

REGISTERED  
SPEED POST



**F. No. 380/58/B/2014-RA**  
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.. 3.01.16.

**ORDER NO. 43/2016-CUS DATED 24.05.2016** 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. C(A) Cus/313/2014, dated 17.02.2014 passed by the Commissioner of Appeals, New Delhi.

Applicant : Commissioner of Customs, IGI Airport, New Delhi.

Respondent : Shri Anurag Rudra.

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## ORDER

This Revision Application is filed by Commissioner of Customs (Import & General), NCH, New Delhi,(hereinafter referred to as Department Applicant) against the Order-in-Appeal No.CC(A)CUS/313/2014 dated 17.02.2014 passed by Commissioner of Customs (Appeals),NCH, New Delhi, with respect to Order-in-Original No.73/2013 dated 22.11.2013 passed by Addl. Commissioner of Customs I.G.I, Airport, New Delhi.

2. Brief facts of the case are that on 03.06.2012, three passengers who had arrived from New York by Air India flight No. AI 102 dated 03.06.2012 and were crossing the green channel with a large number of baggages were intercepted and were asked whether they were carrying any dutiable goods to which they replied in negative. On suspicion that the passengers were carrying a large amount of luggage(10 big suitcases) and no declaration had been made by them regarding value of the luggage in their disembarkation slips, they were diverted for scanning of their baggages through X-Ray machine installed at arrival hall. On X-Ray scanning of the baggages, images of large number of electronic items were observed. Therefore the passengers were stopped for detailed examination of their baggages in the presence of two panchas. As per the information given in their respective passports, the passengers were identified as Shri Anurag Rudra, his mother Smt. Priya Tiwary and his father Shri Ashok Kumar Tiwary. The passengers were holding Indian Passport No. G-8917534 issued on 07.07.2008 at New York, No. F-4715732 issued on 28.09.2005 at Ranchi, No. F-3591385 issued on 14.06.2005 at Ranchi, respectively, with residential address as 29, Hill View Colony, P.O. MGM Medical College, Dimna, Jamshedpur(Jharkhand). Further, the passengers informed that presently they were residing at M-78, Greater Kailash-II, New Delhi. On being asked regarding ownership of the goods, Shri Anurag Rudra (hereinafter referred to as Pax) informed in the presence of the panchas that the entire goods were owned by him and the payment was made by him from his bank account in U.S. and that the luggage had been distributed in his name and his father's name in order to cater to the weight restriction of the airlines. Thereafter, the detailed examination of the baggages of the pax was conducted in the present of two independent witnesses under proper panchnama dated 03/04.06.2012. As a result of the examination, imported goods, collectively valued at Rs. 75,48,107/- were found in the baggage of the pax which were seized under Section 110 of the Customs Act, 1962 on a reasonable belief that the same were attempted to be smuggled into India and were therefore liable for confiscation under the Act *ibid*. The details of the goods recovered during examination and subsequently seized are as under:-

SL. NO.	ITEM	QTY	PRICE IN US\$	TOTAL VALUE IN US\$	TOTAL VALUE IN INR
1.	Apple iPad 64 GB	55	829	45595	25,51,040
2.	Apple iPad 32 GB	35	729	25515	14,27,564
3.	Apple iPad 16 GB	57	629	35853	20,05,975
4.	Apple iPod nano 8 GB	156	129	20124	11,25,938
5.	Apple iPod Touch 8 GB	3	199	597	33,402
6.	Apple iPod Touch 32 GB	4	299	1196	66,916
7.	Apple iPod Touch 64 GB	6	399	2394	1,33,944
8.	BOSE Sound Dock Portable Digital Music System	1	359	350	20,086
9.	New York Yankee (EDT) 100 ml	1	35	35	1,958
10.	Mervellie Perfume by Johan B. for Woman 100 ml	1	20	20	1,120
11.	Burberry Summer for Men (EDT) 100 ml	1	1	60	3,357
12.	JOOP (EDT) Homme 125 ml	1	1	60	3,357
13.	Louis Vuitton Ladies Hand Bag	1	3000	3000	1,67,850
14.	Ladies handbags (made in China)	3	100	100	5,600
	<b>TOTAL</b>		<b>1,34,908</b>	<b>1,34,908</b>	<b>75,48,107</b>

