



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

F.No. 373/16/B/15-RA / 4690

Date of Issue 02.09.2021

ORDER NO 202/2021-CUS (SZ)/ASRA/MUMBAI DATED 25.08.2021 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 Aliyar Syed

Respondent : Commissioner of Customs, Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 84/2014 dated 31.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Aliyar Syed (herein referred to as Applicant) against the Order in Appeal No. 84/2014 dated 31.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. The Officers of Customs intercepted the Applicant's unaccompanied baggage wherein the baggage under import was declared as food items valued at Rs. 6000/-. The declaration did not tally with the description of the goods, quantity and value as the items included various household goods and kitchen items. In addition the Applicant had two swords valued at Rs. 30,000/- in the baggage. The Original Adjudicating Authority vide its Order-In-Original No. 24576/2014 dated 26.03.2014 confiscated the two swords absolutely as a prohibited item under the Arms Rules, 1962. The rest of the items were valued at Rs. 5,75,400/- /- (Rupees Five Lakhs Seventy five lakhs Four hundred) and allowed redemption on payment of Rs. 5,00,000/- (Rupees Five Lakhs) a penalty of Rs. 1,00,000/- was also imposed under section 112 (a) of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), the Commissioner (Appeals) vide his order No. 84/2014 dated 31.10.2014 rejected the appeal.

4. Aggrieved with the above order the Applicant, has filed this revision application on the following grounds;

4.1 The order passed by the Learned Commissioner is against law, weight of evidence and probabilities of the case.

4.2 The Applicant submits that the impugned order suffers from the vice of non-application of mind, in so far as the declared values have been discarded and re-determined, without taking the invoice value into consideration or following the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules 2007 and on this score alone, the order under challenge

deserves to be set aside in its entirety with consequential relief to the applicant.

4.3 The applicant submits that a categorical averment was made that the alleged mis-declaration in the baggage declaration, took place due to mis-communication between the applicant and his Custom House Agent, who had declared the value of the goods under import as Rs. 6000/- instead of USD 6000(Approx.), as was informed by the applicant to his CHA orally. The Lower Authority has negated the said contention of the applicant, on the basis of certain declaration made in the BILL of Lading i.e., "No AES required as the value of the cargo is less than USD 2500". The applicant submits that the Entry/Declaration made in the Bill of Lading is not attributable to the applicant and the same is attributable to Steamer Agent and such a declaration in the Bill of Lading was made, for reasons best known to the Steamer Agent and unknown to the applicant. The applicant therefore submits that such a declaration cannot be used against him in the absence of examination of the said Steamer Agent in respect of the same. The applicant states that the lower authority has gone on a tangent merely because there was a figure of USD 2500 in the Bill of Lading to allege and confirm that the applicant has mis-declared the value of the goods imported by him on transfer of his residence from the United States to India. The applicant therefore submits that on this score also. The order of the Learned Commissioner is patently erroneous and deserves to be set aside in its entirety, with consequential relief to the applicant.

4.4 The applicant submits that much has been made out of an alleged mis-declaration. The baggage declaration impugned in the present proceedings, by stating that, the applicant had made a declaration stating that he had imported "Food Stuff" valued at Rs. 6000/- and on examination of the goods, it was found that there were several items allegedly new including two swords valued at Rs. 6,05,400/- as against declared value. The applicant submits that it is ill-conceivable that a person of Indian origin transferring his residence from United States to India would bring only Food Stuff and that too in 3 pallets. The applicant submits that the lower authority has not stated on what basis the goods found in the consignment on examination were new. The applicant further submits that perusal of the list of goods as found in the consignment would clearly indicate that the

same are house hold goods and the same were imported by the applicant for his personal use after his transfer of residence to India. None of the goods were either trade goods or in commercial quantity and the question of mis-declaration of any entry in the baggage declaration cannot be sustained, for the reason that when someone transfers his residence from one place to another, it is common that things are removed and packed before they are shipped to the new place of residence and as the goods are in the nature of household goods, which are person uses on a day today basis, there is always possibility that there could be a slight discrepancy between the actual contents and the declaration. How a declaration to the effect that the goods in question were food stuff is not known to the applicant. That attributing malafides and alleging mis-declaration of the description and value of the goods on the applicant is totally mis-placed and unfounded and the same merits outright rejection before the authority.

4.5 The applicant submits that as the impugned order does not state the basis on which value has been arrived at, it appears that the values have been appraised/ fixed by the Superintendent of Customs, who examined the goods and the Lower adjudicating authority and the Commissioner (appeals) have merely accepted the same without as much as questioning the said value due to the applicability of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007. The applicant submits that the exercise of arriving at the values in terms of the Order under challenge, appears to be an arm twisting tactic the part of the officers, who examined the value of the goods merely because of the inadvertent communication, between the applicant and his CHA. The re-determination of declared values is contrary not only to the statutory provisions, but also to the Judgment of the Hon'ble Tribunal in the case of Naresh Lokumal Serai Vs. Commissioner of customs (Export), Raigad reported in 2006 (203) ELT 580 (Tri-Mumbai) and as affirmed by the Hon'ble Supreme Court reported in 2010 (256) ELT Al (SC). The applicant submits that the aforementioned judgments of the Hon'ble Tribunal and the Apex Court is that the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, applies to valuation of baggage goods also,

and therefore the applicant submits that the impugned order has to be set aside in its entirety with consequential relief to the applicant, for being contrary to the law.

