

REGISTERED
SPEED POST



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

371

F.No. 373/38/B/14-RA/4484

Date of Issue 25/08/2024

ORDER NO. 197/2021-CUS (WZ)/ASRA/MUMBAI DATED 17.08.2021 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 Mohammed Ribai Abdul Hameed

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-535 & 536-13-14 dated 20.01.2014 passed by the Commissioner of Customs (Appeals), CUSTOMS ZONE-III.

ORDER

This revision application has been filed by Shri Mohammed Ribai Abdul Hameed (herein after referred to as the Applicant) against the order in appeal No. MUM-CUSTM-PAX-APP-535 & 536-13-14 dated 20.01.2014 passed by the Commissioner of Customs (Appeals), CUSTOMS ZONE-III.

2. Briefly stated the facts of the case is that the applicant arrived at the C. S. International Airport from Hong Kong via Bangkok on 05.01.2011. He was intercepted after he had opted for the green channel and was diverted from the screening machine after his baggage showed some electronic images. Examination of his baggage resulted in the recovery of 10 Canon zoom lens EF 70-200mm, 04 Sigma zoom lens 24-70 mm, 1 Canon lens EF 500 mm, 2 Canon Fisheye lens EF 15 mm, 8 Sekonic L-758 cine digital master, Canon EF 200 lens totally valued at 14,57,186/- (Rupees Fourteen Lakhs Fifty seven thousand One hundred and eighty six)

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/RPK/ADJN/24/2012-13 dated 08.06.2012 ordered confiscation of the impugned goods under Section 111 (d) and (l) of the Customs Act,1962, but allowed redemption on payment of Rs. 3,50,000/- as redemption fine along with duty of Rs. 2,66,772/- and interest till the date of payment of duty. A penalty of Rs. 3,00,000/- (Rupees Three lakhs) was also imposed under Section 112 (a) of the Customs Act,1962 and a penalty of Rs.2,66,772/- was imposed under Section 114A of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-535& 536/13-14 dated 20.01.2014 rejected the Appeal.

5. The applicant has filed this Revision Application interalia on the grounds that;

5.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

5.2 The appellant further submits that in the impugned order no direction or order was issued to make pre deposit. However the appellant has filed a petition for waiver and stay along with grounds of appeal. Further admittedly no separate order has been passed for making predeposit and no communication was received from the authority.

5.3 The respondent failed to see that the adjudicating authority failed to consider the same while passing the order, the authority ought to have passed an order to re export the goods imposing lesser redemption fine and personal penalty. But order to redeem the goods on payment of redemption fine sum of Rs. 3, 50, 000/- and imposed the personal penalty of Rs. 3,00,000/- under section 112 (a) (b) of customs act & also imposed penalty of Rs. 2,66,772/- under section 114 A of the said act and also imposed duty amount Rs. 2,66,772/- with interest.

5.4 The appellant further submits that the adjudication authority failed to see the provisions of Customs Act under section 112 and 114 A while passing the impugned order. Further the case is relating to the import (baggage goods) but authority imposed the penalty under section 114 A which is relating to the export of the goods.

5.5 The appellant further submits when penalty imposed under section 114A of the customs act 1962, the authority cannot impose penalty under section 112 of the customs act. If the adjudication authority had applied its mind while passing the impugned order, they would not have imposed the personal penalty under section 114A of the said act. Thus it is clearly shows non application of mind and hence the same is liable to be set aside on this point alone.

5.6 The appellant further submits that the seized goods are under the custody of the department but the authority failed to issue any notice under section 28 of the customs act demanding the payment of duty, further the appellant were not aware that whether the adjudication authority will pass order for absolute confiscation of the goods or order for redemption of goods

on payment of fine, penalty and duty and hence question of duty and interest chargeable thereon does not arise until the passing of the adjudication order by the adjudication authority.

5.7 Further the appellant came to know that that the duty to be paid after receiving the impugned order dated 08.06.2012. Further the adjudication order to be complied within thirty days from the date of receipt of the impugned order and hence the interest can be collected for non payment of duty would arise only after specified period in the adjudication order. Therefore the order of payment of interest for the period mentioned in the impugned does not arise

5.8 The appellant further submits that thought the seizure was effected on 05.01.2011 but the adjudication authority has passed the adjudication order only on 08.06.2012 after lapse of 1 and 1/2 years. Thus it is clearly shows that the adjudication authority has not passed the impugned order at the earlier point of time. Infact the appellant has sent a reminders dated 17.04.2012, 08.05.2012 to the adjudication authority to pass the adjudication orders at once without personal hearing. Even then the adjudication authority has not chosen to pass the order immediately but they have passed the order only on 08.06.2012. If authority ought to have passed the order at the earlier point of time, the delay would not have occurred and hence the authority now cannot claim the duty for non payment of duty.

