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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/14-RA / 4081 Date of Issue 27.08.2020

ORDER NO. 16/2020 - CUS (SZ)/ASRA/MUMBAI DATED 04.03.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Goa.

Respondent : Shri Ismail Usman
Smt. Noorbanu Irfan Motlani

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. GOA/CUS/GSK/112-114/2012 dated 09.07.2012 passed by the Commissioner (Appeals), Central Excise & Customs, Goa.



ORDER

This revision application has been filed by the Commissioner of Customs, Goa. (herein referred to as Applicant) against the order No. GOA/ CUS/GSK/112-114/2012 dated 09.07.2012 passed by the Commissioner (Appeals), Central Excise & Customs, Goa.

2. The facts of the case are that the Officers of Customs, Goa on 15.10.2011 noticed a corrugated TV box and other packages abandoned in the arrival hall. The whereabouts of the passengers were traced from the baggage tags and records of the passenger manifest. The goods were inventoried. The corrugated TV box was found to contain 10 kgs of "Saffron". The other bags were found to contain assorted electronic items like Cigarettes, plastic beads, mobile phones, mobile accessories etc, in trade quantities. Part of the baggage was checked in the name of Smt. Noorbanu Irfan Motlani. The passenger respondents admitted that they became nervous on noticing the Customs and DRI officials and abandoned the baggages and walked through the green channel. The goods were valued at Rs. 15,58,125/- (Rupees Fifteen lacs Fifty eight thousand one hundred and twenty five).

3. After due process of the law vide Order-In-Original No. 01/29/2011 (Apt) dated 17.10.2011 the Original Adjudicating Authority ordered confiscation of the goods under Section 111 of the Customs Act, 1962, but allowed redemption of the same on payment of Rs. 75,000/- (Seventy Five thousand) and imposed penalty of Rs. 50,000/- (Rupees Fifty thousand) under Section 112 (a) of the Customs Act, 1962 and customs duty of Rs. 5,73,756/- (Rupees Five lacs Seventy three thousand Seven hundred and Fifty six).

4. Aggrieved by this order the respondents filed an appeal with the Commissioner of Customs (Appeals), disputing the value of the goods, and produced invoices for the purchase of the goods. The Commissioner (Appeals) vide his order No. GOA/ CUS/GSK/112-114/2012 dated 09.07.2012 held that the manner of valuation adopted was without any basis and ordered re-fixation of prices increasing the invoice values by 20% with consequential relief of refund of excess duty and allowed the appeal of the Respondent.

Aggrieved with the above order the Applicant department filed an Appeal in CESTAT the Appellate order. The Hon'ble CESTAT vide its order No. A/577/14/CSTB/C-1 dated 04.2014 "dismissed the Appeal as not maintainable." Further stating "However, Respondents are at liberty to approach the appropriate forum".



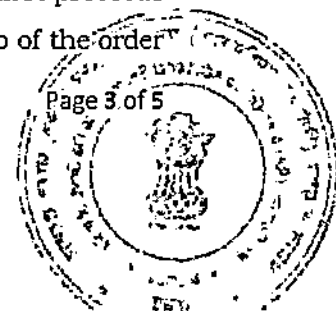
6. The Applicant department has thus filed this revision application seeking a condonation of delay of 667 days, interalia on the grounds that;

6.1 The Order of the Commissioner (Appeals) has erred in ordering the invoice value of the goods be increased by 20%, value re-fixed and appropriate duty collected when the passenger had not even submitted the invoices during the Personal hearing with the lower authorities. The invoices were submitted at the Appellate stage; The Commissioner, (Appeals) has erred in holding that the valuation / price consequential re-fixation adopted by the officers was without any basis and that the consequential re-fixation will make the fine and penalty commensurate to the gravity of the offence committed when the goods were brought in violation of ITC under Baggage Rules.; The Commissioner (Appeals) has considered the invoices submitted by the Applicant at appeal stage which is a fresh appeal and bad in law; The respondents did not declare their checked in baggage, It appears that the Repondent Shri Ismail Usman is a frequent traveller /visitor abroad. He appears to be regularly bringing goods in commercial quantities with the intention of evading the payment of Customs Duty, as in the present case he became nervous on seeing the DRI officers and A.I.U officers, who are usually not in uniform, and left the baggage hall by abandoning his baggage and passed through Green Channel by not declaring any dutiable items to the Customs Authorities.; The impugned goods namely Saffron was being smuggled by hiding it in a TV box, which is not detected would have got cleared by paying duty on TV.; In view of the above, the Commissioner (Appeals) cannot consider a fresh ground at the appeal stage and also as the appellant had not furnished the invoices at the time of adjudication to the lower authority, the valuation was done on the basis of market and inter-departmental enquiries.

6.2 The Revision Applicant cited case laws in support of their contention and prayed that after taking the facts and circumstances of the case the impugned Order is proper and correct in law or otherwise or any other order as deemed fit in the facts and circumstances of the case.

