



भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय MINISTRY OF FINANCE
राजस्व विभाग DEPARTMENT OF REVENUE
केन्द्रीय अप्रत्यक्ष कर और सीमाशुल्क बोर्ड
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
सीमाशुल्क (निवारक) आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF
CUSTOMS (PREVENTIVE)



पाँचवी मंजिल, कैथोलिक सेंटर, ब्रॉडवे, कोच्चि - 682031

5TH FLOOR, CATHOLIC CENTER, BROADWAY, KOCHI - 682031

E-mail: cru-cpc.ker@gov.in

Fax:- 0484-2355065

Phone:- 0484 - 2355070

पत्रसं./C.No.: VIII/10/9/2013-Cus Adj

आदेश की तारीख/ Date of Order: 19.02.2025

DIN : 20250258MC000000B2AA

जारी करने की तारीख/ Date of Issue: 20.02.2025

आदेश (मूल) ORDER (ORIGINAL) NO.COC-CUSTM-PRV-COM-03-2024-25

श्रीमती के पद्मावती, भा.रा.से.

सीमा शुल्क (निवारक) आयुक्त, कोच्चि, द्वारा पारित

PASSED BY Ms. K PADMAVATHY, I.R.S.,

COMMISSIONER OF CUSTOMS (PREVENTIVE), KOCHI

1. यह आदेश जिनके नाम जारी किया गया है, उस व्यक्ति के निजी उपयोग के लिए यह प्रति मुफ्त में दी जाती है।
This copy is granted free of charge for the private use of the person(s) to whom it is issued.
2. इस आदेश से यदि कोई व्यक्ति को हानी हुआ हो तो वे इस आदेश की प्राप्ति की तारीख के तीन महीने के भीतर सीमा शुल्क, उत्पाद शुल्क तथा सेवा कर अपील प्राधिकरण, दक्षिण क्षेत्रीय पीठ, दूसरी मंजिल, डब्ल्यूसी बीलिंग .टी ., एफआई कॉम्प्लेक्स .सी.सी.के., केजी। रोड., बैंगलोर के समक्ष इसके 009 560 विरुद्ध अपील की जा सकती है।
Any person deeming himself aggrieved by this order may appeal to the Customs, Excise & Service Tax, Appellate Tribunal, South Zonal Bench, 1st Floor, W.T.C. Building, FKCCI Complex, K.G. Road, Bangalore 560 009 within three months from the communication of this Order.
3. सीमा शुल्क अधिनियम, 1962 की धारा 129(1) के अंतर्गत अपील प्राधिकरण के समक्ष अपील फार्म सी 3.ए.में किया जा सकता है।
An appeal to the Appellate Tribunal under Section 129(1) of the Customs Act, 1962 shall be made in form CA-3.
(i) सीमा शुल्क, उत्पाद शुल्क तथा सेवा कर अपीलीय न्यायाधिकरण नियमावली (प्रक्रिया), 1982 के नियम के अनुसार अपील के ज्ञापन पर अपीलकर्ता द्वारा हस्ताक्षर और सत्यापन किया किया जाना है। 8 The memorandum of appeal shall be signed and verified by the appellant as per Rule 8 of the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.
(ii) अपील का ज्ञापन चार प्रतियों में होने चाहिए और उसके साथ उतनी ही संख्या में निर्णय या आदेश की प्रतियाँ भी होनी चाहिए, जिसके विरुद्ध अपील किया जा रहा हो, उसमें से कम से कम एक प्रति आदेश की प्रमाणित प्रति होनी चाहिए।
The memorandum of appeal shall be in quadruplicate and shall be accompanied by an equal number of copies of the decision or order appealed against; at least one of which shall be a certified copy of order.

4. सीमा शुल्क अधिनियम, 1962 की धारा (6)ए 129के तहत अपील प्राधिकरण के समक्ष अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए :
Under Section 129 A(6) of the Customs Act, 1962, Appeal to the Appellate Tribunal shall be accompanied by a fee of:
अपिल कए जा रहे मामले में जहाँ सीमा शुल्क के अधिकारी द्वा (अ)रा लगाया गया शुल्क और माँगा गया व्याज और लगाया गया जुर्माना पाँच लाख रुपए से कम हो तो एक हजार रुपए।
(a) where the amount of duty and interest demanded and penalty levied by any Officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees.
अपील किए जा रहे मामले में जहाँ सीमा शुल्क के अधिकारी द्वारा लगाया गया शुल्क और माँगा (ख) गया व्याज और लगाया गया जुर्माना पाँच लाख रुपए से अधिक हो, लेकिन पचास लाख रुपए से कम हो तो पाँच हजार रुपए।
(b) where the amount of duty and interest demanded and penalty levied by any Officer of Customs in the case to which the appeal relates is more than five lakh rupees, but not exceeding fifty lakh rupees, five thousand rupees.
अपील किए जा रहे मामले में जहाँ सीमा (ग) ा शुल्क के अधिकारी द्वारा लगाया गया शुल्क और माँगा गया व्याज और लगाया गया जुर्माना पचास लाख रुपए से अधिक हो तो दस हजार रुपए।
(c) where the amount of duty and interest demanded and penalty levied by any Officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees.
5. उपर्युक्त शुल्क बेंगलूर स्थित किसी राष्ट्रीयकृत बैंक में भुगतान योग्य एक क्रॉस्ड बैंक ड्राफ्ट के रूप में जो सहायक सीमा शुल्क रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील प्राधिकरण, दक्षिण क्षेत्रीय पीठ, प्रथम मंजिल, डब्ल्यूबिल्डिंग .सी .टी ., एफकॉम्प्लेक्स .आई.सी.सी.के., के.जी . रोड, बेंगलूर 009 560-के पक्ष में आहरण किया जाना है तथा मांग ड्राफ्ट अपील के ज्ञापन सहित होना चाहिए।
The fees as aforementioned shall be paid through a crossed bank draft drawn in favour of the Asst. Registrar of the Customs, Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, 1st Floor, W.T.C. Building, F.K.C.C.I. Complex, K.G. Road, Bangalore-560 009 payable at any nationalized bank located at Bangalore and the demand draft shall be accompanied by the memorandum of appeal.
6. जो व्यक्ति इस आदेश या निर्णय के विरुद्ध अपील करने में इच्छुक है, उसे अपील होने तक, इसके अनुसार शुल्क या लगाया गया जुर्माना जमा करना चाहिए और उस भुगतान का प्रमाण अपील के साथ भेजना चाहिए । ऐसा न करने पर सीमा शुल्क अधिनियम, 1962 की धारा 129ई के प्रावधानों के अनुपालन न करने के लिए अपील अस्वीकार करने योग्य होगी।
Any person desirous of appealing against this decision or order shall pending the appeal, deposit the duty/penalty levied therein, failing which the appeal is liable to be rejected for non-compliance with the provisions of the section 129E of the Customs Act 1962.
7. अपील की प्रत्येक प्रतिलिपि अपील के आधारभूत अनुबन्धों के साथ पूर्ण होने चाहिए और अपील की प्रति के साथ उस आदेश की एक प्रति भी होनी चाहिए जिसके विरुद्ध अपील किया जा रहा है। 400 रुपए के निर्धारित न्यायालय शुल्क स्टैप भी लगाया जाना है।
Each copy of the Appeal shall be complete with all annexures relied upon in the appeal and each copy of the appeal must be accompanied by a copy of the order appealed against. The prescribed court fee Stamp for Rs.4.00, shall also be affixed.

