OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.

A	फ़ाइल संख्या/ File No.	S/20-16/DP/TR/2019-20
B	आदेश में मूल सं./ Order-in-Original No.	KDL/HC/AC/55/2019-20
C	पारित कर्ता/ Passed by	SH. HEMESH CHHABRA, ASSISTANT COMMISSIONER, KANDLA
D	आदेश की दिनाँक/Date of order	07/08/2019
E	जारी करने की दिनाँक/Date of issue	07/08/2019
F	एस॰सी॰एन॰ सं॰एवं दिनाँक/ SCN No. & Date	WAIVED SCN AND PERSONAL HEARING
G	नोटीसी/ पार्टी Noticee/Party	M/S Mr. Mangera Aayasha, Khergam Navsari, Gujarat

1. यह अपील आदेश संबन्धित को नि प्रदान शुल्क: किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है–
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

"सीमा शुल्क आयुक्त (अपील), कांडला
मंजिल वीं 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़
अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road
Ahmedabad - 380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए–
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और
A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची–1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं॰–6 में निर्धारित 2/– रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील),अधिनियम शुल्क सीमा और 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

Mr. Mangera Aayasha holding Passport No. L3469751 (hereinafter referred to as the 'transferee') having his address at Khergam Navsari ,Gujarat arrived in India from London on 19.07.2019. On 01.08.2019, the transferee submitted Transfer of Residence, Baggage Declaration List under Section 77 of the Customs Act,1962 for clearance of his unaccompanied baggage declared as 'Old clothes and Personal Effects' valued at Rs.1,67,100/-, as declared by himself. The said baggage found stuffed in container no. TCLU1516387 under Bill of Lading No. LPL0887956 dated 25.06.2019 and the same was transshipped to A.V Joshi CFS, Gandhidham.

1.2 The transferee requested for availing the benefit of duty free clearance of goods declared as 'personal effects and used house hold cargo' under Transfer of Residence/Baggage Rule,2016 on notarized undertaking dated 30.07.2019 on account of settlement in India along with his family members at his above mentioned native place. The transferee executed an authority in the name of Mr.Valji Chetandas Sadhu, who performed the actions on behalf of the transferee during the process of examination.

1.3 Also, Section 77 of the Customs Act, 1962 stipulates that the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer. Also, Section 79 of the Customs Act, 1962 states that, Bona fide baggage is exempted from duty subject to fulfillment of condition mentioned there under. Notification No. 30/2016-Customs (N.T.) dated 01.03.2016 as amended is relevant in respect of Transfer of Residence.

1.4 The terms and conditions for claiming benefits under transfer of residence have been laid down under Rule 6 of the Baggage Rules, 2016 (read with baggage Rule, 1998 and Amendment rules 2006) as below:

(a) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence
(b) Total stay in India on short visit during the two preceding year should not exceed six months limit
(c) Passenger has not availed this concession in the preceding three years.

1.5 In the present case the transferee is Citizen of India and Holding Passport No. L3469751 and has sought TR benefit under Rule 6 of the Baggage Rule, 2016, which provides:

"Any person holding a valid passport under the Passport Act, 1967 and returning to India after having stayed abroad for minimum two years immediately preceding the date of arrival in India, will claim concessional rate of duty as under:
1. Personal and House hold articles other than those listed at annexure-I or Annexure-II but including articles mentioned in Annexure-III up to an aggregate value of five lakh rupees."

1.6 The transferee has stayed abroad for more than 2 years, immediately preceding the date of his arrival (07.06.2019) on Transfer of Residence and his total stay in India on short visit during the two preceding years is not more than six months. Thus, in terms of Rule 6 of the Baggage Rules, 2016 (read with baggage Rule, 1998 and Amendment rules 2006, he is eligible for the benefit of TR.

1.7 The Assistant Commissioner (DP), Customs House Kandla ordered for 100% examination of the goods. Thereafter, 100% examination was conducted by the officers of Dock Preventive, Custom House, Kandla on 06.08.2019 & 07.08.2019. During the examination, it was noticed that there were many small-small packages and it appeared that the bags contained the items which could be meant for delivery to different persons. Further, from the examination of baggages it appeared that some goods are in large numbers, which further confirms that they are meant for delivery to different persons. Hence the import claimed to be under "Transfer of Residence" appeared to be other than bona fide TR and the transferee is not eligible for the TR benefit. During examination no prohibited or restricted items were found.

