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SPEED POST



F.No. 372/03-04,06 & 09/B/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...12/4/14

Order No. 74-77/14-cus dated 16.04.2014 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. passed by the Commissioner of Customs (Appeals), Custom House, Kolkata as mentioned in Column 3 of the table in para 1 of this order.
- Applicant : As per column 2 of table in para I of this order.
- Respondent : Commissioner of Customs, Custom House, Kolkata.

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ORDER

These revision applications are filed by applicants the Orders-in-Appeal passed by the Commissioner of Customs (Appeals), Kolkata as detailed in the following Table:-

S.No.	RA No. Name of the Applicant Shri	OIA No. & Date	Order-in- Original No. & Date	Description of Value and Goods (Rs.)	RF/PP/Order As per Order-in- Original (Rs.)	RF/PP/Order As per Order- in-Appeal (Rs.)
1	2	3	4	5	6	7
1	372/03/B/13-RA Shri Anurag Kumar Singh	18/Cus/KOL/AP/12 dt. 28-12-12	422/12 dt. 11-05-12	Misc. goods 479913	RF 150000 PP 75000	Appeal rejected
2	372/04/B/13-RA Shiv Kumar Aggarwal	19/Cus/KOL/AP/12 dt. 28-12-12	712/12 (AIU) dt. 05-09-12	Misc. goods 255776	RF 61000 PP 44000	Appeal rejected
3	373/06/B/13-RA Ramanand Singh Yadav	20/Cus/KOL/AP/12 dt. 31-12-12	711/12 dt. 05-09-12	Misc. goods 293144	RF 70000 PP 50000	Appeal rejected
4	373/09/B/13-RA MD. Sahid Islam	2/Cus/KOL/AP/13 dt. 15-01-13	558/12 dt. 25-06-12	Misc. goods 446200	RF 90000 PP 45000	RF 75000 PP 35000

2. Brief facts of the case are that the applicants arrived at Chennai International Airport from abroad and imported gold jewellery / gold / miscellaneous goods in commercial quality as shown in the column No. 6 of above table. The passengers were frequent travellers and did not declare the goods before customs as required under section 77. The said goods were also in commercial quantity. As such, it cannot be treated as bona fide baggages in terms of section 79 of Customs Act read with para 2.20 of FTP 2009 – 2014. The said goods were imported in violation of provisions of Section 77, 79, 11 of Custom Act read with provisions of para 2.20 of FTP 2009 – 2014 and Section 3(3) of Foreign Trade (Development & 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 as shown at column No. 7 of the above table was given to the applicants under section 125 of Customs Act, 1962. Penalty as shown at column No. 7 of the above table was also imposed on the said applicants under section 112 of Customs Act, 1962.

3. Being aggrieved by the said Orders-in-Original, applicants filed appeals before Commissioner (Appeals) who rejected the appeals in cases at Sr. No. 1 to 3

of the table and modified the Orders-in-Original in case of Sr. No. 4 as stated in the above table.

4. Being aggrieved by the impugned orders-in-appeal, the applicants have filed these revision applications under Section 129 DD of the Customs Act, 1962 before the Central Government on the following grounds :

4.1 That as per the provision of Baggage Rules 1998, the applicant entitled to get full free allowance which has been denied to him. Permissible free allowance should be allowed to me as per rule.

4.2 That the officers of AIU, AP over valued the goods based on internet prices which is wrong and too much. The valuation done is wrong and baseless i.e. without any proper valuation method. The applicant came from Bangkok and the goods purchased by them from the local market of Bangkok. The goods are not branded and are duplicate of the original made in Thailand. Therefore revalue the same as per current valuation rule after reducing margin of profit etc.

4.3 The goods contained in the baggage are not prohibited/restricted items. To bring such items in baggage is permissible under the provision of BR 1998. The adjudicating authority has wrongly ordered for confiscation of the goods. Consequently after revaluation the imposition of such high redemption fine is not legally correct. It may be reduced to a reasonable amount.

4.4 That since the goods are not prohibited nor restricted and applicants have made a bonafide declaration to this effect under section 77 of this Customs Act, 1962 the imposition of heavy penalty may kindly be waived or reduced to a reasonable amount.

5. Personal hearing scheduled in this case 29-03-2014 at Kolkata was attended by Shri P.C. Jain, Consultant on behalf of the applicant who reiterated the grounds of Revision Application. Applicant in the case at Sr. No. 2,3 of table has requested to allow clearance of one TV under duty free admissible baggage allowance (50%) since one TV cannot be considered in commercial quantity.

Applicant at Sr. No. 4 has pleaded that rechargeable batteries are overvalued and correct value may be fixed.