BRIEF FACTS

M/s. S & J Travels & Cargo Services (P) Ltd, T.C. No 26/863, Panavila Junction, Thycaud Post, Trivandrum - 695014 (hereinafter referred to as "Courier Agency/Operator") are holders of Courier Registration No.03/2010 (Courier) dated 30.12.2010, issued under Regulation 10 of Courier Import and Export (Clearance) Regulations, 1998 (hereinafter referred to as CIECR) to act as an Authorized Courier in Thiruvananthapuram International Airport for clearance of Import and Export goods under courier mode.

2. It appeared that the said Registration issued to M/s. S & J Travels & Cargo Services (P) Ltd under Regulation 10 of the CIECR, 1998 read with Regulation 13, ibid which casts the obligations detailed therein along with the relevant provisions of the Customs Act 1962. And, as per Regulation 3(a) of CIECR, 1998, an "Authorised Courier" in relation to import or export goods means a person engaged in the international transportation of the goods on express door to door delivery basis and is registered in this behalf by a Commissioner of Customs.

3. On receiving intelligence that the Courier Agencies which were granted license as "Authorised Couriers" to operate through Trivandrum International Airport were importing unaccompanied baggage of passengers and goods intended for trade / business etc. in the guise of bonafide gifts, in order to illegitimately avail the benefit of duty free provisions granted for bonafide gifts under Ministry of Finance (Department of Revenue) Notification No.171/93-Cus dated 16.09.93, as amended read with Courier Export & Import (Clearance) Regulations 1998, thereby causing huge loss to the exchequer in terms of Customs duty otherwise leviable on such imports. Hence, an inspection was carried out from December 2011 to identify all the imports made by such Courier Agencies through Trivandrum International Airport.

4. Subsequently, M/s. S & J Travels & Cargo Services (P) Ltd was issued with a **Show Cause Notice No.9/2013** (Commissioner) dated 27.03.2013 (herein referred as "SCN"). According to the Notice, all the Bill of Entries have been filed by Courier Operators under "Courier Bill of Entry-IV (CBE-IV)" meant for import of free gifts and samples i.e. duty-free imports only from the commencement of their operations till 2012 October. The Courier Operators themselves had subscribed to a self-declaration in the relevant portion of the CBE-IV that the goods imported as per this Bill of Entry include only bonafide commercial samples, prototypes of goods and bonafide gifts of articles for personal use of a value not exceeding ₹ 10,000/- and which for the time being not subject to any prohibition or restriction on their import to India. Moreover, it was found that the Courier Agency had imported goods at the declared value of ₹ 12,77,859/- during the period from the beginning of their operations till

October 2012 and cleared the same against 39 Courier Bills of Entry (in Form CBE-IV) in the name of various individuals. Thus, it appeared that the Imports attracted the violations/contraventions of the provisions under Section 28(4)(b) & (c), Section 114(a) of the Customs Act, 1962 and Regulation 5(3) and Regulation 13 of CIECR, 1998. Finally, the Courier Agency/Operator was issued with a Show Cause Notice requiring them to show cause to the Commissioner of Central Excise & Customs, ICE Bhavan, Press Club Road, Thiruvananthapuram as to why-

- a) The Customs duty of Rs. 16,10,183/- (Rupees Sixteen lakhs, Ten Thousand One hundred and Eighty-Three only) arrived at as mentioned in Para 16 above should not be demanded from them under Section 28(4) of the Customs Act 1962;*
- b) Interest under Section 28 AA of the Customs Act should not be demanded from them on the above amount;*
- c) Penalty under Section 114 A of the Customs Act, 1962 should not be imposed on them.*
- d) Penalty under Section 114 AA of the Customs Act, 1962 should not be impose on them.*

5. In the **Submission by Courier Operator on SCN**, they filed their reply on 19.04.2013 in which they elaborated their status especially w.r.t their good track record in handling export cargo at Trivandrum since 1982 & their activities and achievements along with the awards conferred on them. They further stated that Summons u/s 108 was issued and that all the details were produced on 04.01.2012 before the Deputy Commissioner as per his letter VIII/48/09/2011 Cus Tech dated, 12.12.2011 and to the Assistant Commissioner, Customs on 26.12.2012 and 28.12.2012. Also submitted that the Commissioner failed to give the details of intelligence against them and has not specifically mentioned the Courier agency which misused the license and instead he has mentioned it generally as "courier agencies". They further submitted that baggage is bonafide personal effects of an international passenger and unaccompanied baggage have to be shipped within one month from the date of arrival of the passenger in India. They also explained the meaning of bonafide gifts and pointed out that it is not restricted to relatives but can be sent by friends, acquaintances etc. They contended that the Investigating officer failed to mention the details of violations and how huge loss was caused to the exchequer, how duty could be levied on goods exempted by Government; that he failed to prove how they could convert bonafide gifts as baggage, that he failed to give details of investigation carried out; that he failed to prove how the Courier Cell by the Commissioner as per