7. In view of the above, personal hearings in the case were conducted on 26.10.2018 and 22.11.2019. Shri Ismail Usman attended both the hearings. He reiterated the Order in Appeal and in his written submissions has stated that the Hon'ble CESTAT Mumbai has dismissed the Departmental Appeal as not maintainable. He also stated that the Revision Application is barred by limitation as it has been filed after 667 days.

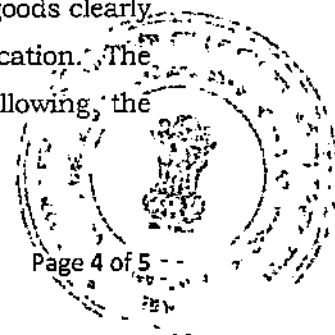
The Government has gone through the case records. The Government first proceeds to discuss the issue of time bar in filing this Revision Application. The Para two of the order



of the Hon'ble CESTAT states " We find as per the provisions of Sec.129A of the Customs Act, the Tribunal has no power to entertain appeal where the Commissioner (Appeals) has passed orders in respect of goods imported or exported as baggage. Therefore, the appeal filed by the Revenue is dismissed as not maintainable. However, Revenue is at liberty to approach the appropriate forum." It is clear from the above that the order has not been issued on merits of the case. The reason for its dismissal is the filing of the appeal before the wrong forum. The Government notes that the High Court of Mumbai in the case of Union Of India Versus Epcos India Pvt. Ltd reported in 2013 (290) E.L.T. 364 (Bom.) has held that " Condonation of delay - Sufficient cause - Period spent in prosecuting appeal bona fide before CESTAT, which had no jurisdiction for same, has to be excluded under Section 14 of Limitation Act, 1963 - On facts, after exclusion of that period, revision found to be filed within further period of three months, delay was condonable as there was sufficient cause for same." The ratio of the above said judgement is squarely applicable to this case. Further, the Hon'ble CESTAT's Order is clear in allowing the Revenue to approach the appropriate forum. Therefore is no dispute that the period which was spent in prosecuting the proceedings before the Tribunal is to be excluded.

8. In view of the above, the time spent in pursuing the Appeal before the wrong forum is set aside. The date of receipt of the Tribunal order by the department is 13.05.2014. The Applicant has filed this revision Application on 03.09.2014 ie after 95 days. The period for filing a revision under Section 129DD of the Customs Act, 1962 is three months. However, a further three months for presenting the application, if the applicant was prevented by sufficient cause from presenting the application within three months. The Government therefore condones the delay and proceeds to decide the case on merits

9. Government notes that the Applicants abandoned the goods in the arrival hall after noticing DRI and AIU officers in plains clothes. All the items in checked in baggage were brought in commercial quantity. The facts of the case also reveal that the impugned goods were branded. The 10 kgs saffron was ingeniously concealed in a TV Carton, if not detected the goods would have escaped customs duty. The Respondents were well aware that their goods would not pass the Customs barrier and therefore, abandoned the baggage and exited through the green channel. Investigation conducted by the customs officers resulted in the identification of the passengers. The abandoning of the goods clearly indicates mensrea, thus rendering the goods liable for absolute confiscation. The Government observes that order in original has been benevolent in allowing the redemption of the goods on payment of redemption fine and penalty.

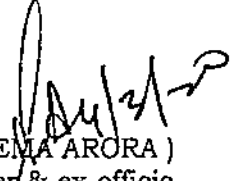


10. In addressing the issue of valuation, it is observed that the main item in the goods under import is branded Saffron. The respondent did not dispute the value at the time of seizure. The statements of the respondent were recorded on 17.10.2011 and 15.11.2011 before the customs officers, there are no references to purchase invoices. Shri Ismail Usman produced the invoices only at the Appellate stage. The Commissioner (Appeals) has erred in accepting these invoices which were not submitted at the adjudication stage. The Government notes that the valuation of the Saffron and other goods was conducted on the basis of contemporaneous imports. The Applicant department has submitted baggage receipts in support of their valuation. Under the circumstances, the Government does not find any anomaly in the valuation process and therefore the order of the Commissioner (Appeals) is liable to be set aside.

11. In view of the above facts, Government sets aside the order of the Appellate authority. The Order of the original adjudicating authority is upheld.

12. Revision application is allowed on above terms.

13. So, ordered.


 (SEEMA ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 16/2020-CUS (SZ)/ASRA/

DATED 04/03/2020

To,

1. The Commissioner of Customs, Customs House, Marmagao, Goa 403 802.
2. Shri Ismail Usman, S/o Usman Ismail, R/o Bungalow - J, Silver Gate Estate, Aquem Alto, Margao, Goa.
3. Smt. Noorbanu Irfan Motlani, C/o Shri Ismail Usman, R/o Bungalow - J, Silver Gate Estate, Aquem Alto, Margao, Goa.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

