

**REGISTERED
SPEED POST**



**F.No. 371/72/B/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

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

31/1/14
Date of Issue.....

Order No. 25 /14-cus dated 30.1.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Order-in-Appeal No.
32/2013-14-Air dated 06-06-2013 passed by the
Commissioner of Customs, (Appeals), Mumbai.

Applicant : Mr. Mohammed Nizar B. Raheem,
c/o A.M.Sachwani, Advocate,
High Court, Nulwala Building,
Ground Floor,41, Mint Road,
Opp. G.P.O, Fort, Mumbai-400 001

Respondent : Commissioner of Customs,
5th Floor, Avas Corporate Point,
Makhwana Lane, Andheri Kurla Road,
Behind S.M. Centre, Andheri (E),
Mumbai Zone-400059.

ORDER

This revision application is filed by applicant, Mr. Mohammed Nizar B. Raheem, c/o A.M.Sachwani, Advocate, High Court, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O, Fort, Mumbai, against the Order-in-Appeal No. 32/2013-14-Air dated 06-06-2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-400059 with respect to Order-in-Original No. 30/2011-12 dated 26-09-2011 passed by Joint Commissioner of Customs CSI Airport, Mumbai.

2. Brief facts of the case are that applicant arrived at CSI Airport Mumbai from aboard. He was intercepted at green channel by the Customs Officers. On detailed examination of his baggage 4.9 kgs of Gold Sharg Saffron, I Pods Personal Navigator and Memory Cards collectively valued at Rs. 25,78,000/- CIF & 39,47,890 (LMV) were recovered. The goods imported by the applicant were in trade quantity and commercial in nature. Import of goods in commercial quantity does not constitute a part of bonafide baggage in terms of section 79 of Customs Act, 1962 and violates the provisions of Baggage Rules, 1998, section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provision of section 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law, confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine of Rs. 5,00,000/- was given to the said passenger under section 125 of Customs Act, 1962. A penalty of Rs. 5,00,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the appeal for non compliance of payment of pre-deposit amount of Rs. 2,50,000/- ordered by Commissioner (Appeals) vide interim order o. 125/Mumbai-III/2013 dt. 09-04-2013.

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 mainly on the following grounds:

4.1 The applicant has a very strong case on merits and has fair chance of success in the revision appeal.

4.2 Instance on pre-deposit of penalty amount may result in denial of justice to the applicant and no prejudice will be caused to the department in the case if this revision application is allowed.

4.3 Any insistence to pay pre-deposit of penalty amount would whittle down right of revision appeal of the applicant.

4.4 The CESTAT Mumbai in an order No. S/200-202/WZB/CSTB/2007/CSTB dt. 01-03-2007, in the case enclosed herewith, was of the opinion that when goods are absolutely confiscated by the Customs, in these circumstances the interest of the revenue is adequately safeguarded. Therefore, the CESTAT was of the view that no pre-deposit of penalty was called for in the cited case and therefore the pre-deposit of the relevant penalty amount was waived under the provisions of section 112 (a) of the Customs Act, 1962 and recovery was stayed till the disposal of the pending appeal.

4.5 The CESTAT Mumbai vide its another order No. S/417/419/09/SMB/CIV dt. 20-11-2009 in the case enclosed herewith was of the opinion that when the seized goods were in the custody of the department and considering the same as sufficient compliance of section 129E of the Customs Act, 1962 waiver of pre-deposit of penalty was granted and its demand was stayed.

4.6 It would be in the interest of the justice to grant the stay of pre-deposit of penalty amount. That the same is required to be given as the balance of convenience requires so. The granting of stay would not cause any serious prejudice to the department as the matter will be decided on merits.

The applicant finally pleaded that the pre-deposit of penalty amount may kindly be waived and the recovery thereof may kindly be stayed and the revision appeal may kindly be heard on merits.

5. Personal hearing was scheduled in this case on 23-12-2013. Shri N.J. Heera, Advocate attended hearing on 23-12-2013 on behalf of the applicant who reiterated the grounds of Revision Application.

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

7. The goods imported by the applicant were in trade quantity and commercial in nature. Import of goods in commercial quantity does not constitute a part of bonafide baggage in terms of section 79 of Customs Act, 1962 and violates the provisions of Baggage Rules, 1998, section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provision of section 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. However, an option to redeem the same on payment of redemption fine of Rs. 5,00,000/- was given to the said passenger under section 125 of Customs Act, 1962. A penalty of Rs. 5,00,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962.

In appeal Commissioner (Appeals) rejected the appeal for non compliance of provisions of section 129 E of Customs Act as applicant failed to make pre-deposit of Rs. 2,50,000/- as ordered in interim order No. 125/Mumbai Zone-III/2013 dt. 09-04-2013. Now, in this revision application the applicant had mainly pleaded to waive the pre-deposit of penalty and decide the case on merits.

8. The applicant has pleaded that the requirement of pre-deposit may be waived since the goods are in custody of department. In this regard, Government notes that redemption fine and penalty of Rs. 500000/- and Rs. 500000/- respectively are imposed in this case. Commissioner (Appeals) has asked for pre-deposit of Rs.

250000/- . Since the goods are in custody of department, the pre-deposit amount is reduced to Rs. 50,000/- . On getting confirmation of deposit of said pre-deposit amount, the appeal will get restored. Thereafter Commissioner (Appeals) will decide the appeal on merit in accordance with law. The impugned Order-in-Appeal is modified to above extent.

9. Revision Application is disposed off in above terms.

10. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Mr. Mohammed Nizar B. Raheem,
c/o, A.M.Sachwani, Advocate
High Court, Nulwala Building, Ground Floor,
41, Mint Road, Opp. G.P.O,
Fort, Mumbai-400 001.

ATTESTED

(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए./ Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 25 /14-Cx dated 30-1-2014

Copy to:

1. Commissioner of Customs, 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
2. The Commissioner of Customs, (Appeals), 5th Floor, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Behind S.M. Centre, Andheri (E), Mumbai Zone-400059.
3. Joint Commissioner of Customs, CSI Airport, Mumbai.
4. Mr. Mohammed Nizar B.Raheem, XI/383 (NEW), Chala Road, Rahmathnagar, PO Vidyanagar, Kasargod Dist., Kerala-670023.
5. PS to JS(RA)
6. Guard File.
7. Spare Copy

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(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)