1.8 It appeared that the value of imported goods was more than declared and there is gross undervaluation. To ascertain the value of goods, Shri Anwar Y. Kukad, Government Approved Valuer (Reg. Cat-VII/19/2013-14), Adipur, Kutch was called. After inspection of the said goods, the said govt. approved valuer valued the said goods Rs. 2,60,000/-(Rupees Two Lakhs sixty Thousands only) as fair value vide their certificate Ref No. AYK:VAL:0776:2019 dated 07.08.2019. The said value was not contested by the transferee through his authorized representative.

2. PERSONAL HEARING & DEFENCE REPLY:

2.1 The transferee submitted his undertaking dated 07.08.2019 to the Assistant Commissioner (DP), CH, Kandla, stating that he agrees to bear sole responsibility for settlement of all issues, matters, errors or penalties which shall arise; that he agrees to indemnify the department for all the liability as a result of the enquiry; that he agrees to pay all the Customs Duty/fine/penalty arising from the legal formalities under the Customs Act, 1962 and Rules/Regulations and that he does not want any Show Cause Notice and Personal Hearing in the matter for early disposal and release of goods.

3. DISCUSSION & FINDINGS:

3.1 I have carefully gone through the entire case records i.e. Transfer of Residence form, Baggage Declaration List, Value declared by the transferee and fair valuation given by the Government Approved Valuer and other relevant material available on records.

3.2 The core issue to be decided in the instant case is whether the said cargo arrived in Container No. TCLU1516387 (1 X 40 feet) shipped vide Bill of Lading No. LPL0887956 dated 25.06.2019 of the transferee can be considered as bona fide baggage under Baggage Rules, 2016 and given the benefit of TR Rules.

3.3 I find that the baggages were examined in the presence of authorized representative of the transferee. I also find that no restricted/prohibited goods were found from the said baggages. Further, it is noticed that the value declared by the transferee in respect of the cargo in question i.e. Rs.1,67,100/- is lower than the fair value determined by the Govt. Approved Valuer amounting to Rs. 2,60,000/-.

3.4 Further, Para 2.26 of the Foreign Trade Policy (2015-20) stipulates that Bona fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof notified in Baggage Rules by the Ministry of Finance.

3.5 In view of the discussions in foregoing paras, I find that for Bona fide Baggage items, as it is observed that the subject baggage consisted of many small- small packages which apparently may belong to several persons other than the transferee. Further, the baggages contain some goods which are in large numbers, which further confirms that they are meant for delivery to different persons. Therefore, I find that the said baggage cannot be construed as bona fide personal unaccompanied baggage under the Baggage Rules, 2016 and Section 79 of the Customs Act, 1962. Besides, in terms of CBEC Circular No. 35/2007-Customs dated 28.09.2007, single passenger arriving India, bringing goods for several persons cannot be considered as bona fide baggage and all cases of import of unaccompanied baggage other than in the nature of "bona fide baggage" have to be adjudicated for levy of fines/penalties for violation of Foreign Trade Policy. I also find that the aforementioned circular is squarely applicable to the instant case. The relevant portion of the circular is reproduced below for ready reference.

" Kind attention is invited to the Minutes of the Chief Commissioners' Conference held in Bangalore in December, 2006, wherein the issue of misuse of the facility of unaccompanied baggage was discussed (Item No.7-iii). It is reported that a single passenger arriving into India brings goods said to be belonging to several other persons as his unaccompanied baggage and that clearance of all such goods was being permitted at some of the airports/Customs station without invoking any penal provisions. Colloquially this is referred to as ***"door-to-door delivery" traffic****. It was clarified during the meeting that only 'bonafide baggage' of that passenger is allowed for import either along with the passenger or as his unaccompanied baggage. It was decided that the filed formations would be alerted about this misuse.*

2. It is, therefore, reiterated that all the provisions of Customs Act, 1962 and Baggage Rules, 1998 are applicable to unaccompanied baggage as they are applicable to baggage (accompanied), except the free allowance which is not available for unaccompanied baggage. Hence, it may be ensured by the officers attending to the clearance of the unaccompanied baggage at all customs stations that "bonafide" nature of the baggage is established before allowing clearance. The exceptions relating to various restrictions as provided in Rule 3 (i) of Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993 in respect of baggage, specified goods including consumer electronic items etc., are part of the facilitation measures available to passenger in respect of his personal effects and hence, the same cannot be allowed to be used as means to circumvent the legal provisions applicable to normal imports.

All cases of import of unaccompanied baggage other than in the nature of "bonafide" baggage have to be adjudicated for levy of fines / penalties for violation of the Foreign Trade Policy."