2.2. Statement of Shri Anurag Rudra was recorded under Section 108 of the Customs Act, 1962 wherein he interalia stated that he was pre-medicine/Bachelor in Psychology and was trading in electronic commodities; that he imported and exported electronics goods; that the name of his company was Royal Unitrading located at M-78, 1<sup>st</sup> Floor, Greater Kailash-II, New Delhi; that he had an office in Singapore; that he was operating in New York for the last five years; that a year and half ago, he visited India and started the business here; that he started business in Singapore from September 2011; that he made his purchases from USA for around 1,15,000 US \$; that he had this money with him beforehand in his bank which was his company account in which he was the only director; that his company's account was in T.D. Bank and he did not have the account number handy; that he did not have the invoices for the purchased goods however he could provide the same within a day or two; that he had not declared the goods he had brought to the Custom officers at the IGI Airport as he was unaware of it; that he imported the goods in India 3-4 times; that he did not fill the column no. 6 (value of goods) in the disembarkation cards he was not aware of it; that he was totally unaware about which was green channel; that he was not aware of the total allowance available to him; that he was not aware that carrying of goods in commercial quantity is an offence; that he was the absolute owner of the goods brought by him; that he had opted for the green channel to avoid payment of Customs duty and to maximize the profit from the goods he had brought; that he was fully satisfied with the proceedings of the panchnama and its annexure and the value of the goods incorporated in it. In follow-up action, statement dated 19.06.2012 of Shri Anurag Rudra was recorded wherein he interalia stated that Shri Anzar Ahmed (Ph. No. 9910465672) was his CA and his address was

1567, Pahari Bhojla Turkman Gate, Delhi-110006; that his CA could be consulted for any question regarding turnover/monthly income; that the address of his TD Bank was 56-50, main street, Flushing New York, 11355, Routine # 026013673; that he would give his account number in TD Bank on 23.06.2012; that he had already called his supplier who would re-send him the invoice to his email address and that he had not received email yet but he would have that definitely when he would come next; that he had done business with Sanjeev one or two time; that he had done deals with M/s Vaishno Electronics; that he did not have the exact amount how much he had done with them but he will provide the details after collecting the invoice from his CA; that with Mr. Sanjeev, he had done business for a very small amount; that his company PAN no. was AAMFR4865N and that his personal PAN No. was APEPR5561A.

2.3. In follow up action the statement dated 21.10.2012 of Shri Anurag Rudra was recorded under Section 108 of the Act ibid, wherein he interalia stated that he had one more firm in the name of Balaji Trading Inc. at M-78, First Floor, G.K-II, New Delhi-48 of which he was the sole proprietor; that he had sent a single consignment of 35 ipads 2 64 GB having total value of Rs. 14,52,500/- thorough invoice number 2604214 dated 28.07.2011 for which he had received a payment of Rs. 15,00,000/- through a cheque no. 0826800 dated 09.08.2011 from M/s Vaishno Electronics Pvt. Ltd, 131 MCD Market, Karol Bagh, Delhi-5 owned by Shri Manoj Kansal; that he was also putting his dated signature on the abovementioned invoice of his firm in token of having seen the same; that in his statement dated 04.06.2012 recorded under Section 108 he forgot to mention the name of his firm Balaji Trading Inc. as no business had been carried out in this firm for the last one year; that as accepted earlier in his statement dated 04.06.2012, he had got these goods from USA after purchasing the same for USD 1,15,000 which was withdrawn by him from his firm's account in TD Bank, USA; that since his US firm was also closed for the last one year, the said account in TD Bank was inactive and he needed more time to furnish bank statement in that regard; that as accepted by him in his statement dated 04.06.2012, he was fully agreed with the contents of panchnama dated 03.04.2012; that he again was agreed with the value of seized goods brought by him from US; that he requested the department to decide his case without further delay on the basis of records and documents available in his case as he is not in a position to furnish more information/record because all of his firms in India as well as abroad were not working and were almost closed. Contrary to the claim of the pax vide his statement dated 19.06.2012 that one Shri Anzar is his CA, Shri Anzar Ahmed has submitted vide his letter dated 30.11.2012 in response to summons dated 30.11.2012 that he was an advocate by profession and not a chartered accountant; that he had no knowledge about the address 1567, Phari Bhojla, Turkman Gate, Delhi and did not know about the documents and its entries in respect of M/s Vaishno Electronics Pvt. Ltd; that he had no client in the name of

Shri Anurag Rudra ever. The pax was asked vide letter dated 17.07.2012 and subsequent reminders dated 25.07.2012, 27.08.2012 and 19.09.2012 to submit bank statement of his account in TD Bank, USA along with copies of invoices of sales and purchase by his company in USA issued during the last 2 years, which the pax failed to submit. Further the pax was asked to appear before investigation authority several time vide summons dated 07.06.2012, 27.06.2012, 06.07.2012, 06.08.2012, 19.09.2012, but he did not appear. However he appeared on 21.10.2012 and despite his earlier assurances he did not submit the bank account details and sales and purchase invoices of his firm for the last two years.