4.6 The applicant submits that the lower authority has ordered absolute confiscation of two swords imported by the applicant on the ground that the same are prohibited items in terms of Section 111(d) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulations) Act, 1992 read with Arms Rules, 1962. The applicant submits that the said swords are merely show pieces and do not fall under the Schedule 1 to the Arms Rules, 1962 and by no stretch of imagination can the same be construed to be prohibited for their import. Not having considered the same and not even having seen the said swords personally, ascertaining whether the said words would fall within the four corners of the prohibition under the Arms Rules, 1962. The lower authority has merely tutored the line of the Superintendent of Customs, who examined the goods and put up the file for adjudication.

4.7 The applicant submits that the lower authority has confiscated the goods valued by it at Rs.5.75.400/- and permitted redemption of the some on payment of a redemption fine of Rs. 5,00,000/-. The applicant submits that the question of imposition of redemption fine was considered by the Hon'ble Apex Court in the case of Commissioner of Customs, Mumbai Vs. Mansi Impel reported in 2011 (270) ELT 631 (SC), Wherein the Hon'ble Apex Court has held that no redemption fine is impossible in the absence of a Market Enquiry, in respect of the goods in question. Admittedly, in the impugned order, it is absolutely clear that no exercise of conducting any market enquiry, whatsoever has been undertaken, to ascertain the present market value of the goods under question, so as to reduce the duty chargeable the said goods thereon, in terms of the provision of the Section 125 of the Customs Act, 1962. The Applicant submits that very imposition of redemption fine and that too an extent of Rs.5,00,000/- is whimsical, arbitrary and contrary to the statutory provisions and law laid down by the Hon'ble Apex Court and the same deserves to be set aside in its entirety with consequential relief to the applicant.

4.8 The applicant submits that the lower authority has also imposed a penalty of Rs.1,00,000/- on the applicant under section 112(a) of the Customs Act, 1962 on the ground that the applicant has rendered the goods impugned in the present appeal liable to confiscation. The applicant submits that in light of the grounds raised herein above, the question of the applicant's complacency to render the subject goods liable to confiscation is absolutely unsustainable, for the facts that the so called miscommunication between the applicant and his CHA and therefore no mens rea, is attributable to the applicant and consequently no penalty is imposable, on him.

4.9 The applicant submits that the lower authority as well as the Commissioner Appeals failed to see that the applicant has submitted the original invoice as proof. The same has not been considered while assessing the value of the goods.

4.10 The Learned Commissioner has not considered the above contentions raised before him and neither has he considered the judgments of the Hon'ble Apex Court. The learned Commissioner without application of his mind has upheld the order passed by the lower authority. Considering the same the order of the teamed Commissioner (appeals) is liable to be set aside.

4.11 The applicant accordingly prays that this authority may be pleased to (a) set aside the absolute confiscation of the item SI. No. 63 viz two nos of swords.

(b) set aside the confiscation of items listed from Sr. Nos. 1 to 62 valued at Rs. 5,75,400/- u/s 111 (d) (l) (m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

(c) set aside the redemption fine of Rs. 5,00,000/- in lieu of Confiscation under Section 125 of the Customs Act, 1962.

(d) set aside the penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act, 1962 .

5. Meanwhile the Applicant filed a Writ Petition no. 3333 and 4428 of 2015 to call for records pertaining to the order in Appeal No. 84/2014 dated 31.10.2014, confirming the order in original No. 24576 dated 26.03.2014 and quash the same and for issuance of a writ of mandamus directing the respondent (Applicant department) to release the seized goods to the petitioner. The Hon'ble High Court of Madras issued the following orders:-

COMMON ORDER

Petitioner has come forward with the aforesaid prayers.

2. It is not in dispute that items mentioned in one writ petition are household articles and fancy items whose cost is 6013 US \$ and that the issue with regard to other writ petition is also covered by decision of the CESTAT in the case of NARESH LOKUMAL SERAI v. COMMISSIONER OF CUSTOMS (EXPORT), RAIGAD, wherein it has been observed as under:-"9. After hearing both sides, perusal of the records and case laws relied upon by both sides, we find that the submissions made by the Id. Counsel for the appellant deserve to be accepted. We find that the appellant had, by enclosing a detailed packing list along with the BDF, declared and disclosed to the department the contents of his baggage. This is the primary requirement of Section 77 of the Customs Act which provides that the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer. There is no statutory obligation cast on the passenger to also declare the value of such baggage in the BDF. The BDF filed by the appellant in the present case gives a list of 14 used personal effects for which a value of Rs.4.5 lakhs was declared. The 237 items which are listed in the packing list attached to the BDF are not the same as the 14 items for which the value of Rs.4.5 lakhs was declared. It is thus evident that in respect of these 237 items, the SOF did not declare any value at all. It is only in the statement of the appellant recorded under Section 108 that he declared the purchase price of the 237 items as equivalent to Dirham 5.25 lakhs. This statement of the appellant has been relied upon in the show cause notice. We have to examine whether this value should have been accepted for assessment purposes or not."