P.N.8/2006 failed to notice the irregularity and also by audit parties during the last 7 years. Moreover, it was present in their submission that the Investigating Officer (I.O.) was not sure when they started the operation and the allegation that all the BE filed in CBE IV were meant for free gifts and samples as totally wrong; and informed that the invoice cum packing list alongwith the shipment and the packing list is pasted in each courier parcel as per Para 5, 2(a), (b), 3, 4 and 5 of the Courier Regulations, 1998/2010; assessment done by Courier Cell on verification of the contents and the parcels were x-rayed. Further, stated that the Investigating Officer failed to give the details of parcels cleared and how the figure ₹ 12,77,859/- arrived at. The Courier Agency stated that the contentions were totally wrong in as much as the Investigating Officer confirmed their replies to letters from department asking for consignee authorisations. Also, their reply dated 18.02.2013 to the Summons dated 14.02.2013 did not find a place in the SCN. They further stated that the SCN confirms that they have collected consignee authorisation as per Regulation 13(a) and produced for inspection on 04.01.2012, 26.12.2012 and 28.12.2012 and that the department failed to prove why the veracity is doubtful. They submitted that additional records would be produced. Thus, requesting an opportunity to be heard in person before adjudicating the case and requested to drop all the proceedings in the SCN.

6. In the **Personal Hearing after SCN** which was granted to the Courier Operator on 07.02.2014. Shri. Stanely Paulus, Managing Director, M/s S & J Travel and Cargo Services (P) Ltd; appeared before earlier Adjudicating Authority for PH. He reiterated what has been given in his written explanation to the show cause notice and submitted two additional written submissions in support of his arguments. In the light of the above, he requested that the proceedings may be dropped. He had nothing more to add.

7. The **Adjudicating Authority i.e. initial Authority** vide **Order no TVM_EXCUS-000-COM-38-13-14 dt 27.03.2014** ordered ₹ 16,10,183/- (Rupees Sixteen lakhs Ten Thousand One hundred and Eighty-Three only) being the customs duty and cesses on the goods imported by him under section 28(8) of the Customs Act, 1962. Further, liable to pay interest at the appropriate rate on the amount confirmed as above as per section 28 AA of the Customs Act, 1962; imposed a penalty of ₹ 16,10,183/- (Rupees Sixteen Lakhs Ten Thousand One Hundred and Eighty Three only) under Section 114A of the Customs Act, 1962 in as much as they have wilfully suppressed /mis declared the facts with intent to evade payment of duty; imposed a penalty of ₹ 2,00,000/- (Rupees Two Lakh Only) under Section 114AA of the Customs Act, 1962 in as much as he has fraudulently availed the exemption by wilful mis-declaration, falsification of records and fabrication of documents.

8. Aggrieved by the order, the **Courier Agency/ Operator** filed an **appeal before the Hon'ble CESTAT** and the Tribunal vide its final order No. 21881/2014 dated 14.10.2014 is set aside the impugned OIO order and the matter is remanded to the original authority for deciding the matter afresh after giving reasonable opportunity to the appellants to present their case with the directions mentioned as below:-

“

- i. *The first step is to verify the authorization given by the importer and its genuineness and only then duty can be demanded from the courier.*
- ii. *If the authorizations are not considered and at least a few authorizations are not proved to be bogus/fictitious, it may be unfair to demand the duty from the courier operator. Therefore we consider that matter requires more detailed consideration in the hands of the Commissioner and all the authorizations have to be considered and at least a few at random verified before demanding duty from the courier without expressing any opinion.*

”

9. However, the SCN was kept in Call Book on the ground that similar issues were pending in the High Court as per Circular No. 1028/16/2016-CX dated 26.04.2016, (cases where injunction has been issued by SC/HC/CESTAT). Further, the case was transferred to Customs (Preventive) Commissionerate after the restructuring of Jurisdiction. Finally, the case was taken out of Call Book as per the previous Commissioner's review order on 05.08.2023.

10. Subsequently, Personal Hearing was conducted, by the then adjudicating authority and Shri. Stanley Paulus, Director, M/s S & J Travels and Cargo Services (P), Ltd. was heard. He gave a written submission dated 28.09.2023 wherein, the managing director replied that there was no bogus authorisation submitted; that the Adjudicating Authority had failed to prove the nature and the number of bogus authorisations produced. Due to the transfer of the earlier adjudicating authority the case was transferred to the present adjudicating authority to look upon the matter freshly.

DEFENCE SUBMISSIONS

11. Personal hearing was granted on 25.11.2024. Shri Stanley Paulus appeared on behalf of M/s S&J Travel & Cargo Services (P)Ltd. He stated that he was issued registration certificate with No 3/2010 dated 30.12.2010 as authorized courier under CIECR, 1998 for import and export of cargo through courier mode for operations from Trivandrum International airport. He stated that he was served with Show Cause Notice dated 27.03.2013 for evasion of Customs Duty and the SCN was confirmed by then Commissioner of Central