2.4 A show cause notice was issued on 30.11.2012 to the pax as to why duty free allowance not be denied to him; impugned goods valued at Rs. 75,48,107/- should not be confiscated under Section 111(d), (l) and (m) and 118 of the Customs Act; duty not be demanded and recovered and penalty not be imposed under Section 112 of the Act.. The same was adjudicated vide Order-in-Original No. 73/2013 ordering as under:-

- i) Denial of free allowance of Rs. 35,000/- each to the Shri Anurag Rudra and his parents Shri Ashok Tiwary and Smt. Priya Tiwary;
- ii) Confiscation of the impugned goods i.e. 147 pcs of Apple I-Pads, 156 pcs of Apple I-Pod Nano, 13 pcs of Apple I-Pod Touch as well as 1 pc Bose Sound Dock Portable Digital Music System, 4 pcs of Perfumes and 4 pcs of handbags collectively valued at Rs 75,48,107/- under Section 111 (d), (l) & (m) of the Act *ibid*;
- iii) Confiscation of suitcases used for concealing the said seized goods under Section 118 read with Section 119 of the Act *ibid*
- iv) Redemption of goods on payment of redemption fine of Rs. 10,00,000/- and payment of Customs duty and Education Cess amounting to Rs. 27,21,093/-
- v) Imposition of penalty of Rs. 10,00,000/- on the pax under Section 112 of the Act, *ibid*
- vi) Permission to re-export of the impugned goods on the payment of redemption fine of Rs. 10,00,000/-

3. Being aggrieved by the impugned order, the pax filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. CC(A) Cus/Air/313/2014 dated 17.02.2014 reduced the redemption fine from Rs. 10,00,000/- to Rs. 2,75,000/- and penalty from Rs. 10,00,000/- to Rs. 4,50,000/.

4. Being aggrieved by the impugned order of Commissioner (Appeals), Department has filed this Revision Application under Section 129 DD of the Customs Act, 1962 before Central Government of India on the following grounds:-

4.1. That the goods imported as a part of the passenger baggage categorically emerges that the Commissioner (Appeals) contention that the value has been enhanced without following legally permissible procedure and without referring to any NIDB data is legally wrong and untenable. That the Commissioner (Appeals) contention with reference to applicability of transaction value and the citation relied upon does not come to his rescue while deciding the valuation of baggage cases.

4.2. That the valuation of goods in his baggage cannot be done using the transaction value method when importation of baggage articles may not involve any sale.

4.3. That baggage is a separate class of goods in itself for assessment. The baggage differs from other cases in a number of ways and hence cannot be subjected to principles of valuation as laid down in the Rule 3 to 7 of Customs Valuation Rules.

4.4. That the valuation of baggage is to be done in accordance with the Rule 9 of Customs Valuation Rules read with the provisions of Section 14 of the Customs Act, 1962.

4.5. That there is no doubt about the mis-declaration made as regards the contents of the ten checked-in baggage. That the pax has made a completely untrue declaration of the contents, knowing fully well the goods in the 10 suitcases were purchased by him in the USA by his own admission, for USD 1,15,000. That the goods imported were in commercial in nature and were attempted to be smuggled into the country by using the green channel option and hence the pax was allowed to re-export the goods with suitable fine commensurating with the value of the goods.

4.6 That the redemption fine imposed by the original adjudicating authority was approximately 13% which is fair and just keeping in view the fact and circumstances of the case and the same has been reduced drastically by the Commissioner (Appeals) without any cogent explanation and reasons.

