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F.No.373/71/B/12-RA-Cus
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 30/6/2015

ORDER NO. 20/15- CUS DATED 30.06.2015 of the Government of India, passed by Smt. Rimjhim Prasad, Joint Secretary to the Government of India, under section 129 DD of the Customs Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. 433/2012 dated 23.05.2012 passed by Commissioner of Customs (Appeal), Chennai

Applicant : Mr. Mohamed Noorudeen.

Respondent : Commissioner of Customs, (Airport & Air Cargo) Chennai

ORDER

This revision application is filed by Mr. Mohamed Noorudeen,(hereinafter referred to as applicant) against the Order-in-Appeal No.433/2012 dated 23.05.2012 passed by Commissioner of Custom (Appeals), Chennai, with respect to Order-in-Original No. 26/2011 dated 05.08.2011 passed by Additional Commissioner of Customs,(Airport) Chennai.

2. Brief facts of the case are that the applicant is a frequent traveller. When he arrived at the Chennai Airport, he had not cleared his baggage booked in his name but abandoned it and left the airport. The officers of the AIU identified the packages lying unclaimed near Airlines Operators Committee situated in the arrival hall of the Airport. On an examination of the baggage, they were found to contain electronic goods, watches, one kg Ivory/Cream coloured powder and one kg grey coloured powder. Samples were drawn from the seized powders under a mahazar and were sent to the Indian Institute of Technology (IIT), Chennai for testing and were reported as Beta Methazone Dipropionate Powder valued at Rs. 71,840/- per Kg and Iridium Powder of high purity, valued at Rs.10,45,310/-per kg. The value of the electronic items including watches adopted at the time of seizure was also revalued based on prevailing market price, make, model etc, internet downloads and allowing usual rebate. As a result total value of the seized goods worked out to Rs. 43,36,000/-[Rs. 32,18,850(for miscellaneous electronic goods) +Rs. 11,17,150(for 1 kg Iridium Powder and 1 kg Beta Methazone Dipropionate Powder)]. As the impugned powders did not form admissible baggage goods and were prohibited items under Section 10C of the Drugs and Cosmetics Act, 1940 and imported without proper licence, they were confiscated absolutely by the lower authority under the Customs Act, 1962. The assorted electronic goods and watches being in trade quantity were also confiscated by the lower adjudicating authority under Sections 111(d) ,(l) and (m) of the Customs Act, 1962, but were allowed to be redeemed on payment of fine of Rs. 21,68,000/- under section 125 of the Customs Act, 1962. Penalty under section 112 (a) of Customs Act, 1962 of Rs. 5,45,000/- was also imposed on the applicant.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal dated 23.05.2012, upheld the Order-in-Original and rejected the appeal in toto being bereft of merit.
4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :
 - 4.1 That the order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.
 - 4.2 That the seized goods are not prohibited item and according to the liberalized policy the electronic goods can be released or re-exported on payment of redemption fine.
 - 4.3 That he is the owner of the electronic goods and Iridium and is claiming the same and also willing to redeem the goods on payment of redemption fine and has also made request to permit him to re export the same.
 - 4.4 That since the seized Beta Methazone Dipropionate Powder valued at Rs. 71,840/-per kg does not belong to the applicant, he is abandoning the same and hence he has no objection to confiscate the same.
 - 4.5 That he brought the goods of lesser value, however the officers assessed the value of the goods on higher side. The original valuation of the seized electronic goods is Rs. 23,55,000/- but the authority enhanced the value to Rs. 43,36,000/- for which no materials were available before the authority.
 - 4.6 That there is no evidence before the adjudication authority to enhance the value of the goods. The adjudication authority before passing the adjudication order ought to have asked the department on what basis the goods had been re valued and how authority enhanced the value from Rs. 23,55,000/- to Rs. 43,36,000/-. Without asking for anything the authority mechanically passed the adjudication order and the appellate authority also failed to look into the same and simply glossed over and passed an ex parte order in favour of the department and simply accepted the version of the department without any basis. Further no materials have been supplied to the