5.9 Further while he was in immigration the officers of Customs department intercepted him but he was not given sufficient opportunity to him to make proper declaration before the customs officers about the quantity and value of the goods. The officers recovered the electronic goods, camera and lens and assessed the value of the goods as Rs. 14, 57, 186. (CIF). Thereafter the officers prepared mahazar and recovered. Thereafter personal search was conducted by the said customs officer in the presence of witnesses but nothing incriminating was recovered

5.10 The appellant further submits that the seizure effected at 2011 and the goods are become old and models are out dated and the seized goods are camera and its accessories which were decreasing the value day by day

and will become out of dated. Unless the value of the goods re assessed and fixed the present value of the goods and imposed appropriate lesser redemption fine and personal penalty fixed based on the today's value, he will be put to irreparable loss and great hardship.

5.11 The appellant further submits that subsequently, they obtained statement from him on 05/06.01.2011 that one Syed had given him the goods at his hotel and he did not remember the name of the hotel; he did not know that he would have to pay customs duty,. that he knew that only electronics were there in his baggage. The customs authority apprehended him on 05.01.2011. The officers prepared the mahazar on the same and he was arrested by officers on the same day. Subsequently he was produce before the ACMM 3.d court, Mumbai who remanded him and he was released on bail on furnishing P8 and 58 of RS. 1,00,000/-, He could not even make a complaint of ill treatment before the Learned Magistrate at the time of remand due to warning. Therefore, I submit that the mahazar and my statement are involuntary and false and they do not reflect true facts. Subsequently his house premises at Chennai was searched as per direction of Mumbai customs by the Customs officers Chennai on but nothing incriminating was recovered Thereafter several statements were recorded from him on various occasions.

5.12 The appellant further submits that he retracted his statement through his bail application filed before the ACMM Mumbai. But the same was neither considered nor rejected by the customs authorities till today. Further he states that the seized goods are accessories and submitted the invoice issued by the seller at Singapore appellant. Though he submitted the invoice and repeatedly requested the department to re fix the value with one the basis of invoice but they refused to accept the same. If the officers accepted the invoice total value of the goods will be less than five Lakhs and hence the arrest is become illegal which is against the notification.

5.13 The appellant further submits that according to the Apex Court in several cases "Even if the maker of statement fails to establish his allegations of inducement, threat etc against the officer who recorded the statement the authority while acting on the inculpatory statement of the maker is not completely relieved his obligations in the least subjectively

applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any court intending to call upon the inculpatory statement, as voluntary one should apply its mind to the retraction and reject the same in writing. This is only on this principle lower court in several decisions has ruled that even in passing the detention order on the basis of an inculpatory statement of an accused person who has violated the provisions of the Customs Act etc. The authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement /est the order will be vitiated".

5.14 The appellant further submits that though the seized goods were lesser value and but the officers assessed the value of the goods are excessively. The assessment of the officers are not supported by any cogent materials and the same is contrary to the customs valuation and If the authority considers in a proper manner they would have come to the conclusion that the valuation assessed by them are excessive. Therefore he is requested the officers to consider and revalue the seized goods through his representation but the authority failed to revalue the goods seized under mahazar. The appellant further submits that in Nina Mohamed case dated 05.07.2006 the goods are valued as per guidelines of Internet and officers given 45 percentage deduction from its Internet value whereas the present case the valuation adopted through internet after giving 30 percentage deduction. Why the department taken different stand while arriving valuation. If department officers given 45 percentage as given in the above case the value will be less than 3 Lakhs and hence no arrest is required under law. The appellant further submits that the valuation is jurisdictional aspect. It cannot be a matter for assumption. He further submits that failure to advert to this vital aspect has vitiated the order of adjudication. The central government has given a detailed circular under the customs Act to all the customs authorities wherein the customs authorities have been forbidden from arresting any person where there is contravention of custom act by him is less than Rs. 5 Lakhs. Further the adjudication authority stated that the valuation adopted by the officers was in, consultation with the Airport Customs officers who clear the goods at the Airport, Chennai,

further the value of the goods had been adopted as per contemporary prices being adopted for similar goods at the Airport, Mumbai".

