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SPEED POST



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

F.No. 371/133-134/B/2020-RA

3468

Date of Issue

07.07.2024

ORDER NO. <sup>52-153</sup> /2021-CUS (WZ) / ASRA / MUMBAI/ DATED <sup>20</sup> 06.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Smt. Safiya Mistry  
: Shri Abdul Majid Ahmed Mistry.

Respondent : Commissioner of Customs, Mumbai.

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-APSC-APP-1143 to 1145/2019-20 dated 20.01.2020 passed by the Commissioner of Customs (Appeals), Mumbai -III.

ORDER

These Revision Applications have been filed by Smt. Safiya Mistry and Shri Abdul Majid Ahmed Mistry (hereinafter referred to as "Applicants") against the Order-in-Appeal No. MUM-CUSTOM-APSC-APP-1143 to 1145/2019-20 dated 20.01.2020 passed by the Commissioner of Customs (Appeals), Mumbai -III.

2. The issue briefly is, the officers of the Special Investigation and Intelligence Branch, Airport special Cargo Commissionerate ( SIIB) detained and examined 12 nos of suspected post parcels. The detailed examinations of the parcels resulted in the recovery of

- i. 200 pouches of Saffron totally weighing 5 kgs.
- ii. 129 bottles of Chemical Rhoduna R271
- iii. 23 gold rings and 2 compressed gold bars totally weighing 1811gms.

It was noticed that all the consignments were booked by different individuals., however the consigners address in all the consignments was P.O. Box No. 376879, Dubai, UAE. The gold rings and bars were concealed in the hollow portion of a voltage converter. The contents of the parcels were declared as Eatables/ clothes having no commercial value.

3. The investigations conducted in the matter resulted in a show cause notice by investigative agencies. After due process of the law the original adjudicating authority vide its order nos. ADC/SKHM/12/2018-19/APSC dated 19.09.2018 determined the value of the impugned goods at Rs. 62,04,610/- ( Rupees Sixty two lakhs Four thousand Six hundred and ten) and ordered absolute confiscation of the goods and imposed a penalty of Rs. 17,45,000/- on Smt. Safiya Mistry under section 114A of the Customs Act, 1962. and a penalty of Rs. 5,00,000/- ( Rupees Five lakhs ) under section 114AA of the Customs Act, 1962. A penalty of Rs. 2,00,000/- was also imposed on Shri Abdul Majid Ahmed Mistry under section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), the Commissioner (Appeals) vide his order No. MUM-CUSTOM-APSC-APP-1143 to 1145/2019-20 dated 20.01.2020 held that there was no case to demand any duty which was short levied or non-levied with reference to goods brought vide Post Parcel. The goods in the said parcel were held liable for confiscation under section 111(d) (i) (1) & (m) of the Customs Act, 1962 and therefore any person who had done any act rendering the offending goods liable for confiscation or abetted such act shall be liable to penalty in terms of section 112 of Customs Act, 1962. The mandatory penalty under section 114A can be imposed only in cases of short levy or no levy of duty which has been demanded strictly under section 28(4) and the amount of duty with interest is confirmed under 8(8) ibid. The cases which involve contravention of section 111 rendering, the goods liable for confiscation, the natural corollary for imposing penal,, is section 112 of Customs Act, 1962. I am also constrained to observe that while deciding. penalty aspect in terms of section 112 of Customs Act, 1962, the adjudicating Authority should keep in mind that vide Para 44(i)(v), penalty of Rs. 5 lakhs has been imposed on the appellant Mrs. Safiya Mistry under section 114AA ibid. Accepting the contention raised in the appeal filed by the Revenue the Appellate authority remanded back the matter to the lower authority to decide the penalty afresh on the appellant Mrs. Safiya Mistry under Section 112(a) / (b) of the Customs Act, ibid thus disposing of the Appeal.

5. Aggrieved with the above orders the Applicant, has filed these revision applications pleading that they were falsely implicated in the case of smuggling. The guilt of the petitioners is not proved in this case and prayed that the goods be ordered to be reexported or allowed to be cleared on payment of reasonable fine and penalty and further proceedings may be dropped since they were in no way concerned with any smuggling activity.

6. The Government has examined the matter at the outset it is observed that the case pertains to goods under import through post. As per first proviso to Section 129A(1) read with Section 129DD of Customs Act, 1962, a revision application can be filed before the Government against the order-in-appeal if

it relates to the issue of baggage, drawback of duty and short landing of the goods. The dispute is regarding import of goods by post. Therefore, the Government does not have jurisdiction to deal with these Revision Applications.

7. In view of above, Government is of opinion that the issue involved in this case does not fall within the jurisdiction of this authority and hence, the issue is required to be agitated before proper legal forum, i.e. Tribunal if the Applicant deems fit to do so. The revision applications are thus not maintainable before this authority for want of jurisdiction in terms of Section 129A read with Section 129DD of the Customs Act, 1962.

8. The revision applications, thus stands rejected as being non-maintainable for lack of jurisdiction.

*Shrawan Kumar*  
*30/06/21*  
( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

152-153

ORDER No. /2021-CUS (WZ) /ASRA/

DATED 30.06.2021

To,

1. Smt. Safiya Mistry and Shri Abdul Majid Ahmed Mistry, I Sector, A-1 Line, Room No. 15, Cheeta Camp, Trombay, Mumbai 400 088.
2. The Commissioner of Customs, Airport Special Cargo, Mumbai.

Copy to:

1. Shri Prakash Shingrani, Advocate, 12/334 New MIG Colony, Bandra ( E ) Mumbai - 51.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File. ,
4. Spare Copy