Excise & Customs vide order-in-original dated 14.10.2014. On their application of appeal in CESTAT, Bangalore, the CESTAT vide its final order No. 21881/2014 dated 14.10.2014 remanded the case back to the original adjudicating authority for fresh adjudication on merits, holding that at least a few authorizations had to be verified for its authenticity before demanding duty from the party. He further submitted that he had produced authorizations for 2 bill of entry, one for a courier consignment of dry fish, milk powder etc. sent by a person from Maldives to him, and the second one, a consignment of baggage tags from Maldives, which were not considered in his favour by the former Commissioner, who adjudicated the case, stating that the authorization were not proper and not genuine. He had submitted additional submission on 26.11.2024. Further, he stated that his first import was cleared on 26.07.2011, six months after the license was issued. The last import was cleared on 14.10.2012. The first inspection was conducted as per the request from the Deputy Commissioners letter dated 12.12.2011 in which all documents were inspected in accordance with Para 4 (II) in Circular No 33/2010 dated 07.09.2010. He further stated that the MAWB number 986 9101 3160 dated 09.10.2011 and the MAWB number 986 9101 3521 dated 14.10.2012 were inspected again during the second inspection. A letter to the Assistant Commissioner was submitted along with the copy of the Authorization, the Bill of Entry and other documents. These were also produced during the personal hearing held as per the Bill of Entry signed by the Superintendent. These two Bill of Entries were submitted to the present Commissioner. The earlier 37 shipping bills, inspected by Deputy Commissioner, as per inspection dated 04.01.2012, were not available, as it is not mandatory to keep documents after one year or date of inspection by customs whichever is later as per Para 4 (ii) in Circular No 33/2010 dated 07.09.2010. He further stated that he had produced the suspension order by the Commissioner and the suspension of license was revoked by the Chief Commissioner on 28.06.2013. On 25.03.2013, his license was cancelled, and the security deposit was ordered to be forfeited as per the Order in Original No 1/2013 dated 05.05.2013. A Show Cause Notice was issued on 27.03.2013, alleging all the matters mentioned in the order. However, the same order was set aside by the Chief Commissioner on 28.06.2013, three months after the issuance of Show Cause notice. As a result, the whole case was set aside as per the above Order No. C. No. VIII/48/69/2013 CCO (K2) V/2591, dated 28.06.2013. A personal hearing was granted on 23.05.2013 for the SCN issued on 27.03.2013. By that time, even though the whole order and case had been set aside by the Chief Commissioner on 28.06.2013, after eight months of the Commissioner's order, the Commissioner overlooked this defect and passed an order dated 27.03.2014, confirming the duty of ₹16,10,163/- and imposing a penalty of ₹16,10,163/- and is in violation of the customs circulars and notifications, as well as the Chief Commissioner's

order cited above. The same was challenged in the Honorable Tribunal, CESTAT, Bangalore which set aside all the orders of the Commissioner (Vide Order No. 21881, dated 14.10.2014) and remanded the case to the Commissioner, who had passed the order in violation of the customs regulations and the Chief Commissioner's order dated 28.06.2013.

DISCUSSIONS AND FINDINGS

12. I have carefully gone through the Show cause notice, facts, records of the case, the written submissions by Shri Stanley Paulus and the submissions given by him during the personal hearings.

13. The primary issues to be determined are:

A. Whether the consignments cleared by the Courier Agency as free gifts under Regulation 3(d) of CIECR, 1998, were illegal imports as unaccompanied baggage (*and therefore classifiable under Customs Tariff heading -9803*)

B. Whether the Courier Agency had fulfilled the obligations under Regulation 13 of CIECR, 1998.

C. Verification of all authorizations and its genuineness given by the Courier Agency, if not at least a few authorizations as directed vide CESTAT Order No. 21881/2014 dated 14.10.2014 proved to be fictitious/ bogus.

14.1. I will first discuss the classification of the imported goods proposed in the SCN under Customs Tariff Head(CTH) 9803, imported by the Courier Agency - M/s S & J Travel & Cargo Services (P) Ltd. Since the SCN alleges that CTH 9803 was attracted for the import, the demand was raised in accordance of the duty structure under the above Customs Tariff Head.

14.2. Moreover, the investigation raised the issue that the Courier Agency had cleared the goods under the provisions of the Courier Imports and Exports (Clearance) Regulations, 1998 (CIECR, 1998) as "free gifts" were, in reality, unaccompanied baggage. Even the SCN alleges that the goods cleared as free gifts under Regulation 3(d) of CIECR, 1998, were, in fact, unaccompanied baggage of international passengers. It further alleges that, sample verification of consignee authorizations was conducted, leading to the inference that the goods were not free gifts but unaccompanied baggage. The SCN also alleges that overseas associates of M/s. S & J Travels & Cargo Services (P) Ltd acted as independent operators, facilitating fraudulent clearance of goods as free gifts to evade customs duty.

14.3. In fact, the Chapter 98 of the Customs Tariff Act, 1975, specifically covers two tariff headings relevant to dutiable goods:

Customs Tariff Head 9804 pertains to “dutiable goods, imported for personal use”—goods imported via courier.

Customs Tariff Head 9803 applies to “All dutiable articles, imported by a passenger or a member of a crew in his baggage,” including unaccompanied baggage.

However, Chapter Note No. 5 explicitly sets the **parameters** for classifying goods under Customs Tariff Head 9803, stating that unaccompanied baggage **must meet specific conditions to qualify** as such. For goods to qualify as Unaccompanied Baggage under Customs Tariff Head 9803, the **goods must belong to an international passenger and form part of their personal effects or household items**. The goods must be **transported separately and not accompany the passenger during travel**. Adequate documentation must **establish the linkage between the passenger and the goods** (e.g., declarations, travel details, and shipping documents). The goods must comply with customs regulations regarding admissibility, exemptions, and duty payment.

14.4. Upon reviewing the allegations, several deficiencies and gaps in the investigation were identified. The investigation did not provide a conclusive verification report based on consignee authorizations to substantiate the claim that goods cleared as free gifts were unaccompanied baggage. The SCN lacked any documentary evidence or verification reports that could support the unmistakable inference made in the investigation. The SCN did not name even a single overseas associate of M/s. S & J Travels & Cargo Services (P) Ltd. who allegedly facilitated the fraudulent clearance of goods.