4.7 That the original adjudicating authority while allowing the passenger's request for re-export has acceded to his request and imposed a redemption fine of Rs. 10,00,000/- but the Commissioner (Appeals) without giving cogent justification/explanation has drastically reduced the redemption fine to Rs.2,75,000/-

4.8 That the appellate authority has not truly appreciated the facts of the case wherein a passenger without declaring the goods in column 6 of the disembarkation card attempted to utilise the green channel to evade payment of

duty on the collective value of goods valued at Rs. 75.48 lakhs. That at no stage of the proceedings, did the passenger produce any documents for the importation of the impugned goods and certainly tried to mislead the investigators into believing that the said goods were covered under proper documents. That the pax himself admitted to the fact of the goods being purchased for USD 1,15,000/, which corresponds to the value of Rs. 64 lakhs.

4.9. That the valuation arrived at has not been challenged by the pax before the appellate authority but the Commissioner (appeals) chartered into a territory which was not a subject matter before him. Therefore, the reasons given by the Commissioner (Appeals) is not applicable to the facts of the case.

4.10. That the Commissioner (Appeals) has not taken into consideration the Circular No. F.No. 495/19/99-Cus VI dated 11.04.2000.

4.11 That the Commissioner (Appeals) has reduced the redemption fine imposed which is not correct particularly in respect of goods imported by the pax for commercial gains. That he has given no detailed reasoning and has not taken into consideration all the material facts before reducing the redemption fine and has acted in a mechanical fashion/manner. Similarly the Commissioner (Appeals) has without giving cogent justification/explanation has drastically reduced the fine to Rs. 4,50,000/- which clearly exhibits lack of application of mind.

5. Personal hearing in this case was fixed for 05.04.2016, 25.04.2016 and 09.05.2016. None attended hearing on behalf of department or the respondent.

6 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.

7. On perusal of record, Government observes that on 03.06.2012, Shri Anurag Rudra (pax), Shri Ashok Kumar Tiwary, father of pax and Smt. Priya Tiwary, mother of pax had arrived from New York by Air India flight No. AI 102 and who crossing the green channel with a large number of baggages were intercepted and were asked whether they were carrying any dutiable goods to which they replied in negative. On suspicion that the passengers were carrying a large amount of luggage(10 big suitcases) and no declaration had been made by them regarding value of the luggage in their disembarkation slips, they were diverted for scanning of their baggages. On X-Ray scanning of the baggages, images of large number of electronic items were observed and the passengers were stopped for detailed examination. On being asked regarding ownership of the goods, Shri Anurag Rudra informed in the presence of the panchas that the entire goods were owned by him and the payment was made by him from his bank account in U.S. and that the luggage had been distributed in his name and

his father's name in order to cater to the weight restriction of the airlines. As a result of the examination, imported goods containing among other things 55 nos Apple ipads 64 GB, 35 nos. Apple ipods 32 GB, 57 nos. Apple ipads 16 GB, 156 nos. Apple ipod nano, 13 nos. Apple ipod touch, Bose sound dock etc. collectively valued at Rs. 75,48,107/- were found in the baggage of the pax which were seized under Section 110 of the Customs Act, 1962 on a reasonable belief that the same were attempted to be smuggled into India and were therefore liable for confiscation under the Act *ibid*. A show cause notice was issued on 30.11.2012 to the pax. The same was adjudicated *vide* Order-in-Original No. 73/2013 and ordering denial of free allowance of Rs. 35,000/- each to the Shri Anurag Rudra and his parents Shri Ashok Tiwary and Smt. Priya Tiwary; confiscation of the impugned goods collectively valued at Rs 75,48,107/- under Section 111 (d), (l) & (m) of the Act *ibid*; confiscation of suitcases used for concealing the said seized goods under Section 118 read with Section 119 of the Act *ibid*; redemption of goods on payment of redemption fine of Rs. 10,00,000/- and payment of Customs duty and Education Cess amounting to Rs. 27,21,093/-; imposition of penalty of Rs. 10,00,000/- on the pax under Section 112 of the Act, *ibid*; permit to re-export of the impugned goods on the payment of redemption fine of Rs. 10,00,000/-. Commissioner (Appeals) *vide* Order-in-Appeal No. CC(A) Cus/ Air/ 313/2014 dated 17.02.2014 reduced the redemption fine from Rs. 10,00,000/- to Rs. 2,75,000/- and penalty from Rs. 10,00,000/- to Rs. 4,50,000/-. Now the department has filed this revision application before the Central Government on the grounds mentioned at para 4 above.

