

REGISTERED
SPEED POST



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

F.No. 371/138/B/2020

/ 3431

Date of Issue

08/08/2021

ORDER NO. ¹⁵⁴ /2021-CUS (WZ) / ASRA / MUMBAI/ DATED 30.06.2021 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 : Shri Kishor Ramji Boricha

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-1130 & 1131/2019-20 dated 17.01.2020 passed by the Commissioner of Customs (Appeals), Mumbai -III.

ORDER

This Revision Application has been filed by Shri Kishor Ramji Boricha (hereinafter referred to as "Applicant") against the Order-in-Appeal No. MUM-CUSTOM-APSC-APP-1130 & 1131/2019-20 dated 17.01.2020 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 24 kgs of Saffron. It was noticed that the consignment were booked by Shri Chandana, Dubai and the Consignee was Shri Kishor Ramji Boricha. 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/19/2018-19/APSC dated 19.09.2018 determined the value of the impugned goods at Rs. 28,77,168/- (Rupees Twenty eight lakhs Seventy seven thousand One hundred and Sixty eight) and ordered absolute confiscation of the goods and imposed a penalty of Rs. 10,00,000/- on Shri Kishor Ramji Boricha 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.

5. 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-1130 &1131/2019-20 dated 17.01.2020 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 penalty, 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 shall keep in mind that *vide* Para 44(i)(v), penalty of Rs. 5 lakhs has been imposed on the appellant 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 under Section 112(a) / (b) of the Customs Act, *ibid* and thus disposed of the Appeal.

6. Aggrieved with the above orders the Applicant, has filed this revision application 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 re-exported 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.

7. 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.

8. 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 application is thus not maintainable before this authority for want of jurisdiction in terms of Section 129A read with Section 129DD of the Customs Act, 1962.

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

Shrawan Kumar
20/6/21
(SHRAWAN KUMAR)

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

ORDER No. ⁵⁴/2021-CUS (WZ) /ASRA/

DATED 30.06.2021

To,

1. Shri Kishor Ramji Boricha, 33, Manurwadi, Corba Mittaggar, Wadala East, Mumbai 400 037.
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