3. It is the admitted case that the matter is pending before the revisional authority. Without prejudice to the rights of the parties in the revision petition, this court directs the authorities to release the goods which are subject matter of the writ petitions. On an application made by the petitioner, the goods shall be released within a period of four weeks from that date. However, this court makes it clear that there should not be any demurrage as there is no fault on the part of the petitioner.

4. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petition is closed.

6. The respondent department being aggrieved filed a Writ Application no. 997 and 998 of 2015 in the High Court of Madras to set aside order dated 26.03.2015 in Writ Petition no. 3333 and 4428 of 2015.

The Hon'ble High Court of Madras observed that;

"The learned counsel appearing for the Appellants submit that the Writ Court had completely ignored the facts that the dispute is still pending consideration before the vigilance authorities. The goods were brought without disclosing the proper value and as such, the writ petitioner is liable to pay duty on the said goods with penalty.

2. Heard the learned counsel appearing for the Appellants and respondent. We have examined the facts as projected by the appellants.

3. On perusal of the impugned order, we find that the learned single judge recording the pendency of the dispute before the vigilance authority has directed the authorities to release the goods, without ensuring the fact that in the event, the writ petitioner fails before the revisional authority, how the customs duty would be recovered from the writ petitioner.

4. The learned counsel appearing for the writ petitioner submits that in the event the writ petitioner fails before the revisional authority, he undertakes to pay the entire duty leviable as per law on his own merit.

5. In that view of the matter, we are not inclined to interfere at this stage. However we make it clear that it would be open to the authorities to recover the duty as permissible under the provisions of law."

6. Personal hearings in the case were accordingly scheduled on 02.03.2021, 09.03.2021, 06.04.2021, 13.04.2021, 22.07.2021 and 29.07.2021. However neither the Applicant nor the respondents attended the hearings the matter is therefore being decided on merits.

7. Government has gone into the facts of the case. The Applicant claims that there was a mis-communication between him and his CHA which resulted in the misdeclaration and of the value of the goods under import as Rs. 6000/- instead of USD 6000(Approx.), as was informed by the applicant to his CHA orally. Whatever may be the reason, there is no dispute that a misdeclaration has occurred and therefore confiscation of the goods is justified. The Applicant disputes the valuation as the declared values have been discarded and re-determined, without taking the invoice value into consideration or following the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules 2007. Further, it has also been submitted that the swords brought by him are ornamental and therefore cannot be held as prohibited items in terms of Section 111(d) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulations) Act, 1992 read with Arms Rules, 1962.

8. The Hon'ble court of Madras in its order datedhas observed that “ *The BDF filed by the appellant in the present case gives a list of 14 used personal effects for which a value of Rs.4.5 lakhs was declared. The 237 items which are listed in the packing list attached to the BDF are not the same as the 14 items for which the value of Rs.4.5 lakhs was declared. It is thus evident that in respect of these 237 items, the SOF did not declare any value at all. It is only in the statement of the appellant recorded under Section 108 that he declared the purchase price of the 237 items as equivalent to Dirham 5.25 lakhs. This statement of the appellant has been relied upon in the show cause notice. We have to examine whether this value should have been accepted for assessment purposes or not.*”

In view of the order of the Hon'ble High Court, Government notes that to arrive at the actual value of the goods, invoices submitted by the Applicant, the baggage declaration and other documents pertaining to the same are not available with this office. Further, the Applicant has not availed the option of attending the

personal hearing, and therefore the dispute of valuation cannot be decided at this end.

9. In view of the above, Government holds that ends of justice will be met if the case is remanded back to the original adjudicating authority for the limited purpose of reverification of the claim of the Applicant with regard to valuation and the directions of the Hon'ble High Court of Madras, keeping in mind the decision of the CESTAT in the case of Naresh Lokumal Serai V. Commissioner Of Customs (Export), Raigad, with directions that he shall consider the claim for revaluation on the basis of the documents submitted by the applicant in the correct perspective and assess the claim after satisfying itself in regard to the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

10. The revision application is disposed off in the above terms.

Shrawan
25/08/21

(SHRAWAN KUMAR)

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

ORDER No.202/2021-CUS (WZ) /ASRA/

DATED 25.08.2021

To,

1. Shri Aliyar Syed, Thahamohamed Jalal No. 33, Ibrahim Sahib Street, 2nd lane, Manady, Chennai- 600 001.
2. The Commissioner of Customs(Import), 60, Rajajisalai Custom House, Chennai- 600 001.

Copy to:

1. Shri T. R. Senthil Kumar, K. G. Usha Rani & M. Kaushik Krishna, Advocate, AP-1110, 74th Street, 12th Sector, K.K. Nagar, Chennai-600 078.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File. ,
4. Spare Copy.