8. Government observes that there is no dispute about the fact that that the passenger opted for the green channel; that goods were undeclared and are not bonafide baggage and Government also notes that it has been conclusively established that the applicant has clearly contravened the provisions of Section 77, 79 & 20 of the Customs Act, 1962 read with the Baggage Rules, 1998 and the Foreign Trade Policy Rules on the grounds that the impugned goods were not declared, did not constitute his bonafide baggage and he failed to produce any documents for the importation of the impugned goods. The Commissioner (Appeals) has reduced the quantum of fine and penalty solely on the ground that the value of the impugned goods has been enhanced without following legally permissible procedure and without referring to any NIDB data. Department on the other hand has contested the reduction in fine and penalty amount by the Commissioner (Appeals) claiming that the goods have been valued in accordance with the relevant provisions. The value of the impugned goods is determined from official website of Apple and Bose and as declared by the pax himself and also he himself admitted to the fact that the goods were purchased for USD 1,15,000/-.

9. Government observes that the respondent at the time of import could not produce any invoice for the purchase of the impugned goods and claimed he had purchased it on payment of USD 1,50,000 available in his bank account in USA



but he was not aware of the bank account number. Later he claimed his Chartered Accountant would give the bank details and that he had requested his supplier for the invoice. However, when the statement of the person Shri Anzar Ahmed who he claimed to be his Chartered Accountant was recorded he stated he was an advocate by profession and not a Chartered Accountant and did not know the pax. Also the pax was repeatedly given time until 21.10.2012 to produce the invoices for the purchase of the impugned goods, the bank details but he failed to do so. Also in his voluntary statement he expressed agreement with the seizure value of the goods.

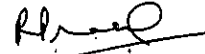
10. Government notes that as the respondent failed to produce any purchase invoices or other documents in support of the purchase of the goods, the Department for items at Sl. No. 1 to 8 i.e. branded electronic items of reputed international manufacturers viz Apple and Bose placed reliance on the official websites of these companies as a source of price. Internet prices have been relied upon only for items at Sl. No. 9 to 12 which are branded designer perfumes and valued at a total of Rs. 9792/- only. As regards the ladies hand bags at Sl. No. 13 and 14 the price declared by the pax has been accepted. The Commissioner (Appeals) has thus erred in holding that value of the goods has been enhanced without legally permissible procedure and without referring to NIDB data. Government finds that the respondent had been given adequate time and opportunity to produce the evidence in support of the value at which he purchased the impugned goods but he failed to do so. The nature of the goods being such Department has rightly relied on the prices as available on the manufacturer's website to determine the value of the goods particularly at Sl. No. 1 to 8. The need for relying on NIDB data would have arisen if these were not available. Hence the value adopted by the adjudicating authority is as per law and does not warrant interference.

11. In view of the above, Government finds that Commissioner (Appeals) has failed to give clear reasoning and has not taken the facts and circumstances of the case in reducing the fine and penalty by merely observing that the goods have not been valued properly. The pax had attempted to smuggle the impugned goods in commercial quantity and without any intention to pay Customs duty. Therefore, the applicant has rightly been held as liable for penalty under Section 112 of the Customs Act, 1962. As regards the quantum of penalty Government notes that the fine and penalty imposed by the original authority is very reasonable (13%) in relation to the value of the goods. Keeping in view the gravity of offence and overall circumstances of the case and the value of the impugned goods, the Commissioner (Appeals) has erred in reducing the redemption fine and penalty on the pax. Government therefore restores the quantum of redemption fine and penalty as imposed by the original adjudicating authority.

12. In view of the above facts and discussions, Government hold that the Commissioner (Appeals) has erred in reducing the fine and penalty and restores the impugned Order-in-Original in toto.

13. The Revision Application is thus allowed.

14. So, ordered.



**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

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



Attested.

सहायक सचिव  
प्रशासन  
उप-सचिव (प. अ.)  
Under Secretary (PA)

**ORDER NO. 43/2016-CUS DATED 24.05.2016**

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 Anurag Rudra, H.No. M-78, Greater Kailash-II, New Delhi-110048.
5. PA to JS (RA).
- ✓ 6. Guard File.
7. Spare Copy.

ATTESTED



( SHAUKAT ALI )  
UNDER SECRETARY (RA)

शुकरत अली  
Shaukat Ali  
अध्यापक (ए अर)  
Under Secretary (RA)