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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

(i). F.No. 371/46/B/2014-RA : Date of Issue : 24/11/2022
(ii). F.No. 371/45/B/2014-RA/6702

CORRIGENDUM TO ORDER No. 246-247/2022-CUS (WZ)/ASRA/MUMBAI DATED. 30.08.2022. 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.

(i). F.No. 371/46/B/2014-RA

Applicant : Shri. Viraj P. Shah,

(ii). F.No. 371/45/B/2014-RA

Applicant : Shri. Jayesh B. Patel.

Respondent : Pr. Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 145-146/2009/ Cus/Commr(A)/Ahd dated 30.06.2009 issued through F.No. S/49-144/Cus/ Ahd/2008 and S/49-145/Cus/Ahd passed by the Commissioner of Customs (Appeals), Ahmedabad.

CORRIGENDUM

In the Order No. 246-247/2022-CUS (WZ)/ASRA/MUMBAI DATED. 30.08.2022 existing para no. 15 and 16 at page 9 & 10,

“15. On the issue of the goods being prohibited, the Hon’ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that “ *if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, “prohibited goods”.”

“16. Further, in para 47 of the said case the Hon’ble High Court has observed “*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods*

liable for confiscation.....”. Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the ‘Applicants’ thus, liable for penalty.”

Maybe read as,

“15. On the issue of the goods being prohibited, the Hon’ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that “ *if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus clear that medicines, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of medicines, would squarely fall under the definition, “prohibited goods”.”

“16. Further, in para 47 of the said case the Hon’ble High Court has observed “*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which*

states omission to do any act, which act or omission, would render such goods liable for confiscation.....". Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned medicines "prohibited" and therefore liable for confiscation and the 'Applicants' thus, liable for penalty."

Shrawan
22/11/22
(SHRAWAN KUMAR)

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

CORRIGENDUM TO ORDER No. 246-247/2022-CUS (WZ)/ASRA/MUMBAI
DATED. 30.08.2022

To,

1. Shri. Viraj P. Shah, 14, Shah Colony, Opp. Best High School, Bhairavnath Road, Maninagar, Ahmedabad - 380 008.
2. Shri. Jayesh B. Patel, 6, Gujarat Co-op. Hsg Society, Near Kankaria Football Ground, Maninagar, Ahmedabad - 380 008.
3. Pr. COMMISSIONER OF CUSTOMS (CUSTOMS AHMEDABAD) 1ST FLOOR, CUSTOM HOUSE, NEAR ALL INDIA RADIO, INCOME TAX CIRCLE, NAVRANGPURA, AHMEDABAD-380009.

Copy to:

4. Shri. N.K Tiwari, 21, Surdhara Bungalows, Drive-in Road, Thaltej, Ahmedabad - 380 054.
5. Sr. P.S. to AS (RA), Mumbai.
6. File Copy.
7. Noticeboard.