14.5. In this case, the investigation has not established that the courier import as bonafide gifts of articles for personal use is actually unaccompanied baggage. For instance, the investigation neither identified the international passenger as one of the criteria to consider as Unaccompanied baggage nor unearthed the misuse of passport details of any international passenger. Thus it failed to provide conclusive verification reports to substantiate that the goods cleared by Courier Agency as free gifts were unaccompanied baggage. It did not present evidence linking overseas associates to the alleged fraudulent activity. It also failed to establish the role of any specific individual or entity in facilitating the evasion of customs duty. As a result, the mere allegations in the SCN, without adequate documentary evidence or

substantive investigative efforts, are **insufficient to reclassify the goods as Unaccompanied Baggage under Customs Tariff Head 9803.**

15. Further, I find that the only Relied Upon Documents (RUDs) in the show cause notice served to the Courier Agency are the following-

- i. Statement dated 22.02.2013 given by the Shri Stanley Paulus, the proprietor of M/s. S & J Travels & Cargo Services (P) Ltd before the Investigation Officer
- ii. Reply dated 26.12.2012 by the Courier Agency
- iii. Reply dated 28.12.2012 by the Courier Agency
- iv. Department's letter dated 17.01.2013
- v. Reply dated 22.01.2013 by the Courier Agency
- vi. Reply dated 14.02.2013 to the Summons by Department

16.1. The Statement dated 22.02.2013 is in a questionnaire format which brings about the general facts and information of the Courier Agency and about the general functioning from their commencement of operations. The Statement was recorded under Section 108 of the Customs Act, 1962 does not clarify whether the consignments were imported by the courier agency or other parties, nor does it investigate the consignee authorizations provided by the agency. The Statement did not explore or question the five authorizations mentioned in the agency's replies dated 26.12.2012 and 28.12.2012. Similarly, the airline carrier, Island Aviation Services Limited, was not questioned about the authorizations submitted by the courier agency. There is no other statement under Section 108 of the Customs Act in addition to the above one given by the courier agency to conclude on the doubtful import of goods through courier. The courier agency also stated that all records and registers were submitted to the department vide reply dated 04.01.2012, but the consignee authorizations were not explicitly included in the list of 12 records submitted during the inspection. Despite acknowledging the courier agency's reply dated 04.01.2012, the statement did not identify discrepancies in the records or ask relevant questions while recording the statement. Even though the courier agency in the statement, stated that he will produce the same records and registers again if called for but did not produce to the present adjudicating authority. Furthermore, the shortcomings in the statement were exacerbated by the failure to inquire about the duty computation or misdeclaration of goods in the 39 courier bills of entry.

16.2. The statement did not confront the Courier Agency with the relevant documents and question about the non-submission of documents. Additionally, there was no thorough examination of the records or registers, or appropriate interrogation conducted during the statement-recording

process. On perusal, there is no evidence from the statement for misutilisation of benefit under Customs Notification No.171/93 read with provisions of CIECR, 1998. From the RUDs, it is not clear that the said authorisations of the remaining 37 Bills of Entry were submitted by the party to the department with an acknowledgement and simultaneously it is not evident that the department had analysed or examined the mis-utilisation of the above-mentioned Notification. Parallely, from RUDs and the Statement it is not clearly emerging that the investigating officer had accepted the submission related to the document, which was acknowledged by the department. It is surprising that a thorough analysis of the documents related to the allegation was not conducted and no questions were posed to the Courier Operator to explore further to substantiate the allegations during the recording of the statement dated 22.02.2013 under Section 108 of the Customs Act, 1962.

16.3. Despite acknowledging the courier agency's response dated 04.01.2012, the proper officer did not identify discrepancies in the records or ask specific questions while recording the statement. These lapses suggest that the investigation did not substantiate the allegations of mis-utilization under the specified customs notification, and the necessary steps to prove the case were not taken. Thus, the statement is inconclusive with respect to the allegations levelled against the courier agency in the SCN.

17.1. The next two replies dated 26.12.2012 and 28.12.2012, as a part of RUDs, are in connection to the letter dated 17.12.2012 from department asking to furnish consignee authorisations from the Courier Operator. In the reply dated 26.12.2012, there are three enclosures giving client authorization to the Courier Agency in handling Import /Export Shipment at Trivandrum Airport. One of the said client authorisation is given by Island Aviation Services Ltd. Neither the engagement of the courier with other private agent/forwarder (Island Aviation Services Ltd.) is asked for in the statement nor has investigation explored to verify the non-operational or pseudo nature of the forwarder. Further, in the reply dated 28.12.2012, there are five consignee authorisations with regard to two Bills of Entry (MAWB number 986 9101 3160 dated 09.10.2011 and the MAWB number 986 9101 3521 dated 14.10.2012). In which, authorizations has no complete addresses but mobile numbers. But in this case the Investigation has not proved the authenticity of the authorisations. It should have verified the addresses, phone numbers and ensured the genuineness of delivery of the import consignment. In this instance the investigation has never gone pursuing the consignees namely Abdullah Niyas, Anju John, Prasanth BP and Bindu Varghese. Further, in this process it could have been revealed whether the goods are meant for the consignee as mentioned in the authorisations and

Bill of Entry. This Bill of Entry (CBE-IV) with irregular/incomplete address in the authorisations have not been decrypted and discussed in the SCN.

17.2. The Courier Agency submitted a reply letter dated 04.01.2012 vide which it contains a list of 12 documents which was acknowledged by the department. However on perusal of the list of documents, the authorizations obtained from the consignees are not figuring in the said list of documents. Ironically, the same letter is referred in the Statement dated 22.02.2013 recorded from the Courier Agency. Further, the Courier Agency has claimed that he had submitted all the authorizations along with the letter 28.12.2012. Only five authorizations with respect to two bills of entry were produced vide letter 28.12.2012. Whereas, the duty demanded in the SCN is based on 39 Bills of Entry. The investigating officer did not ask for a specific document viz. a set of authorisations with respect to all the 39 Bills of Entry. Therefore, the fictitious/bogus nature of the authorisations is not established by the investigation.

17.3. The replies dated 26.12.2012 and 28.12.2012, which include consignee authorizations, were not properly scrutinized. The investigation did not explore the role of Island Aviation Services Ltd. or verify the legitimacy of the forwarder, nor did it adequately follow up on the consignees or confirm the authenticity of the authorizations. Furthermore, the incomplete addresses and lack of verification in the Bill of Entry raised doubts that were not addressed in the Show Cause Notice. The failure to request specific documents or to challenge the legitimacy of the authorizations leaves the allegations of fictitious/bogus authorizations unsubstantiated.

