# 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/20-01/DP/TR/2020-21 |
| B | आदेश में मूल सं./ Order-in-Original No. | KDL/HC/AC/01/2020-21 |
| C | पारितकर्ता/Passed by | SH. HEMESH CHHABRA, ASSISTANT COMMISSIONER, KANDLA |
| D | आदेश की दिनाँक/Date of order | 17/04/2020 |
| E | जारी करने की दिनाँक/Date of issue | 17/04/2020 |
| F | एस.सी.एन. सं.एवं दिनाँक/ SCN No. & Date | WAIVED SCN AND PERSONAL HEARING |
| G | नोटीसी/ पार्टी Noticee/Party | MRS. PATEL MINAXIBEN NAYANKUMAR, MANDIR FALIYU, LAKHANPORE, LAKHANPOR, SURAT, GUJARAT-394352 |
| H | D.I.N | 20200471ML00003O3C0D |

1. यह अपील आदेश संबन्धित को नि शुल्क प्रदान:कियाजाता 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 128A (1) के अंतर्गत प्रपत्र सीए- 3मेंचारप्रतियोंमेंनीचेबताएगएपतेपर 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
वीं मंजिल 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. उक्तअपीलयहआदेशभेजनेकीदिनांकसे60 दिन केभीतरदाखिलकीजानीचाहिए।
Appeal shall be filed within sixty days from the date of communication of thisorder.

4. उक्तअपील 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 mustaccompanied 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 इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्नकिया जाना चाहिये ।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील),और सीमा शुल्क अधिनियम 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 हेतुजहां शुल्क या शुल्क और जुर्माना विवाद में हो,अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्कका7.5% 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:

Mrs.Patel Minaxiben NayanKumar holding British Passport No.527937023(hereinafter referred to as the 'transferee') having address at Mandir Faliyu, Lakhanpore, Lakhanpor, Surat,Gujarat-394352 arrived in India from U.K. on 20.02.2020. On 16.04.2020,the transferee submitted Transfer of Residence, Baggage Declaration List under Section 77 of the Customs Act,1962 for clearance of her unaccompanied baggage declared as 'Old clothes and Personal Effects' valued at Rs.1,23,540/-, as declared by herself. The said baggage found stuffed in container no. TLLU4662188 under Bill of Lading No.LPL0938069 dated 25.02.2020 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 undertaking dated 16.04.2020 on account of settlement in India along with her family members at her 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 Rule6 of the Baggage Rules, 2016 as below:

(a) Minimum stay of two years abroad, immediately preceding the date of her arrival on transfer of residence

(b) Total stay in India on short visit during the preceding two years should not exceed six months limit

(c) Passenger has not availed the concession in the preceding three years.

**1.5** In the present case, the transferee is Overseas Citizen of India and Holding British Passport No. 527937023 and has sought TR benefit under Rule 6 of the Baggage Rule, 2016, which provides:

"Any person 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 her arrival (20.02.2020) on Transfer of Residence and her total stay in India on short visit during the two preceding years is less than six months and she has also not availed TR benefit for three years.

**1.7** As directed, 100% examination of the goods has been carried out on 16.04.2020& 17.04.2020 by the DP officers, Customs House, Kandla. The said container was also earmarked for scanning. Accordingly, it was scanned by Container Scanning Division who found the 'Inconsistent' or 'Hidden Zone' in the container and informed to DP section vide their letter F.No. S/20-12/Con./CSD/2019-20 dated 10.04.2020.During the examination, it was noticed that there were many small-small packages. Thus, it appeared that the bags contained the items which could be meant fordelivery to different persons.Further, during examination of the baggages, it appeared that most of the baggages were having name and address of different persons which confirms that these are for delivery to them. Further, from the examination of baggages it appeared that somegoodsare 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 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.2,10,000/-(Rupees Two Lakh Ten Thousand only) as fair value vide their certificate Ref No. AYK:VAL:0971:2020 dated 17.04.2020. The said value was not contested by the transferee through her authorized representative.

## 2. PERSONAL HEARING & DEFENCE REPLY:

***2.1*** *The transferee submitted her undertaking dated 17.04.2020 to the Assistant Commissioner (DP), CH, Kandla, stating that she agrees to bear sole responsibility for settlement of all issues, matters, errors or penalties which shall arise; that she agrees to indemnify the department for all the liability as a result of the enquiry;that she agrees to pay all the Customs Duty/fine/penalty arising from the legal formalities under the Customs Act, 1962 and Rules/Regulations and that she 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. TLLU4662188 shipped vide Bill of Lading No.LPL0938069 dated 25.02.2020of the transferee can be considered as bonafide baggage under Baggage Rules, 2016 and given the benefit of TR Rules.

**3.3** I find that the baggageswere 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.1,23,540/- is lower than the fair value determined by the Govt. Approved Valuer amounting to Rs.2,10,000/-.

**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 whichapparently 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. Further, during examination of the baggages, it appeared that most of the baggages were having name and address of different persons which confirms that these are for delivery to them. 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 her 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 ther 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 her unaccompanied baggage. It was decided that the filed formations would be alerted about ther 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 her 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 her unaccompanied baggage at Rs.1,23,540/-, whereas the value of the said goods were ascertained by the Government Approved Valuer at Rs.2,10,000/- .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 contestedby the transferee. Instead the transferee has submitted that she 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% | 2,10,000/- | 73,500/- | 7,350/- | 80,850/- |

**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.80,850/- on the assessed value of the goods ascertained by the Government Approved Valuer (i.e. Rs.2,10,000/-).

**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 thatmiscellaneous householdgoods 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 and also the goods are having name and address of different recipients.Also the value of the goods declared by the transferee i.e. Rs.1,23,540/- is lower than the fair value determined by the Government approved valuer i.e. Rs.2,10,000/-.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(b) 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 bonafide 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 ofimported goods) Rules, 2007. I order to re-determine total value of Rs.2,10,000/- (Rupees Two Lakh Ten ThousandOnly), 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 ofCustoms Duty of Rs.80,850/- (Rs.73,500/- as BCD and Rs.7,350/- as Social Welfare Cess)as calculated in para 3.7 above on re-determined value of Rs.2,10,000/- 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 fineof Rs.21,000/-under section 125 of the Customs Act, 1962;

*(iv)* I impose a penalty of Rs.11,000/-, upon Mrs.Patel Minaxiben NayanKumar under Section 112(b) of the Customs Act, 1962;

17/4/20

(Hemesh Chhabra)
Assistant Commissioner
Custom House, Kandla

**F.No. S/20-01/DP/TR/2020-21** **Dated: 17.04.2020**

To,
Mrs.Patel Minaxiben NayanKumar,
Mandir Faliyu, Lakhanpore, Lakhanpor,
District Surat, Gujarat-394352

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) Guard file.

O/O COMMISSIONER OF CUSTOMS
174
14 MAY 2020
INWARD SECTION
Custom House, Kandla