appellant for enhancing the value of the goods. Further despite specific request made through reply to show cause notice dated 06.04.2011 sent to the adjudication authority with request to supply the documents relating to valuation, no material was supplied to the appellant to defend the case at the time of adjudication proceedings. Thus it is clearly proved that the department suo motto had increased the value without any basis or documentary evidence and more over the adjudication authority had failed to apply its mind while accepting the enhanced value of the department and appellate authority also failed to consider the same while passing the impugned order.

4.7. That the goods seized by the Customs Department i.e (2GB) Micro SD cards were valued by the Customs Department at the rate of Rs. 100/- each. Subsequently they enhanced the value to Rs. 200 while adjudication proceedings were pending whereas in earlier adjudication orders passed by the Additional Commissioners of Customs (Airport) at Chennai/Trichy for an earlier period the goods were valued at a lower rate.

4.8 That the plastic watches are of lesser rate and the same are available in the market for Rs. 20 to 30 each but the department assessed the value on the higher side without any basis.

4.9 That it is clear evidence from their own record that they have not assessed the value properly and the value assessed at present is contrary to the adjudication order. He further submitted that if the goods are identical the authority should accept the same. Further once the authorities have accepted the valuation they should be bound by their precedents and stopped from acting to the contrary (1989 (44) ELT 202 Calcutta Ghanshyam Chejra and HCP no. 391 of 2006

4.10 That the adjudication authority has relied upon the internet prices for arriving the valuation in respect of seized goods. In this regard he submitted that the Hon'ble Supreme Court case reported in 2000(117)ELT 49 (Tribunal) Aggarwal Distributors (P) Ltd 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 unworthy and not reliable documents to calculate the value, though the adjudication authority is well aware that

the same is not reliable material. However, the adjudication authority has relied upon the value displayed in the internet is against the verdict of the Supreme Court. Any orders/judgments passed by the Apex Court is binding on the adjudication authority or Court under Article 141 of the Constitution of India.

4.11 That the applicant has relied upon following case laws in support of its request for applicability of Section 125 of Customs Act, 1962 in its case :

- Mukadam Rafique Ahmed 2011(270) ELT 447 (GOI)
- Mohamed Irsath Order No. 269/2011-Cus dated 05.09.2011 (GOI)
- Mohamed Ramzan 1995(75) ELT 207 (GOI)
- Escorts Harson Ltd Vs. Commissioner of Customs, Mumbai 1999(107) ELT 599 (Tri-Mumbai)
- Jamal Allapitchai Order No.109/2004 dated 31.03.2004 (GOI)
- Jabban Ilyas & Others Order No. 212-221/2007 dated 27.04.2007 (GOI)
- Hargovind Dash Vs Collector of Customs 1992(61) ELT 172 (SC)
- Sheikh Jamal Basha Vs GOI 1997 (91)ELT 277 (AP)
- Shabir Ahmad Abdul Rehan 2009(235)ELT402(Bom)
- Yakub Ibrahim Yusuf Vs Commissioner of Customs, Mumbai 2011(263)ELT 685(Tri Mum)

4.12 That the Hon'ble Supreme Court(full bench) has delivered a judgment on 30.09.2011 in Om Prakash's case Vs UOI wherein it is categorically stated that the main object of the enactment of the said Act was the recovery of Excise duties and not really to punish for infringement of its provisions.

4.13 That the impugned order dated 23.05.2012 be set aside to re-assess the value and to permit re-export of the electronic goods and Iridium and reduce personal penalty and redemption fine.

