

### **The guilty Guitar!**

ON 19.1.2005, we carried a report about a guitar gifted by an Englishman to a poor boy in Assam, getting stuck in Kolkotta Customs as none of the parties concerned, donor, donee or the church through which the gift was arranged could not afford to pay the 40,000 rupees customs duty. We had carried the letter from the British donor and requested the Finance Minister to help.

We are happy to report that the **CBEC has responded to our report.**

The CBEC rejoinder which is given in full here clarifies that the duty of Rs. 40,000/- is correct and that no action was taken **resulting in harassment of consignee as claimed by your news portal.**

First of all we clarify that we did not claim any harassment, in our portal. Further we did not comment about the duty structure or rate. We only published a letter from an English donor who took pity on a poor Assamese boy and sent him a gift. We requested the Finance Ministry to help the poor boy who could not afford to pay the customs duty of Rs. 40,000/- . The Government could even give an adhoc exemption notification. Of course the fact is that such notifications are not given for poor people. Any way the Board clarifies that they are right as indeed they are! We have no quarrel! What happens to the guitar? Maybe it is still languishing in Kolkotta Customs and will most probably be exported back to England. Sad music – but laws are laws, you know!

Further the Board letter wants us to give a corrigendum to our report – as they do for notifications. In obedience to the Board, here is our corrigendum. We reported that a guitar meant for a poor boy is stuck in Customs, because the boy could not afford to pay the duty and suggested the Government to help. **The Government replies that it cannot legally help. Thank you!**

The Board further clarifies that in such cases, the Board web site [www.cbec.gov.in](http://www.cbec.gov.in)

may be referred. We did and found that the said web site says in Notification No. 171/93 \_that imported gifts up to Rs. 5,000/- are exempted. The Board letter to us says it is Rs. 10,000/. Which is right? The Board letter or the Board web site!

**See the full text of the Board's letter to us.**

**F.No.401/6/2005-Cus.III  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs**

**Dated: January 31, 2005**

To  
**The Editor,  
Tax India Online  
New Delhi.**

Sir,

**Subject : Import of guitar as gift and demand of customs duty of Rs. 40,000 by Kolkatta Customs-reg.**

The undersigned is directed to refer to the news item published in the Tax India Online Portal dated 19.1.2005 captioned as 'Englishman's gift to a poor Indian gets stuck in customs; Mr. FM, pl. do something!' (copy enclosed).

2. the matter was examined in detail. The goods consisting of guitar, lead and accessories covered by MAWB No. 023 6829 7740 and HAWB No.6952 7025 1520 was arrived at Kolkatta by 9W615 Jet airways flight on 15.12.2004 vide rotation No. 5656/2004 from Stanwell, UK. M/s. Federal Express who had handled the above consignment, had engaged M/s. Quatro & Cargo pvt. Ltd., Kolkatta, as their forwarding agent, for clearance of cargo on their behalf at Kolkatta. They had sent cargo arrival notice to Repalemba Jamir, at the address given in airway bill, immediately on advice from concerned airlines as per their regular procedure. However, the same was returned to them by the courier company due to incorrect address. The final notice was also sent subsequently by the above agent to Repalemba Jamir, and the same was also returned back due to the reason of incorrect address. It is only when that

Repalemba Jamir had contacted the clearing agent M/s. Quatro & Cargo Pvt. Ltd., over phone, they had informed that clearance of the consignment would involve payment of customs duty of Rs.40000 approx. based on the value declared at 1200UK pounds by the consignor in the shipping manifest. The letter dated 20.1.2005 of the M/s. Quatro & Cargo Pvt. Ltd., Kolkatta who is handling the consignment on behalf of M/s. Federal Express cargo explaining the above stand is enclosed.

3. You may be aware that import of all dutiable articles, intended for personal use, by post or air, exempt from prohibition of FTDR Act, 1992, are covered under 9804 of the Customs Tariff and bonafide gifts up to the value limit of Rs.10,000 are exempt from whole of duty of customs vide notification No.171/93-customs dated 16.9.93. Gifts of value above the exemption limit and goods imported as gifts and as normal aircargo are liable for customs duty at applicable rates. If there is no invoice or transaction value to reflect commercial value involved then the importer may state the value of goods under section 46 and declare the same in the bill of entry which would be subject to assessment as per prescribed rules. In the case of Guitar either under chapter heading 9804 (in case import by courier) or under 9202 (as cargo) they would be chargeable to basic customs duty of 20% additional duty of customs (CVD) of 16% and an educational cess at 2%.

4. In the present case as per the international shipping manifest of M/s. FedEx dated 14.12.2004, for MAWB No. 023 6829 7740, the value of guitar, leads and its accessories has been declared as 1200 UK pounds. On the basis of this manifest value it approximates to Rs.1,00,800/-. Accordingly, the duty at the applicable rate of basic customs duty 20% plus CVD 16% and educational cess at 2% works out to Rs.40,700/-. however, it found that as on 20.1.2005, either the courier agent M/s. Quatro & Cargo Pvt. Ltd., had submitted any bill of entry or the consignee had provided any details for the Customs to act upon. Further, from the letter dated 20.1.2005, it is seen that the clearing agent had communicated to the consignee that the clearance of goods involves payment of customs duty of Rs.40000/-.

5. From the above, you may appreciate that there is neither any duty demanded by Customs Kolkata nor any action taken resulting in harassment of consignee as claimed by your news portal. There appears to be no interaction of consignee with the customs so far. The duty liability is determined only by agent of FedEx on the basis of value declared by the consignor, and no bill of entry so far has been filed in this case. The value reflected in the FedEx manifest, is neither refuted by consignor or consignee, nor any further communication received from FedEx to their clearing agents M/s. Quatro & Cargo Pvt. Ltd. Kolkatta.

6. In view of the above, it would be appreciated if the proper legal position of the case is reflected and necessary corrigendum is issued in your news portal early. Further, it would be of help to the public, if the website of the department [www.cbec.gov.in](http://www.cbec.gov.in) such cases, where all details of import including gifts are mentioned in detail.

Yours faithfully,

**M.M. Parthiban**  
**Director**  
**(Customs)**