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

7. On perusal of records, Government observes that applicant passengers did not declare the said goods to the Customs as required under section 77 of Customs Act. The said goods were also in commercial quantity except the item one TV low value item. As such, the said goods cannot be treated as bona fide baggage in terms of section 79 of Customs Act read with para 2.20 of FTP 2009 – 2014. The said goods were imported in violation of provisions of Section 77, 79, 11 of Custom Act read with provisions of para 2.20 of FTP 2009 – 2014 and Section 3(3) of Foreign Trade (Development & Regulation) Act 1992. The adjudicating authority confiscated the goods under section 111 of Customs Act but allowed the same to be redeemed on payment of redemption fine as shown at column no. 7 of above table in lieu of confiscation, under section 125 of Customs Act, 1962. Personal penalty as shown at column no. 7 of above table was also imposed on the applicants. Applicants in their revision applications have not disputed the confiscation of said goods but requested to reduce redemption fine and penalty. As such order for confiscation of goods except one TV each in cases at Sr. No. 2,3 imposition of penalty cannot be assailed.

8. As regards the pleading of applicants regarding re-valuation of goods, Government notes that the applicants were frequent visitors, they have brought goods in commercial quantity and did not declare the same before customs officers under section 77 of Customs Act, 1962. They could not provide valid documentary evidence in support of their claim of re-valuation of goods and therefore appellate authority has upheld the valuation done by the original authority. Government do not find any reason to interfere with the valuation done by lower authorities. Applicants have also requested to allow re-export of goods. In this regard, it is noted that passenger have not made true declaration of goods

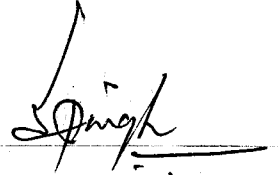
under section 77 of Customs Act and therefore re-export of goods cannot be allowed under section 80 of the Customs Act.

9. As regards the pleadings of the applicants at Sr. No. 2 and 3 of table who have requested to allow duty free clearance of one TV in baggage allowance as admissible under baggage rules since one TV cannot be considered in commercial quantity. Government finds merit in this pleading of the applicants as one TV cannot be considered in trade quantity. Government therefore set aside the confiscation of one TV each in case of applicants at Sr. No. 2 and 3 and allows duty free clearance of one TV each in cases at Sr. No. 2 and 3 as per entitlement in Baggage Rules. If the value of one TV is more than duty free allowance, then appropriate duty is to be charged on the value in excess of baggage allowance. Regarding valuation of rechargeable battery in the case at Sr. No. 4 of table, applicant has produced price data of Sony Info Lithium L. Series Rechargeable Battery 2 NP- F 970/B downloaded from website. It show the price of said battery as USD 250/- = Rs. 7150 (@ USD= Rs. 58.00 on the relevant date). Commissioner appeal has accepted the overvaluation of goods in his order but refrained from giving any finding. The adjudicating authority has not mentioned the basis of valuing these goods. As such Government finds the said documentary evidence cannot be ignored and these goods are to be valued at Rs. 143000/- @ Rs. 7150/- for one unit of battery. As such the total value of offending goods gets reduced to Rs. 229200/-. As regards pleadings to reduce redemption fine/personal penalty, Government observes that the redemption fine/personal penalty imposed is on higher side and same can be reduced. Government keeping in view overall circumstances of cases, reduces the redemption fine and penalty as under:-

S.No.	RA No. Name of the Applicant Shri	OIA No. & Date	Value of offending goods	RF/PP Modified (Rs.)
1	2	3	5	6
1	372/03/B/13-RA Shri Anurag Kumar Singh	18/Cus/KOL/AP/12 dt. 28-12-12	479913	RF 96000 PP 48000
2	372/04/B/13-RA Shiv Kumar Aggarwal	19/Cus/KOL/AP/12 dt. 28-12-12	215776	RF 43000 PP 22000
3	373/06/B/13-RA Ramanand Singh Yadav	20/Cus/KOL/AP/12 dt. 31-12-12	253144	RF 51000 PP 25000
4	373/09/B/13-RA MD. Sahid Islam	2/Cus/KOL/AP/13 dt. 15-01-13	229200	RF 46000 PP 23000

The impugned Orders-in-Appeal are modified to above extent.

10. The revision applications are disposed off in terms of the above.
11. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

As per column 2 of table in para I of this order  
c/o Shri Punnam Chand Jain  
64, Burtolla Street, Kolkata-700007.

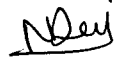
ATTESTED

Order No. 74-77/14-Cus Dated 16.04.2014

Copy to:

1. The Commissioner of Customs, 15/1 Strand Road, Custom House, Kolkata-700001.
2. The Commissioner of Customs (Appeals), 15/1 Strand Road, Custom House, Kolkata 700001.
3. The Additional Commissioner of Customs (Airport), Custom House, Kolkata.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(Nirmala Devi)

Section Officer (REVISION APPLICATION)

(निर्मला देवी) (NIRMALA DEVI)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi