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

F. No. 371/30/B/15-RA / 5336

Date of Issue : (7.09.2021)

ORDER NO. <sup>228</sup> 9/2021-CUS (SZ) / ASRA / MUMBAI/ DATED 08.09.2021 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 Roofi Khalil Bhure

Respondent : Pr. Commissioner of Customs, Mumbai.

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against Order-in-Appeal No. MUM-CUSTM-SMP-83-84-14-15 dated 31.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai-I.

ORDER

This revision application has been filed by Shri Roofi Khalil Bhure (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-SMP-83-84-14-15 dated 31.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai-I.

2. Shri Roofi Khali Bhure, had filed Bill of Entry No. 5855435 dated 19.06.2014 through their authorized CHA M/s. Contessa Forwarders for clearance of one used 2000 Mercedes Benz 500s Model car (hereinafter referred to as the 'goods' or 'impugned goods'). The value of the goods were declared as Rs. 2,20,220/- (CIF) and has claimed the benefit of Rule 8 of the Baggage (amendment) Rules, 2006 (Baggage Rules, 1998) i.e. Transfer of residence facility vide Notification No. 30/98 dtd. 02.06.1998 as amended. The importer had annexed an Affidavit dated 03.07.2014 affirming that he has come for permanent settlement to India from USA on 18.05.2014 and intends to claim the TR facility. Further he had also affirmed that after importation of the car in India, he will not sell or transfer the car for 02 years. Since, the goods were old and used, the goods were examined under DC/Docks supervision, and valued by Chartered Engineer vide certificate no. SA/CEC/VALUE/CONTESSA/ROOFI/166/2014-15 dated 30.06.2014 issued by M/s. Intertek Testing Services India Pvt. Ltd., Mumbai and suggested the value of Rs. 4,70,000/- (CIF).

3. In view of the above the eligibility of the importer for availing Transfer of Residence was examined and it was found from the photocopy of the passport of the importer that the last arrival of the importer was 18.05.2014 and in the preceding 02 years from the arrival of the importer, he has stayed 634 days in India. The importer vide his letter dtd. 07.07.2014 had requested to condone the excess stay in India. The scrutiny of the documents and referring to the aforesaid notification No. 30/98 dated 02.06.1998, it was found that as per

condition of Rule 8 of the baggage ( amended) Rules, 2006, in the condition that if the total stay in India exceeds 6 months, only the Commissioner of Customs was empowered to condone the same in deserving cases. The request made by the importer for condonation of delay was rejected by the Commissioner of Customs (Import) in the impugned case.

4. The case was adjudicated by the adjudicating authority by re-determining the assessable value at Rs. 4,75,000/- (Rs. Four Lakh Seventy Five Thousand only) and absolutely confiscated the goods under section 111(d) and 111(m) of the Customs Act, 1962. However, the goods were allowed to be redeemed under section 125 of the Customs Act, 1962 on payment of redemption fine of Rs. 1,00,000/- (Rs. One lakh only) for the purpose of re-export and imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) under section 112 (a) of the Custom Act, 1962.

5. As the benefit of Transfer of Residence was not granted the applicant filed an appeal before the Commissioner of Customs (Appeals), the Commissioner (Appeals) vide its Order-in-Appeal No. MUM-CUSTOM-SMP-83-84-14-15 dated 31.03.2015 held that, if the goods are confiscated absolutely the same cannot be released to the person from whom the goods are seized/detained. And accordingly modified the impugned order of the original adjudicating authority and set aside the absolute confiscation and held the car liable for confiscation under section 11(d) of the Customs Act, 1962 and allowed it to be redeemed for the purpose of re-export.

6. Aggrieved with the above orders the Applicant, has filed this revision application for setting aside the orders of the lower authorities and submitted reasons for his overstay in India and pleaded that the overstay be condoned, and reduce the penalties imposed.

7. Government observes that the Appellate authority in para 13 of its impugned order notes "*Regarding the applicant's grievance that he was not accorded proper facility of personal hearing to explain his case to the competent*

*authority, and that the principle of natural justice was not followed, I find that the appellant should raise this issue before the appropriate appellate level i.e The Customs, Central Excise, Service tax Appellate Tribunal. As the request of condonation is denied by the Commissioner of Customs, the office of the Commissioner of Customs (Appeals) is not the appropriate level, to challenge the same."*

8. The Government has examined the matter and it is observed that as per first proviso to Section 129A read with Section 129DD of Customs Act, 1962, an appeal against a decision or order passed by the [Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority, lies before the Appellate tribunal. As the condonation of delay has been denied by the Commissioner of Customs, the Government does not have jurisdiction to deal with this Revision Application. The Commissioner (Appeals) has rightly pointed this out in his Appellate order, which has not been discerned by the Applicant.

9. In view of above discussions, Government is of opinion that the issue involved in this case does not fall within the jurisdiction of this authority and hence, the issue is required to be agitated before the proper legal forum, i.e. Tribunal if the Applicant deems fit to do so. The revision application is thus not maintainable before this authority for want of jurisdiction in terms of Section 129A read with Section 129DD of the Customs Act, 1962.

10. The revision application, thus stands rejected as being non-maintainable for lack of jurisdiction.

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

ORDER No. <sup>228</sup>/2021-CUS (WZ) /ASRA/MUMBAI

DATED 08.09.2021

To,

1. Shri Roofi Khalil Bhure, 502, Yellow Rose Apartment, Pali Village, Bandra (W) Mumbai – 400 050.
2. The Commissioner of Customs, CSI Airport, Mumbai.

Copy to:

3. Dr. Sai Kumar Pathrudu, Advocate High Court, 324, 3<sup>rd</sup> Floor, Himalaya House, 79 MRA Marg, Mumbai -001. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.