5.15 The appellant submits that he came know that the authority has relied upon the Internet prices for arriving the valuation in respect of seized goods. In this aspect I respectfully submit that the hon'ble supreme court case reported in 2000 (117) ELT 49 (Tribunal) Aggarwal Distributors (P) L/Tbe Vs Commissioner of Customs New Delhi wherein Apex court categorically stated that "Documents displayed on Internet not reliable being unsigned and nature of price not being indicated therein and the Internet prices are un worthy and not reliable documents to calculate the value" the adjudication authority are well aware that the same is not reliable material. The adjudication authority is relied upon the value displayed in the internet is against the verdict of the Supreme Court.

5.16 The appellant further submits that he had submitted various orders passed by the customs department and judgment of Honble High court Madras in respect of identical goods, but the adjudication authority failed to consider the same. Thus it is clearly shows that the adjudicating authority is not following the guideline or order passed by the court is amounting to violation of law.

5.17 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of the redemption fine and personal penalty.

6. A personal hearing in the case were scheduled on 03.02.2021, 17.02.2021. However, the wife of the Advocate for the Applicant Smt. Kamalamalar Palanikumar vide her letter dated 27.01.2021 informed this office that Shri Palanikumar the Advocate on record is no more. The value of the electronic goods is now worthless and the earlier orders have been passed without considering the margin of profit. The case may be decided on available records. Nobody from the department attended the said hearing.

7. The Government has gone through the facts of the case, the impugned goods are in commercial quantity and therefore cannot be considered as bonafide

baggage. The Applicant did not declare the goods as required under section 77 of the Customs Act, 1962 the confiscation of the same is justified. The adjudicating authority allowed redemption on payment of Rs. 3,50,000/- along with duty of Rs. 2,66,772/- and interest till the date of payment of duty. A penalty of Rs. 3,00,000/- (Rupees Three lakhs) was imposed under Section 112 (a) of the Customs Act,1962 and a penalty of Rs.2,66,772/- was also imposed under Section 114A of the Customs Act,1962.

8. Government notes that the Appellate authority in its order paras 4, 5 and 6 has extended several opportunities for early hearings and has also considered the Applicants application for waiver of pre- Deposit on the grounds that the pre-deposit. The facts of the case also reveal that the Applicant is not the owner of the goods and is a carrier. He is an habitual offender and has two earlier cases booked against him at Chennai Airport. Differential duties along with interest and penalty have also been ordered to be recovered from him as he has, by his own admission, evaded duty on the goods imported during these earlier trips. The evidence on record has clearly established that the applicant was carrying the goods on somebody else's instructions and only on monetary considerations.

9. Under the circumstances, it is observed that the Appellate authority has been very considerate considering the nature of the goods and due to the fact that such goods will get outdated, the Appellate authority has accepted the request for early hearings which has not been properly responded to by the Applicant. It is observed that Applicant has repeatedly disputed the value of the goods but has not produced any bill or documents to evidence to this authority to reassess the same. Government however agrees with the Applicants contention that the case is old and the electronics under import have become obsolete, further, the penalty imposed under section 114A relates to exports, and once penalty is imposed under section 112 further penalty for the same offence is not in consonance with law. Government therefore is inclined to accept the plea, a more reasonable view is therefore required to be taken in the matter.. The impugned Order in Appeal is therefore liable to be modified accordingly.

10. Accordingly, the redemption fine of Rs. 3,50,000/- (Three Lakhs Fifty thousand) is reduced to Rs.1,75,000/- (Rupees One lakh Seventy five thousand). The penalty of Rs. 3,00,000/- (Rupees Three lakhs) imposed under section 112 of the Customs Act, 1962 is also reduced to 1,50,000/- (Rupees One lakh Fifty thousand). The penalty imposed under section 114A of the Customs Act,1962 is set aside.

11. Revision application is allowed on above terms.

Shrawan
17/8/21

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

ORDER No. 187/2021-CUS (SZ)/ASRA/MUMBAI

DATED 17/8/2021

To,

1. Shri Mohammed Ribai Abdul Hameed, 3rd Floor, 29/42 B Saiva Muthiah Street, Mannady, Chennai-600 00.
2. The Pr. Commissioner of Customs, CSI Airport, Mumbai.

Copy to:

3. Smt. Kamalamal Palanikumar, No. 10, Sunkurma Street, Chennai - 600 001.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.