



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

F.No. 373/262/B/15-RA | 4569.

Date of Issue 27/08/2021

ORDER NO. 190/2021-CUS (SZ)/ASRA/MUMBAI DATED 18.08.2021 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 Ebrahim Rajivi

Respondent : Commissioner of Customs (Airport), Trivandrum

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. TVM-EXCUS-000-APP-034-15-16 dated 28.04.2015 passed by the Commissioner of C.Ex. Customs & S. Tax (Appeals-III), Cochin.

ORDER

This revision application has been filed by Shri Ebrahim Rajivi (herein after referred to as the Applicant) against the Order in appeal No. TVM-EXCUS-000-APP-034-15-16 dated 28.04.2015 passed by the Commissioner of C.Ex. Customs & S. Tax (Appeals-III), Cochin.

2. Briefly stated the facts of the case are that the officers of Customs at the Trivandrum International Airport on information, intercepted the Applicant, who had arrived from Singapore. The Applicant had two checked in bags one of which he had abandoned on the baggage delivery belt. Examination of the bags and person resulted in the recovery of 735 brand new TITAN watches valued at Rs. 28,24,150/- (Rupees Twenty eight lakhs Twenty four thousand One hundre and fifty) and 5 Sony Erickson mobile phones valued at Rs. 60,000/- (Rupees Sixty Thousand). In his statement the Applicant stated that the goods were arranged by one Shri Syed Mohammed on a consideration of 200 Singapore dollars as remuneration for carrying the goods from Singapore to Trivandrum. Shri syed also informed him that he has made arrangement for smuggling the through Trivandrum Airport and later informed that as DRI officers are checking the baggage Shri Syed advised to abandon the checked in baggage. He also informed that he has been a carrier for the past five years.

3. The Original Adjudicating Authority vide Order-In-Original No. 05/2014/CUS/ADC dated 16.05.2014 ordered absolute confiscation of the impugned goods, and imposed penalty of Rs. 10,00,000/- (Rupees Ten lakhs) on the Applicant under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 10,00,000/- (Rupees Ten Lakhs) was also imposed on Shri Syed Mohammed.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. TVM-EXCUS-000-APP-034-15-16 dated 28.04.2015 rejected the appeal of the Applicant.

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

5.1 The order is not legal or proper. The Annexure-A and Annexure-B orders are unreasonable, unjustifiable and unsustainable in law.

5.2 That the observations of the Adjudicating Authority in the impugned order against the applicant are perverse and contrary to the evidence on record. Hence the impugned order is unsustainable in law.

5.3 The adjudicating authority and the appellate authority failed to appreciate that the goods imported by the applicant is not a prohibited goods to order for absolute confiscation/re-export. As per Sec. 125 of Customs Act, 1962, adjudication authority has no other option but to allow the applicant to release the goods on payment of fine in lieu of confiscation.

5.4 The adjudicating authority and the appellate authority failed to appreciate that there is no allegation in SCN that applicant had any knowledge regarding alleged illegality. It is also submitted that the applicant is not a repeated offender and was under the impression that Indian made watches are not taxable items. Thus even if it is found that the goods are liable for confiscation, the order of imposing huge amount of penalty on applicant is unsustainable.

5.5 In *Hindustan Steel Vs State of Orissa* 1978 (2) ELT J159 (SC) the Hon.ble Supreme Court held that penalty can only be levied in cases where the assessee has acted 'deliberately in defiance of law' or is 'guilty of conduct contumacious or dishonest' or 'acted in conscious disregard of its obligation'. Penalty need not be imposed when there is a technical breach of the provisions or where breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.

5.6 *AB Jiwani Vs Collector of customs* 1990 (47) ELT 161 (SC) the Supreme court held that no penalty can be levied in case where breach of law is caused by the bonafide belief on the part of the assessee. *Apex Steels Vs Collector* 1995 (80) ELT 368 (Tri) it was held that no penalty is leviable where there is no suppression or intent to evade tax.

5.7 That the impugned order is also barred by limitation under Section 28 (9) (b) of the Customs Act, 1962. As per the statutory provision under Section 28 (9) (b) of the Customs Act, 1962, the adjudicating authority is

legally bound to determine the amount of duty within one year from the date of issue of Show cause notice. In the present case SCN is issued on 11/12/12 and the Annexure-B impugned order is issued only on 16/05/14, i.e. more than one year after the issue of SCN. Thus it is barred by limitation.

5.8 The adjudicating authority arbitrarily determines the so called interim value of the goods contrary to the provision of Customs valuation rules.