18.1. Further, Department's letter dated 17.01.2013 asked for scrutiny/inspection of the authorisations from the beginning of the courier operations. In reply dated 22.01.2013 by the Courier Agency, they have reiterated about submitting the authorisations with an acknowledgement by the department on the same day, in which, it was submitted that their documents & records had been produced on 04.01.2012 and premises had been inspected earlier. This inspection was prior to the investigation leading to the issuance of SCN. Also, they have submitted that all the records up to October 2011 were submitted in the inspection which was carried out on 04.01.2012 and the records for the subsequent period alone have been preserved with them.

18.2. Therefore, the investigation reveals significant gaps and failures in addressing critical aspects of the case. Despite the department's letter dated 17.01.2013 requesting scrutiny of authorizations from the beginning of the courier operations, the Courier Agency merely reiterated previously acknowledged submissions. Furthermore, while the agency claimed to have

submitted all records, including a list of 12 records on 04.01.2012, the consignee authorizations were not included, and it is not evidently clear from SCN whether these documents are examined during investigation. The lack of thorough inspection and incorporation of these documents into the RUDs leaves substantial gaps in the evidence provided in the Show Cause Notice.

19. In the reply dated 14.02.2013 given by the Courier Agency, he has reiterated the earlier submission given to the department. Further he has submitted that it never imports courier consignments as an importer, but imports courier consignments like CHA in Air Cargo Complex or Sea Port. As per Regulation 3(a) of CIECR, 1998, an "Authorised Courier" in relation to import or export goods means a person engaged in the international transportation of the goods on express door to door delivery basis and is registered in this behalf by a Commissioner of Customs. All the bills of entry were filed by the above courier agency and not fulfilled its obligations under above regulations by producing deficient authorizations i.e. incomplete addresses of the consignees. It is the courier agency who is the importer as he held himself to be as such by filing Bills of Entry and getting goods cleared with incomplete set of consignee authorizations. Therefore, in the above case I find that the contention of courier agencies that they are not the importer is fallacious.

20.1. As an adjudicating authority if I try to fill the gaps in the inspection and investigation, I keenly observe that vide letter dated 22.01.2013 submitted by the courier agency, wherein it is mentioned that their documents and records were produced on 04.01.2012 during the inspection in response to a letter issued by the Technical Section under file no. VIII/48/09/2011 Cus-Tech/10097. It appears that the courier agency made its first import in August, 2011 and the last import took place on 22.10.2012. On 17.12.2012, the department issued a letter requesting consignee authorizations. In response, the courier agency submitted a reply on 26.12.2012, followed by an additional reply on 28.12.2012. However, these replies contained only five authorizations pertaining to two bills of entry and the authorizations pertaining to the remaining 37 bills of entry were not submitted. As per Circular No. 33/2010-Customs dated 07.09.2010 and subsequent Circular No.9/2010-Cus, dated 08.04.2010, authorized couriers are required to retain authorizations for a period of one year or until the date of inspection by customs, whichever is earlier. The Courier agency vide the aforementioned letter submitted that the remaining 37 bills of entry were inspected by the Deputy Commissioner on 04.01.2012 are no longer available and he claims that it is not mandatory to keep documents beyond the stipulated period. They also submitted that they have not kept the records for the period before investigation. Furthermore, the documents in question were

not included as part of the Relied Upon Documents (RUD) to substantiate the case. Even though the courier agency in the statement, stated that he will produce the same records and registers again if called for but did not produce authorisations pertaining to remaining 37 bills of entry to the present adjudicating authority. The authorisations which were preserved and available with them i.e. 5 in number were submitted to the department. No address record to prove the point that the authorized courier fraudulently cleared unaccompanied baggage classifiable under CTH 9803 without payment of appropriate customs duty. Further the main question of computation of the duty has not been worked out in SCN and Order-in-Original No. TVM_EXCUS-000-COM-38-13-14 dt 27.03.2014. It is surprising that not even a single RUD has the value of the goods imported through all the 39 Bill of Entries barring the 5 consignee authorizations submitted by the Courier Operator. Thus, even assuming that the Courier Agency may have submitted the relevant documents for the period in question, not a single document was challenged or questioned during the inspection or investigation at the time the statement was recorded and not included as RUD. Further, there is no other authorisations discussed in RUDs that correlates with the other Bills of Entry.

20.2. The investigation had not established the allegations on critical aspects such as duty forgone, mis-declaration of goods, or consignee authorizations. It had failed to scrutinize the documents submitted by the courier agency primarily consignee authorizations. The analysis by the investigation did not validate the calculation of the duty as no information was provided or relied upon in the SCN provided regarding the duty computation and valuation of goods in the 39 Bills of Entry. Further, the investigation overlooked significant documents, including the consignee authorizations, and failed to verify their authenticity or establish whether the courier agency had submitted them properly. Thus, the investigation lacks *prima facie* evidence to support allegations of mis-utilization of the Customs Notification No.171/93-Cus dated 16.09.93, read with Courier Export & Import (Clearance) Regulations 1998, and no conclusive proof of fictitious or bogus consignments was provided. The RUDs in the SCN mention the authorisations of the 2 Bills of Entries but don't provide the authorisations of the remaining 37 Bills of Entry. Accordingly, the relied upon documents fails to substantiate and uncover the calculation of the duty demand in this case, even making it impractical to discuss authorizations for other 37 Bills of Entry.

21.1. It is pertinent to note that the Hon'ble CESTAT, Bangalore, in its Final Order No. 21881/2014 dated 14.10.2014, remanded the case back to the original adjudicating authority for fresh adjudication, emphasizing the

need for verification of at least a few authorizations for authenticity before demanding duty from the party.