3.6 I find that the transferee has declared the value of the goods container in his unaccompanied baggage at Rs.1,67,100/-, whereas the value of the said goods were ascertained by the Government Approved Valuer at Rs. 2,60,000/-. Thus, I find that the value has been mis-declared by the transferee. Therefore, the declared value is liable to be rejected in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. Further, I find that actual value of the goods covered under the subject TR has been ascertained through government approved valuer and the same has not been contested by the transferee. Instead the transferee has submitted that he would discharge the liability of

applicable duty on the subject goods. Therefore, I hold that the values ascertained by the government valuer, as discussed above, in respect of the baggage items, as true, correct and fair value.

3.7 In view of discussion as stated in above paras, I find that for the act of contravention of various provisions by the transferee as discussed above, the benefit of clearance of baggage free of duty cannot be allowed under Baggage Rule, 2016. Accordingly, the Duty has to be calculated without granting exemption contained in Baggage rules, 2016. Accordingly, the Duty on subject goods comes to:-

SN	Name of items	Rate of duty	Value (in Rs.)	BCD (in Rs.)	Social Welfare Cess (in Rs.)	Total (in Rs.)
1.	Personal Effects & Household goods	35%	2,60,000/-	91,000/-	9,100/-	1,00,100/-

3.8 In view of the duty calculation tabulated hereinabove, I find that the transferee is liable to pay Customs duty to the tune of Rs. 1,00,100/- on the assessed value of the goods ascertained by the Government Approved Valuer (i.e. Rs. 2,60,000/-).

3.9 I find that the miscellaneous baggage items i.e. personal effects and household goods covered under the subject TR have been mis-declared in respect of value and thus are liable to confiscation under Section 111(m) of the Customs Act, 1962. In view of the facts and circumstances, I find it appropriate to grant an option to redeem the miscellaneous baggage items on payment of appropriate redemption fine as provided under Section 125 of the Customs Act, 1962.

3.10 I find that miscellaneous household goods brought by the transferee are varied in nature such as "old and used clothes", "personal effects", "old and used household items" etc. I also find that the quantity of some of the goods of a particular category is in such a quantity that it may be meant for different persons. Also the value of the goods declared by the transferee i.e. Rs. 1,67,100/- is lower than the fair value determined by the Government approved valuer i.e. Rs. 2,60,000/-. Yet, I also take into account that the value of these old and used personal items may be taken differently by different individuals. However, fact is that the value declared by the transferee is much lower than the fair value ascertained by the experienced Government approved valuer. Thus the said goods became liable for confiscation under Section 111(m) of the Customs Act,1962 and therefore, the transferee is also liable for penalty under Section 112(a) of the Customs Act,1962.

4. In view of above, I pass the following order:-

ORDER

(i) I hereby reject the Transfer of Residence Claim as bona fide TR/Baggage under Baggage Rules, 2016 and declared value of the unaccompanied baggage by the transferee under Rule 12 of the Customs Valuation (Determination of

value of imported goods) Rules, 2007. I order to re-determine total value of Rs.2,60,000/- (Rupees Two Lakhs sixty thousands Only), as ascertained by the Government Approved Valuer to be correct and fair value for calculation of Custom duty of baggage under Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 read with Section 14 of the Customs Act, 1962;

(ii) I confirm the demand of Customs Duty of Rs. 1,00,100/- (Rs. 91,000/- as BCD and Rs. 9,100/- as Social Welfare Cess) as calculate in para 3.11 above on re-determined value of Rs. 2,60,000/- as ascertained by the Government Approved Valuer.

(iii) I order to confiscate the miscellaneous baggage items i.e. personal effects and household goods covered under the subject TR liable to confiscation under section 111(m) of the Customs Act, 1962. However, in lieu of confiscation, I grant an option to redeem baggage items on payment of redemption fine of Rs. 26,000 /- under section 125 of the Customs Act, 1962;

(iv) I impose a penalty of Rs. 13,000/-, upon Mr. Mangera Aayasha under Section 112(a) of the Customs Act, 1962;

7/8/19

(Hemesh Chhabra)
Assistant Commissioner
Custom House, Kandla

F.No. S/20-16/DP/TR/2019-20 **Dated: 07.08.2019**

To,
Mr. Mangera Aayasha,
Khergam Navsari ,
Gujarat

Copy to:-

1) The Deputy/Asst. Commissioner (RRA), Custom House, Kandla.
2) The Deputy/Asst. Commissioner (Recovery), Custom House, Kandla.
3) The Superintendent(EDI Section) for uploading on the website.
4) The Manager, A.V.Joshi CFS, Gandhidham
5) Guard file.

O/O COMMISSIONER OF CUSTOMS
3262
19 AUG 2019
INWARD SECTION
Custom House, Kandla