

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS [APPEALS]
CUSTOM HOUSE : COCHIN -682 009.

F. No. C27/PAD/54/2007AU Cus.

Date of Order: 31/03/2008

Date of Issue : 10/04/2008

PASSED BY:- SHRI. BISWAJIT DATTA, COMMISSIONER (APPEALS)

ORDER-IN- APPEAL NO.93/2008

[Issued under section 128 A of the Customs Act, 1962]

1. This copy is granted free of charge for the private use of the person to whom it is issued.
2. Any person aggrieved by an order issued under section 128 A of the Customs Act, in respect of cases other than listed at item 3 below, can file an appeal under Section 129 A (1) of the Customs Act, 1962 in form CA. 3 before **The Customs Excise & Service Tax Appellate Tribunal (South Zonal Bench) WTC Building, 1st Floor, Federation of Karnataka Chamber of Commerce & Industry Complex, Kempa Gowda Road, Bangalore-560 009, within 3 months from the date of communication of the order.**

The appeal must be filed in quadruplicate and must be accompanied by:

- (A) Copy of this order and also the Order-in-Original both in quadruplicate (at least one each of both should be a certified copy) and
 - (B) A fee of:-
 - (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;
 - (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;
 - [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.
3. Any person aggrieved by an order issued under section 128 A of the Customs Act, in respect of the categories of cases listed below, can prefer a Revision Application under section 129DD(1) of the Customs Act, 1962 (as amended) to the **Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, Department of Revenue, Parliament Street, New Delhi, within three months from the date of the communication of the order.**

Orders relating to: -

- a) any goods imported or exported as baggage;
- b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
- c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made there under.

The Revision Application in form No.CA.-8 shall be filed in duplicate and shall be verified in such manner as may be specified in the relevant rules and shall be accompanied by:-

- (A) 2 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870;
- (B) 2 copies of the decision or order passed by the Customs Officer which was the subject matter of the order referred to in clause (A).
- (C) A fee of: -
 - (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;
 - (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees:

The duplicate copy of the T.R. 6 Challan evidencing payment of Rs.200/- (Rupees two hundred only) or Rs.1, 000/- [Rupees One Thousand Only] as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous items, being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application shall be enclosed.

4. The documents authorising the representative, to sign and appear on behalf of the appellant, if the appeal is signed by an authorised representative, specified under Rule 9 of Chapter IV of the Customs (Appeals) Rules, 1982 shall be enclosed.

Name and address of the appellant : Shri Santosh Kumar K.R.,
Kallada House, Thanissery P.O.,
Irinjalakuda, Trichur – 680 701.

Appeal filed against : Order No. Nil. dated 12/01/2007
passed by the Assistant Commissioner
of Customs, Postal Appraising
Department, YMCA Building,
Chittoor Road, Cochin – 682 017.

The importer herein imported post parcels Nos.031.099 and 031.100. The goods were examined at Foreign Post Office at Cochin on 28/11/2006 and was found to contain the following goods.

- (1) Simulated 3D Aerobatic Remote Control Aero plane SAPAC Brand extra 330 L Aero plane FT 06-V (3 numbers);
- (2) 3D Aerobatic Remote Control Jet Aero Plane (2 numbers);

As per the EXIM Policy, the importer of consumer electronic goods through post is a violation to both EXIM Policy, 2002-2007 and Foreign Trade Order, 1993. Further, the goods would be classified under Chapter 88.02 as Aircraft which have self-propelling property and maneuvering capability. These goods requires specific import license. Subsequently a call memo- cum Show Cause Notice was issued to the importer to produce the license or show cause as to why the goods should not be confiscated under Section 111(d) and 111(m) of Customs Act, 1962 read with para 3(1) (h) of Foreign Trade Order, 1993, and why penalty should not be levied on the importer under Section 112 of the Customs Act, 1962. Vide letter dated 08/01/07 the importer replied to the Show Cause Notice stating that the imported items are reduced size, remote controlled recreational model of Aero planes/Jets with in-built motors and that those items were classifiable under CTA 95.03.80 and do not require any import license.

After granting a Personal hearing to the importer the Original authority, considering the potential security risk, absolutely confiscated the impugned goods but refrained from imposing any personal penalty. Aggrieved by this order, the appellant preferred this appeal.

The grounds of appeal are;

1. that Assistant Commissioner of Customs(PAD) was wrong in stating that Chapter 9503-83 only covers toys as those imported items were reduced size recreational models (of Aero planes/Jets) with in-built motors;
2. that the HSN Explanatory Notes states that Chapter 95 not only covers toys but also “the models of a kind mainly used for recreational purposes, for example working or scale models of Aircrafts”;

3. that the Assistant Commissioner (PAD) ignored the fact that Chapter 95 contains not only toys but also “models” and so instead of classifying the imported goods under 9503.80 as “models”, the lower authority erroneously classified that as “Aircraft” under Chapter 88.02.

On 14/02/2008, Shri Santhosh Kuamar K.R, appellant appeared for Personal hearing.

Findings and order: I have carefully gone through the records of the case, grounds and submissions made during the Personal hearing. The issue here is whether the item imported through the Post parcel namely (1) Simulated 3D Aerobatic Remote Control Airplane SAPAC Brand extra 330 L Aero plane FT 06-B (3 numbers);(2) 3D Aerobatic Remote Control Jet Aeroplane (2 numbers); are toys under CTA 950380. The implication is that if they are not toys, then there is a violation of Import Control Regulations. Learned adjudicating authority has held that the instructions/Literature attached stated “this model is not a toy”. These goods have self-propelling property and can make manouevres in the air. They are having propellers activated by inbuilt powerful motor system, controlled by remote control. He also held that “as per the Import Control Regulations, as per para 3(1)(h) of Foreign Trade (Exemption from Application) Order 1993, the import of electronic goods by post for private use is restricted. These goods require an import licence.” He has classified the items under CTA 88.02, ruling out classification under CTA 98.04 as gift also because goods under any prohibition cannot be classified as gift. 9503.80, however, reads: “other toys and models, incorporating a motor having a propeller activated by inbuilt motor.” Therefore, should not rule out classification under 9503.80. Once it is classified under 9503.80, there is no violation of EXIM Policy also. Explanation to 8802 in HSN also excludes toys and models for recreational purposes (9503). This finds, support from Commissioner of Custom, Chennai Vs. India Book House Ltd. [2002 (141) E.L.T 831 (Tri.- Chennai)]. As to the other point, a toy or a model with a motor cannot be considered consumer electronic goods and hence is not banned for parcel. I therefore, allow the appeal.



BISWAJIT DATTA
COMMISSIONER OF CUSTOMS (APPEALS)

To ✓

Shri Santosh Kumar K.R.,
Kallada House, Thanissery P.O.,
Irinjalakuda, Trichur – 680 701.

Copy to: -

1. The Commissioner of Customs, Custom House, Cochin (Review Cell).
2. The Commissioner of Customs, Preventive, Cochin.
3. The Assistant/Deputy Commissioner of Customs, PAD, YMCA Building, Chittoor Road, Cochin - 682 017.
4. Master File.
5. Arrear Cell.

Copy Submitted to: -

The Chief Commissioner of Customs, Bangalore Zone, Bangalore.