 1962, it is observed that Commissioner (Appeals) has proportionately reduced the quantum of penalty at the time of upholding the confiscation of the seized goods only. However, in view of the fact that as the goods have rightly been held to be smuggled on an earlier occasion on 30.07.2011 also as discussed in paras 12 to 15 above the same are liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962. For these acts of omission and commission the original adjudicating authority has rightly held that he is liable for penal action under Section 112 of the Act. The entire penalty amount of Rs. 2,00,000/- as imposed under the impugned Order-in-Original is thus restored.

24. In view of the above facts and discussions, Government modifies the order passed by the Commissioner (Appeals) in above terms and restores the impugned Order-in-Original in toto.

25. The Revision Application is thus allowed.

26. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

The Commissioner of Customs,
IGI Airport, Terminal 3,
New Delhi.



Attested

ORDER NO. 42/2016-CUS DATED 23.05.2016

Copy to:-

1. The Commissioner of Customs (Airport), IGI Airport, Terminal 3, New Delhi-110037.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. The Additional Commissioner of Customs, IGI Airport, New Delhi.
4. Shri Amarjit Singh, H.No. 2174/4, Chowk Chabutra, Bazar Gujran, Amritsar.
5. Shri S.S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi-110029.
6. PA to JS (RA).
7. ✓ Guard File.
8. Spare Copy.

ATTESTED


(SHAUKAT ALI)
UNDER SECRETARY (RA)