21.2. In order to follow the directions of Hon'ble CESTAT, let us discuss the two bills of entry with five authorizations which is available as RUDs. The courier authorizations were furnished by the Courier Agency in reply of the letter by the department vide file no C No. VIII /22/14/2012 Cus (A) dated 17.12.2012. It is seen that vide the said letter Department asked for the courier authorizations for the period of beginning of their courier operation to date or before 28.12.2012. In reply, Courier Agency has furnished only five authorisations dated 26.12.2012 and 28.12.2012 in the names of Abdullah Niyaz, V Stanley Paulus, Anju John, Prashanth B P and Bindu Vargese. Previous Commissioner in the OIO TVM/EX-CUS-000-COM-38-13-14 dated 27.03.2014 at para 11 sub para (e) found that the consignee addresses were all bogus.

21.3. The Courier Agency provided five consignee authorizations related to two Bills of Entry (MAWB number 986 9101 3160 dated 09.10.2011 and MAWB number 986 9101 3521 dated 14.10.2012). Among these, one authorization belonged to Stanley Paulus, the owner of S & J Courier and even during statement the same was not countered with Stanley Paulus to unearth the mis-utilisation, if any. However, the authorizations lacked complete addresses and only included mobile numbers. The investigation did not go beyond accepting these authorizations and failed to verify their authenticity. It should have traced the mobile numbers to check the validity of the consignees' details, including verifying the addresses and ensuring the legitimate delivery of the goods. The investigation did not pursue consignees such as Abdullah Niyas, Anju John, Prasanth BP, and Bindu Varghese to confirm whether the goods were intended for the consignees as mentioned in the authorizations and Bills of Entry. Upon examining the four remaining authorizations, it is evident that their addresses are improper and identical, except for that of Stanley Paulus. The investigation could have conducted a thorough physical verification of the consignees' existence by checking the addresses in the Courier Bill of Entry (CBE-IV) filed at the time of import, or before issuing the show cause notice. The investigation also failed to question the Courier Agency about the accuracy and validity of these addresses. It is found that no further effort was made to substantiate the genuineness of the authorizations.

21.4. In light of the above facts, I find that while the Courier Agency submitted five authorizations, which were incomplete, lacking proper addresses and providing only mobile numbers. Regrettably, the investigation did not make any attempt to trace these numbers or verify the identities and

details of the consignees. The addresses provided were inadequate, and no physical verification was conducted to establish the existence or legitimacy of the consignees. Furthermore, the investigation neglected to challenge the Courier Agency regarding the validity of these addresses, nor did it make any concerted effort to substantiate the genuineness of the authorizations. Although the SCN deemed the veracity of these authorizations to be doubtful, no corroborative evidence has been presented before the adjudicating authority to support this claim. Given the absence of addresses in the authorizations and the significant lapse of time, it is now not possible for me to verify their authenticity, even if such verification were desired. Hence, even if I do not consider these four authorizations, I am still unable to conclusively prove that any of the authorizations are bogus or fictitious.

22. In these circumstances, I find that the investigation has failed to establish that the consignments cleared by the Courier Agency were illegal imports of unaccompanied baggage classifiable under Customs Tariff Heading 9803. Furthermore, no corroborative evidence has been provided to substantiate the authenticity of the authorizations submitted by the Courier Agency or to prove that any of the authorizations were fictitious or fraudulent. Additionally, the documents relied upon in the Show Cause Notice (SCN) do not provide a basis for the falsely availing the benefit under exemption Notification No.171/93-Cus dated 16.09.1993. I further find that though the investigation has arrived at various deductions/conclusions alleging that the authorized courier are not working in conformity with the provisions of CIECR, 1998 on the basis of information gathered regarding the activities of the authorized courier, none of these conclusions have been substantiated with help of any documentary evidence brought out in the investigation conducted against the Courier Agency.

23.1. Thus, the investigation had not established whether the consignments were genuinely "free gifts" or if they had been misclassified to evade customs duty. The free goods as per the Regulation-3(d) of CIECR, 1998 is reproduced below-

" (d) "free gifts" means any bona fide gifts of articles for personal use of a value not exceeding rupees twenty-five thousand for a consignment in case of export goods and rupees ten thousand for each consignment in case of import goods which are not subject to any prohibition or restriction on their export out of or import into India and for which no transfer of foreign exchange is involved ; "

Whereas unaccompanied baggage is "All dutiable articles, imported by a passenger or a member of a crew in his baggage". The act of bringing unaccompanied baggage as "free gifts" by misusing the Exemption Notification

constitutes an illegal clearance procedure. A crucial element missing from the investigation is the verification of the authenticity of the consignees and the nature of the goods being cleared. No effort was made to confirm whether the shipments were, in fact, unaccompanied baggage disguised as legitimate "free gifts". The investigation has failed to address the key issues necessary to establish a clear link between the goods cleared by the Courier Operator and unaccompanied baggage under the guise of "free gifts".

23.2. Under Regulation 13 of CIECR, 1998, an Authorized Courier is required to verify the identity and authenticity of consignees. However, the investigation did not demonstrate that the Courier Agency had fulfilled this obligation. The addresses provided in the consignee authorizations were found to be improper or incomplete, and the investigation did not perform any physical verification of the addresses or attempt to contact the consignees. This oversight into investigation even suggests that the Courier Agency had not complied with regulatory requirements in verifying the consignee's details.

23.3. The SCN was reliant on a limited and incomplete set of documents, none of which conclusively supported the claims of fraudulent activity. There was no corroborative evidence to prove that the consignments were not genuine free gifts. From the RUDs it is not clear how the assessed value is arrived at. The duty demanded in the Show Cause Notice (SCN) appears to have been calculated based on a "set of papers" available in the file, which lists the Bills of Entry along with the value of the goods imported by the Courier Agency. However, neither the SCN nor the earlier Order-in-Original No. TVM_EXCUS-000-COM-38-13-14 dt 27.03.2014 includes an Annexure or Worksheet where the calculation has been clearly enumerated, apart from the same "set of papers" listing the Bills of Entry. However, the validity of these papers remains unestablished, as they lack any stamp, seal, or signature from the investigation team, inspection authority, or the then adjudicating authority. As a result, the investigation has failed to provide documentary evidence to support the valuation of the imported goods, making it impossible to substantiate the duty demand at this stage.