5.9 The adjudicating authority and the appellate authority have failed to appreciate that even if the goods are found liable for confiscation, this was not a case calling for imposition of huge amount of fine and penalty since the goods brought by the applicant are Indian made Titan watches.

5.10 That the applicant has not imported any prohibited goods for imposing heavy amount as penalty. But the adjudicating authority has failed to distinguish the difference and imposed heavy amount as penalty.

5.11 In view of the above and other grounds to be urged at the time of hearing, it is submitted that the impugned order is bad in law and is liable to be quashed and set aside and the goods may be ordered to be released without fine and penalty. Any other order or orders deemed fit and proper by the Revision Authority considering the facts and

6. Personal hearings in the case were scheduled in the case on 11.07.2018, 04.03.2021, 08.04.2021, 15.04.2021 and finally held on 16.07.2021. Shri A Mohan, Asst. Commr. attended the hearing online on behalf of the Department and submitted that goods brought by the Applicant are prohibited and are commercial in nature. He submitted that order of the Commissioner (Appeals) be upheld. Nobody attended the hearing on behalf of the Applicant.

8. The Government has perused the case records carefully. It is not disputed that the TITAN watches and the mobiles were in commercial quantity. The goods are not bonafide household goods and personal effects. It is also on record that the Applicant did not declare the goods and tried to abandon the goods and therefore as a proper declaration as required under section 77 of the Customs Act, 1962 was therefore required to be submitted and therefore confiscation of the watch is sustained, and the Applicant is liable for penal action.

9. The issue is whether the impugned watches and the mobile phones can be allowed to be released on redemption fine. In addressing the departments contention that the impugned goods are prohibited. Government opines that the liberal definition of section 2(33) which is applied in the context of section 111 or 113 cannot be applied in the context of section 125. If the same definition is applied in the context of section 125, it would result in absurdity rendering the word 'shall' redundant and otiose, because there cannot be any situation where the goods would be liable to confiscation under section 111 or 113 as the case may be without there being any violation of the provisions under the Customs Act, 1962 or under any other law or rules, regulations made there under. Therefore in the context of section 125 if the word "prohibited" is construed as to apply in respect of every violation of any regulation or restriction or statutory procedural requirement, the word "shall" in said section 125 would be rendered redundant and meaningless.

10. In this regard Government relies on the Apex court in the case of Hargovind Dash Vs Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi judicial authority must exercise discretionary powers in a judicious manner and not in arbitrary manner. As per the provisions of section 125 of the Customs act, 1962 in case of goods which are prohibited the option of redemption is left to the discretionary power of the authority who is functioning as a quasi judicial authority and in cases of other goods option to allow redemption is mandatory. Government notes that import of watches and Mobile phones is not restricted or prohibited. The impugned goods have been held liable for confiscation as they are commercial in quantity and they were not declared by the Applicant, however, Section 125 is very clear on this aspect, Goods which are not prohibited are required to be mandatorily allowed for redemption. Government also finds that in a recent judgement in case of R. Mohandas Vs CC, Cochin 2016 (336) ELT 399 (Ker), the Hon'ble Kerala High Court held that "under Section 125 of the Customs Act the goods can be released to the owner of the goods or to the person from whose possession or custody such goods have been seized. Section 125 was originally worded to give custody of such goods only "to the owner of the goods". An amendment has been made with effect from 27-12-1985 by incorporating a provision to give release of the goods to the person from whose possession or custody such goods have been seized".

11. In view of the above, Government holds that the absolute confiscation of the watches and mobiles is unjustified and the impugned goods are liable to be allowed redemption on suitable fine and penalty. The absolute confiscation of the goods is therefore set aside and the impugned goods valued at Rs. 28,84,150/- (Rupees Twenty eight lakhs Eighty four thousand One hundred and fifty) is allowed redemption on payment of Rs.10,50,000/- (Rupees Ten Lakhs Fifty thousand). Penalty imposed is appropriate.

12. The impugned Order is modified as above. Revision Application is partly allowed on above terms.

Shrawan Kumar
28/8/21

(SHRAWAN KUMAR)

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

ORDER No. 90/2021-CUS (SZ) /ASRA/MUMBAI

DATED 28.8.2021

To,

1. Shri Ebrahim Rajiviri, S/o Shri Ebrahim, 69/1, A-Block, Crystal Court apartment, 11th Street, 2nd Avenue, Annanagar East, Chennai 600 102.
2. The Commissioner of Commissioner of C.Ex. Customs & S. Tax Trivandrum.

Copy to:

3. Shri Agustian P.A., Advocate, Faizel Chambers, Pullepady Cross Road, Cochin - 682 018.
4. Sr. P.S. to AS (RA), Mumbai.
5. ✓ Guard File. ,
6. Spare Copy.