5. Personal hearing in this case held on 13.03.15 was attended by Shri S. Palanikumar, authorized advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of Department.
6. Government has carefully gone through the relevant case records available in case file, oral & written submission and perused the impugned Order-In-Original and Order-In-Appeal.
7. Government observes that on examination by the Customs Officers of the unclaimed baggage held as belonging to the applicant as verified from the baggage tags affixed on it, miscellaneous electronic goods as detailed in Order-in-Original dated 05.08.2011 initially valued at Rs. 23,55,000/- and subsequently valued at Rs. 43,36,000/- were recovered in trade quantity as non bonafide baggage alongwith 1kg of cream coloured powder and one kg of grey coloured powder. The samples of powders on testing were confirmed to be chemical substances known as Beta Methazone Dipropionate powder and Iridium powder totally valued at Rs. 11,17,150/- The electronic goods and cream and grey coloured powders of one kg each were seized under Section 110 of Customs Act, 1962. A show cause notice was issued to the applicant but no reply was submitted by him. After due process of law, the adjudicating authority adjudicated the case ex-parte, vide Order-In-Original dated 05.08.2011 as nobody appeared for personal hearing given to the applicant from time to time. The adjudicating authority vide said Order confiscated the electronic goods under Section 111 (d), (l) and (m) of Customs Act, 1962 with the option granted to redeem the same on payment of fine of Rs. 21,68,000/-; absolutely confiscated the Beta Methazone Dipropionate powder and Iridium powder under Section 111 (d), (l) and (m) of Customs Act, 1962 read with Drugs and Cosmetics Act, 1940; and also imposed a personal penalty on the applicant of Rs. 5,45,000/- under Section 112 of the Customs Act, 1962. Aggrieved by the Order, applicant filed appeal with Commissioner (Appeals), who upheld the Order-in-Original vide Order-in-Appeal dated 23.05.2012. Now, the applicant has challenged the impugned Order-in-Appeal on the grounds stated in para 4.

8. Government notes that basic facts and findings are not disputed in this application. The applicant has cited various cases/judgments and has made submissions that valuation is too high and requested to allow re-export of the impugned electronic goods and Iridium powder on reduced personal penalty/fine. Government finds that the applicant, arrived at Chennai Airport from Colombo with electronic goods etc. in trade quantity alongwith chemical substances known as Beta Methazone Dipropionate Powder and Iridium Powder which he initially abandoned at the airport. The applicant appeared before the Superintendent Airport, Chennai only on 14.11.2010 in response to summons issued to him. He was arrested on 14.11.2010 and remanded to judicial custody.

9. Government notes that import of Beta Methazone Dipropionate Powder and Iridium Powder does not constitute bonafide baggage and their import is prohibited without an Import Licence and registration certificate in terms of the Customs Act, 1962 read with Drugs and Cosmetics Act, 1940. The applicant was admittedly not in possession of any such licence and certificate for the legal import of the impugned items. It is seen from the records that the substance was in loose condition without any label or batch no., etc. Moreover, the applicant did not specify the contents of his baggage or declare its nature, quantity and actual value to the Customs and did not possess or produce any documents showing the licit procurement of the goods. This reveals that the applicant is guilty of smuggling the goods into India. The applicant abandoned the above referred goods and left the Airport to escape action by the Department. The applicant claimed in his application that the impugned goods did not belong to him and that he was abandoning the same is not tenable in as much as that the applicant has claimed ownership of items other than the impugned goods found in the same baggage. Therefore, the order of the lower adjudicating authority which was upheld by Commissioner (Appeals) in absolutely confiscating the Beta Methazone Dipropionate Powder and Iridium Powder under Section 111 (d),(l) and (m) of the Customs Act,1962 read with Drugs and Cosmetics Act, 1940 is just and valid.

10. Government further notes that with regard to the assorted electronic goods also, the applicant failed to make a true declaration as envisaged under Section 77 of the

Customs Act, 1962. Further being in commercial quantity, they do not constitute bona fide baggage in terms of Section 79 of the Customs Act, 1962 read with Para 2.20 of the Foreign Trade Policy in force. Therefore, the goods are liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act 1962. Government holds that the order of confiscation and allowing the goods for redemption on payment of fine and the imposition of penalty by the original authority is rightly upheld by the Commissioner (Appeals) and is not to be interfered with.