23.4. In light of the deficiencies in the investigation and the incomplete set of documents, the SCN did not present sufficient evidence to establish that the Courier Agency was involved in fraudulent activities. The investigation failed to link the Courier Agency to the alleged fraudulent clearance of goods, and no evidence was provided to prove that the consignments were misclassified as free gifts to evade customs duties. Even if I were to consider the two Bills of Entry (MAWB number 986 9101 3160 dated 09.10.2011 with a declared value of ₹8067/- and MAWB number 986 9101 3521 dated 14.10.2012 with a declared value of ₹9222/-) to be bogus, the duty cannot be

demand based on the goods imported at the rates specified in the Courier Bill of Entry. This is because the assessment and valuation of these goods were not disputed during the investigation nor recorded in the Show Cause Notice. Additionally, the goods were declared as genuine gifts with a value below the threshold of ₹10,000/-. Thus, I am unable to confirm the demand as the evidence on record fails to meet the necessary standards of substantiation. In the absence of clear evidence, I, as an adjudicating authority cannot proceed with the demand of ₹16,10,183/- under section 28(4) of the Customs Act, 1962 for customs duty. Further as the liability of the duty herein is not established by the investigation, I cannot charge an interest on delayed payment of duty under section 28AA of the Customs Act, 1962.

24. Consequently, as mentioned above, my incapacity of demanding the duty also refrains me from imposing penalty for short-levy or non-levy of duty under section 114A of the Customs Act, 1962.

25. In order to follow the directions of the Hon'ble CESTAT in final Order No. 21881 dated 14.10.2014, it is imperative to analyse the available authorizations thoroughly. On perusal of the authorizations in the names of Abdullah Niyaz, V. Stanley Paulus, Anju John, Prashanth B. P., and Bindu Vargese given by the Courier Agency. I find that these authorizations lack correct addresses of the consignees. The addresses declared are incorrect and improper except mobile numbers. Ideally the inspecting officer has to take it forward to prove its fictitious nature at the initial inspection. In this case, the investigation has failed to conclusively establish that the courier agent knowingly or intentionally made, signed, used, or caused to be made, signed, or used, any declaration, statement, or document that was false or incorrect in any material aspect in the course of conducting their courier business for clearance purposes. Also, as per CIECR, 1998 read with CIE(EDP)R, 2010-Authorized couriers are required to obtain authorization from consignees for the clearance of import or export goods. They must advise clients to comply with the provisions of the Customs Act, 1962, and related rules and regulations. Couriers are obligated to exercise due diligence in furnishing information to customs authorities and maintain prescribed records and accounts. The Courier Agency had to maintain the KYC details wherever necessary and ought to have produced before the investigation or adjudicating authority. As per Section 114AA of the Customs Act, 1962 "*if a person knowingly or intentionally makes, signs, or uses—or causes to be made, signed, or used—any declaration, statement, or document that is false or incorrect in any material aspect in the course of customs-related business, they shall be liable to a penalty not exceeding five times the value of the goods*". I find that the aforementioned authorizations, are incomplete, the Courier

Agency has submitted insufficient material for using false or incorrect material in customs-related matter and shall be liable under Section 114AA of the Customs Act, 1962. In this case, the penalty applies to five authorizations in two Bills of Entry—MAWB number 986 9101 3160 dated 09.10.2011, with a declared value of ₹8,067/-, and MAWB number 986 9101 3521 dated 14.10.2012, with a declared value of ₹9,222/- which were produced before the adjudication authority. Therefore, I am imposing a penalty of ₹86,445/- for the use of false and incorrect material under Section 114AA of the Customs Act.

26. Subsequently, I am constrained by the principle that adjudicating authorities cannot go beyond the scope of the Show Cause Notice. Even if I were to consider the possibility of imposing a penalty for the non-submission of authorizations beyond the available five, for a contravention not expressly mentioned in the statute, under Section 117 of the Customs Act, 1962, along with a penalty under Regulation 14 of the CIE(EDP)R, 2010, for the absence of a complete address. Imposing penalty on grounds not enumerated in the notice would be beyond jurisdiction. Furthermore, the Courier Agency was not afforded an opportunity to defend against such a charge, which would violate the principles of natural justice, specifically the principle of *audi alteram partem*. Additionally, a review of the reply submitted by the Courier Agency reveals that no arguments were made regarding a penalty under this provision, which further underscores the inability to proceed with imposing a penalty in this instance.

27. Given the absence of sufficient evidence to support the allegations, and in accordance with the principles of natural justice, the benefit of doubt is extended to the Courier Agency. I conclude that the investigation did not provide conclusive evidence to support the demand for duty or to prove the fraudulent nature of the consignments cleared by the Courier Agency. The SCN's reliance on incomplete and inadequate documentation led to a failure to substantiate the allegations. The SCN is found to be deficient, and the allegations raised in the notice are not substantiated. Therefore, the proceedings against M/s S & J Travels and Cargo Services (P) Ltd. are dropped, and no duty demand or penalty is imposed.


28. Accordingly, I pass the following order:

ORDER

- I.** I drop the proceedings **in respect of demanding the duty** initiated against **M/s S & J Travels and Cargo Services (P) Ltd.** vide Show Cause Notice No. 09/2013 dated 27.03.2013.

II. I am imposing a **penalty of ₹86,445/-** for use of false and incorrect material under Section 114AA of the Customs Act, 1962.

o/c.


के. पद्मावति/ **K PADMAVATHY**
आयुक्त/ **COMMISSIONER**

To,

M/s. S & J Travels & Cargo Services (P) Ltd
T.C. No 26/863, Panavila Junction,
Thycaud Post,
Thiruvananthapuram District, Kerala- 695014

Copy submitted to:

The Chief Commissioner, Central Tax, Central Excise & Customs, C.R.
Building, I.S Press Road, Kochi – 682018 (**Review Cell**).

Copy to:

1. Master File,
2. Commissioner's File
3. The Assistant Commissioner, Air Cargo Complex,
Thiruvananthapuram
4. Master File/Notice Board/File