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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/92/B/16-RA | 2457

Date of Issue 20/12/2018

ORDER NO. ¹¹⁰⁷/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.12.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Chennai.

Respondent: Shri Ram Prakash

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 704/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai. (herein after referred to as the Applicant) against the order in appeal C. CUS-I No. 704/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

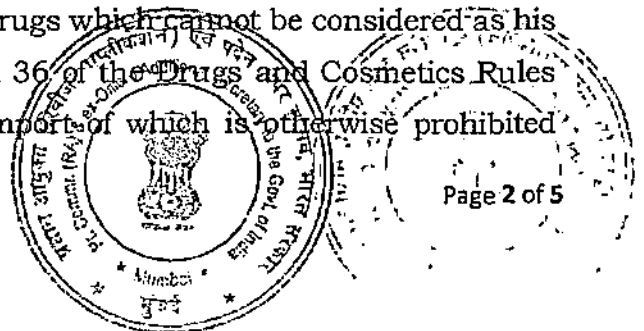
2. Briefly stated the facts of the case are that the Respondent arrived at the Chennai International Airport on 01.07.2015. He was intercepted and examination of his person resulted in the recovery of 98 packets of MESTINON DRAGEES valued at Rs. 18,345/- (Rupees Eighteen Thousand Three hundred and Forty five). The drugs were imported for another patient named Smt. Kasturi.

3. The Original Adjudicating Authority vide Order-In-Original No. 669/2015 Batch A dated 01.07.2015 ordered confiscation of the drugs but allowed redemption of the same on payment of Rs. 9,000/- as redemption fine. A penalty of Rs. 5,000/- was also imposed under Section 112 (a) of the Customs Act. The order was issued, inspite of the respondent furnishing the invoice for the purchase in Hong Kong and submitting a permit no. P/72 (Chennai ACC) 2015-16 dated 26.06.2015 given by the Asst. Drug Controller in form 12B permitting the Patient Kasturi to import the said drugs from Hong Kong. The adjudicating Authority held that the permit was given to Ms. Kasturi but the drugs were imported by the Respondent and therefore the goods are not the bonafide baggage of the Respondent.

4. Aggrieved by the said order, the Respondent an appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. CUS-I No. 704/2015 dated 30.10.2015 contemptuously set aside the adjudication order of the lower Adjudicating authority and allowed the appeal.

5. Aggrieved with the above order the Applicant department have filed this revision application, interalia on the grounds that;

5.1 The order of the Commissioner (Appeals) is neither legal nor proper as the Applicant had brought the drugs which cannot be considered as his own the bonafide baggage; Section 36 of the Drugs and Cosmetics Rules 1945 small quantities of drugs , import of which is otherwise prohibited



under section 10 of the Act, may be imported for personal use, subject to the following conditions:-

(iv) The drugs shall form part of a passenger's bona fide baggage and shall be the property of , and be intended for, the exclusive personal use of the passenger;

(v) The drugs shall be declared to the Customs authorities if they so direct;

(vi) The quantity of any single drug so imported shall not exceed one hundred average doses: Provided that the licensing authority may in an exceptional case in any individual case sanction the imports of a larger quantity : 1 (Provided further that any drug, Imported for personal use but not forming part of bona fide personal baggage, may be allowed to be Imported subject to the following conditions, namely:-

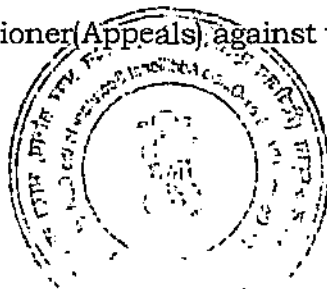
d) The licensing authority, on an application made to it in Form 12A is satisfied that the drug is for bona fide personal, use;

e) The quantity to be imported is reasonable in the opinion of the licensing authority and is covered by prescription from a registered medical practitioner; and

f) The licensing authority grants a permit in respect of the said drug in Form 12B).

As per the above Rule 36 of Drugs and Cosmetics rules, 1945, the drugs shall form part of the passengers bonafide baggage, shall be the property of and be intended for the exclusive personal use of the passenger;

In this case, the permit has been given to Smt. Kasthuri but the drugs have been brought by the Respondent passenger, who is said to be an importer of life saving medicines. Therefore the said goods are not bona-fide baggage of the passenger and therefore are liable for confiscation under section 111(d), (l), (rn) & (o) of Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. However taking into account, the needs of the drug by the patient Kasthuri, and as per the said Act, the passenger has been given an option to clear the items on redemption fine and applicable duty. Hence the order in Appeal passed by the Commissioner(Appeals) against the order in original is not correct.



5.2 The Revision Applicant prayed for setting aside the order of the Appellate authority or any such an order as deemed fit.

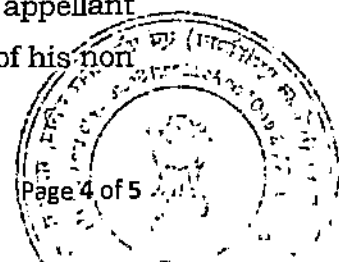
6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled held on 24.08.2018, 12.09.2018 and 03.10.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided ex parte on merits.

7. Government has gone through the facts of the case, in his order the Commissioner (Appeals) has rightly pointed out that as the patient is suffering from acute Myasthenia Gravis, and will have to get up from her bed and travel to Hong Kong to bring it as part of her bonafide baggage, being bed ridden, she cannot be expected to travel on her own and bring the said medicine. It is for such a situation that the legislature in foresight had introduced the Second proviso to Rule 36 of the Drugs and Cosmetics Rules, 1945 and is reproduced as below:

“ Provided further that any drug, imported for personal use but not forming part bonafide Personal baggage, maybe be allowed be imported subject to the following condition namely :-

- (i) *The licensing authority, on application made to it in Form 12 A is satisfied that the drug is for bona fide personal use;*
- (ii) *The quantity to be imported is reasonable in the opinion of the licensing authority and is covered by prescription from a registered medical practitioner; and*
- (iii) *The licensing authority grants permit in respect of the said drug in Form 12B”*

8. From the above it is clear that a person can bring medicine as non bonafide baggage on behalf of some other person who is unable to travel and get medicines for himself or herself. The LAA has singularly failed to understand the concept of non bonafide baggage which can be brought by a passenger in such cases. This proviso is specifically meant for persons, who cannot bring their own medicines, to authorize someone else to bring it on their behalf. In this regard the appellant is more than competent and eligible to carry these medicines as a part of his non bonafide baggage.



9. In view of the above the Government is in full agreement with the Order in Appeal. The impugned Appellate order is therefore is liable to be upheld and the impugned Revision Application is liable to be dismissed.

10. Government therefore upholds the Order in Appeal C. CUS-I No. 704 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai as being legal and proper.

11. The Revision Application is accordingly dismissed.

12. So, ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 1107/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.12.2018

To,

1. The Commissioner of Customs (Airport), Chennai .
2. Shri Ram Prakash
S/o Sadasivam
No. 15, 4th Street,
VGP Layout,
Injambakkam,
Chennai – 600 041.
3. The Commissioner of Customs (Appeals-I), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED


S.R. HIRULKAR
Assistant Commissioner (R.A.)



ATTESTED

S. R. HILL
Assistant Commissioner

