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SPEED POST



F.No. 375/41/B/2018-RA.Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 11/12/18

Order No. 221/18-Cus dated 6-12-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/D-I/Air/50/2018 dated 21.02.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi.

Applicant : Mr. Manoj Kumar Jain
C/o Rajiv Tuli, Advocate

Respondent : Commissioner of Customs, NCH New Delhi

ORDER

A Revision Application no. 375/41/B/18-RA dated 17.05.2018 has been filed by Sh. Manoj Kumar Jain, R/o Beverly Hills Apartment, Flat No. 40/63, Geeta Colony, Delhi-110031 (hereinafter referred to as applicant) against Order-in-Appeal No.CC(A)Cus/D-I/Air/50/2018 dated 21.02.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi.

2. Brief facts of the case leading to the filing of the Revision Application are that the applicant arrived from Thailand to New Delhi and on frisking of his baggage by Customs officers, steroids and cameras in commercial quantity were recovered from his possession. These goods were seized as the applicant did not have license in Form-10 from the Drug Controller of India, the goods were undervalued and the goods were not declared under section 77 of Customs Act 1962. The original adjudicating authority absolutely confiscated the goods under section 111 of the Customs Act 1962 and imposed penalty of Rs.18,00,000/- on the applicant under section 112 and 114AA of the Customs Act 1962. Being aggrieved, the applicant filed an appeal with Commissioner (Appeals) who also rejected their appeal and thereafter the applicant filed this Revision Application mainly on the grounds that Form-10 is given to companies and not to any individual, steroids are not prohibited goods, the department has valued the goods through market enquiry and internet prices in violation of Customs valuation Rules 2007 and that section 144 AA of Customs Act 1962 is not applicable to their case.


3. Personal hearing was held on 14.08.2018 and Sh. Rajiv Tuli, Advocate, availed the same for the applicant who reiterated the above mentioned grounds of revision already pleaded in their application. He also produced a compilation of several case laws relied upon by them.

4. The Government has examined the matter and observed that there is no dispute that the steroids brought by the applicant in commercial quantity could be legitimately imported only after obtaining license from the Drug Controller of India and Import Export Code from the DGFT. The Supreme Court, in the case of Om

Prakash Bhatia Vs. Commissioner of Customs 2003(155)ELT423(S.C) and in several other cases has clearly held that goods imported or exported on non fulfilment of specified conditions becomes prohibited goods and thus the steroids brought by the applicant without support of license from the Drug Controller are clearly prohibited goods. Further it is also beyond any doubt that the applicant did not declare the importation of the steroids to the custom authorities under section 77 of the Customs Act when he arrived at International Airport from Bangkok. Thus, the applicant imported the prohibited steroids in flagrant contravention of section 11 of the Customs Act and section 7 of the Foreign Trade (Development and Regulation) Act 1992 with clear motive to evade Custom duties and to breach public health Policy as per which the availability of the products like steroids needs to be regulated to maintain proper social and national health. Accordingly, the Government is fully convinced that the original adjudicating authority as well as the first appellate authority have exercised their discretion very prudently as envisaged in section 125 of the Customs Act to confiscate the goods absolutely brought by the applicant illegally in India. Considering the above glaring facts, the request of the applicant to allow the applicant to redeem the confiscated steroids on payment of fine etc. or to reexport the same to Thailand is found completely untenable as it would amount to compromising the public health. The applicant has otherwise also not satisfied any of the criteria specified in section 80 of the Customs Act so as to be eligible for reexport of the goods. The applicant's reliance on several decisions in the cases of Mohammed Zia-ul-Haque, [2014(314)ELT849(GOI)] Commissioner of Customs, Mumbai Vs. Alfred Menezes [2004 (242)ELT 334 (BOM)], Yakub Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai [2011(263) ELT 685(Tri-Mumbai)] and Nine Star Exports Vs. Commissioner of Customs, Chennai [2003(151)ELT 265 (Mad)] is found completely misplaced as in none of these decisions it has been held that prohibited goods must be mandatorily released on payment of duties and fine etc. under section 125 of the Customs Act. The said section 125 only provides discretion to the adjudicating officer for allowing redemption of the prohibited confiscated goods and in this case the same has been exercised by the above authorities not to allow the redemption of steroids which could be misused against the public interest. However, the Government has

found that the Department has not made out any case that ten cameras of the value of Rs.2,77,200/- are prohibited goods and, therefore, under section 125 of the Customs Act an option should have been given to the applicant to redeem these confiscated cameras on payment of Custom duties and fine. Since it has not been done earlier, the Government allows the applicant to redeem the confiscated cameras within thirty days from the receipt of this order on payment of applicable Custom duties alongwith interest and fine of Rs. 1,00,000/-. The issue regarding valuation of the goods as raised by the applicant is also found to be of no relevance at this stage as the applicant had not brought any purchase document at the time of his arrival and the documents submitted to the departmental authorities after huge gap cannot be given any credibility for accepting the value of the goods on the basis of such documents. Hence, the department did not have any other option but to work out the value of the imported goods from other sources such as market enquiries and online prices of similar goods. Moreover, the valuation of the goods is not of much importance in the present case as the steroids which constitute lion's share of the confiscated goods have been absolutely confiscated because of which Customs duties are not to be levied from the applicant. However, the applicant's contention that penalty is not maintainable under section 114AA of the Customs Act is found legally tenable as the department has not made out any case that the applicant had falsely misdeclared or resorted to some false documentation to import the confiscated goods. On the contrary the department's case against the applicant is that he did not declare the goods while he arrived from Thailand alongwith the confiscated goods for which penalty under section 112 of the Customs Act is already imposed. But it is found that penalty of Rs. 18,00,000/- has been imposed on the applicant by invoking both section 112 and 114AA of the Customs Act and no separate penalty under section 114AA has been imposed which can be set aside in this case. Since the Government is entirely convinced that the applicant has committed grave offence of smuggling huge quantity of steroids threatening public health and a befitting deterrent penalty as already imposed is warranted in this case, the penalty of Rs. 18,00,000/- imposed by the lower authorities should be considered to have been imposed under section 112 of the Customs Act only.

5. Accordingly, the Order-in-Appeal is modified and Revision Application is allowed to the extent of above discussions.


6.12.18
(R.P. Sharma)

Additional Secretary (Revision Application Unit)

Mr. Manoj Kumar Jain,
Beverly Hills Apartments,
Flat No. 40/63, Geeta Colony,
Facility Centre Delhi-110031

Order No. 221 /18-Cus dated 6-12-2018

Copy to:

1. The Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
2. The Commissioner of Customs (Appeals) New Customs House, Near IGI Airport, New Delhi-110037.
3. The Additional Commissioner of Customs IGI Airport, Terminal-3, New Delhi-110037.
4. Mr. Rajiv Tuli, Advocate, Vaidat Legale Services A-415, LGF Defence Colony New Delhi-110024.
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(Debjit Banerjee)
STO (REVISION APPLICATION)