11. Government observes that the applicant has raised a plea regarding valuation of the assorted electronic goods brought by him. The Customs authorities have valued the goods on the basis of prevailing market rates and taking into consideration the type, brand etc. and also based on relevant information searched and retrieved from the internet and National Import Data Base after allowing the usual rebate, which is correct. The Apex Court in the case of Auto Stores Vs CC (Export), Mumbai has held that available NIDB data of comparable goods to be adopted for assessment-2014(305)ELT A 75(SC). Moreover, the applicant was given more than adequate opportunities to substantiate his claim after the seizure of the impugned goods and the issue of show cause notice which has been issued to the applicant by a further extended period of six months under Section 110 (2) of the Customs Act, 1962. However, the applicant failed to produce any invoice or any other documentary evidence in support of his contention. As no supporting document to substantiate the value of electronics goods has been produced, there is no infirmity in applying NIDB data which gives price of contemporaneous imports of similar/identical goods. Hence, the plea of over valuation is not acceptable and the value adopted by the adjudicating authority and upheld by Commissioner (Appeals) is sustained as per law and does not warrant interference.

12. As regards the plea of the applicant to reduce the redemption fine and personal penalty, Government notes that the redemption fine and penalty imposed by the original adjudicating authority and upheld by Commissioner (Appeals) are only 50% and 12% of the value of goods respectively. Keeping in view the gravity of offence and overall circumstances of the case, the same are reasonable and there is no ground for their further reduction.

13. Government observes that the applicant has also requested to permit re-export of impugned electronic goods and Iridium. It is an undisputed fact that the contents of his baggage were not declared by the applicant upon his arrival at the Airport. Therefore, applicant contravened the provisions of Section 77 of Customs Act, 1962. Government further observes that the goods brought by the applicant were prohibited (Beta Methazone Dipropionate powder and Iridium powder) and in commercial quantity (assorted electronic goods and watches), and hence do not constitute bona fide baggage in terms of Section 79 of the Customs Act, 1962 read with provision of Para 2.20 of EXIM Policy in force. Government notes that provision for re-export of baggage is available under Section 80 of the Customs Act, 1962. However, as this will apply only in the case of declared bona fide baggage, the applicant is not eligible for re export of impugned goods. In similar circumstances, Central Government has denied re export of goods in the case of Hemal K. Shah reported in 2012 (275)ELT 266 (GOI). Further, the Hon'ble Supreme Court in the case of CC, Kolkata Vs Grand Prime Ltd 2003(155)ELT 417(SC) has supported the view that goods which are liable to confiscation cannot be allowed to be re exported. Government also finds that the facts of the case laws relied upon by the applicant are different from the present case. Hence, Government is of the view that, the request of the applicant to re export (electronic goods, watches and Iridium) is not legal and proper and cannot be allowed.

14. In view of above circumstances, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

15. Revision Application is thus rejected being devoid of merit.

16. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Govt. of India

Mr. Mohammad Noorudeen,
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शौकत अली
Shaukat Ali
असिस्टेंट सचिव (प. ए.)

Order No. _____ /14 - Cus dated _____ 2015

Copy to:

1. The Commissioner Customs (Airport & Cargo), Integrated Air Export Complex, Chennai- 600027
2. The Commissioner of Custom (Appeals), Customs House, Chennai 600001.
3. The Additional Commissioner of Customs, Airport, Custom House, Chennai- 600 001
4. Shri S. Palani Kumar ,Advocate, No. 10, Sunkuram Street, 2nd Floor, Chennai- 600001.
5. PS to JS (RA)
6. Guard File
7. Spare Copy

ATTESTED

(Shaukat Ali)
Under Secretary, GOI (RA)

