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

F.No. 371/15 & 16/B/17-RA / 3020

Date of Issue : 15.09.2022

ORDER NO. ²⁶⁶⁻²⁶⁷ /2022-Cus (WZ) / ASRA / MUMBAI/ DATED 15.09.2022
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. 371/15 & 16/B/17-RA

Applicant : Shri. Guru Swarup Shrivastava

Respondent : Commissioner of Customs (NS-V), JNCH, Nhava Seva.

(i). F.No. 371/15 & 16/B/17-RA

Applicant : Shri. Mehar Shrivastava

Respondent : Commissioner of Customs (NS-V), JNCH, Nhava Seva.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962 against Order-in-Appeal No.
133 & 134 (Adj-Imp)/2017/(JNCH)-Appeal-II (S/49-592
& 593/2015-Misc/JNCH/A-II dated 28.02.2017
passed by the Commissioner of Customs (Appeals-II),
Mumbai -II, JNCH, Nhava Sheva.

ORDER

These two Revision Applications have been filed by Shri. Guru Swarup Shrivastava and Shri. Mehar Shrivastava, (hereinafter referred to as "the Applicants" or alternately, as Applicant No. 1 (A1) or Applicant No. 2 (A2) resp.) against Orders-in-Appeal No. 133 & 134 (Adj-Imp)/2017/(JNCH)-Appeal-II (S/49-592 & 593/2015-Misc/JNCH/A-II dated 28.02.2017 passed by the Commissioner of Customs (Appeals-II), Mumbai -II, JNCH, Nhava Sheva.

2. Brief facts of the case are that the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU) had developed an intelligence indicating that certain importers had hatched a conspiracy and had imported high end cars / SUVs through Nhava Sheva port and had evaded Customs duty by resorting to undervaluation and misdeclaration. Investigations were carried out and in this case, a high end car viz Chrysler 300 C Saloon which had been imported from Felixstowe, U.K was identified. Key persons involved in its import and clearance were apprehended and they admitted to have undervalued and misdeclared its value to Customs and evaded payment of appropriate Customs duty.

3. Investigations by DRI revealed that the key conspirators had sold this car to applicant no. 2. Applicant no. 1 who was the father of applicant no. 2 had assisted in the purchase of this car. It was alleged that the Applicants had knowledge that the impugned vehicle was undervalued at the time of import.

4. After due process of the law, the original adjudicating authority (OAA) viz, Addl. Commissioner of Customs (NS-V), JNCH, Nhava Sheva vide Order-In-Original No. 63/2015-16 [(S/26-212/12-13 Adj(I) JNCH)

(DRI/MZU/B/Inv-08(Pt. 08)/2008-09)] dated 16.07.2017 besides the others involved in the case and confirmation of differential Customs duty as payable, had imposed a penalty of Rs. 2,00,000/- each under Section 112(b) of the Customs Act, 1962 on Applicant No. 1 & 2 respectively.

5. Aggrieved by this order, the applicants filed an appeal with the Commissioner of Customs (Appeals-II), Mumbai – II, JNCH, Nhava Sheva who vide the Orders-in-Appeal No. 133 & 134 (Adj-Imp)/2017/(JNCH)-Appeal-II (S/49-592 & 593/2015-Misc/JNCH/A-II dated 28.02.2017 dismissed both the appeals of the Applicants.

6. Aggrieved with the above order, the Applicants have filed these revision applications for setting aside the penalty imposed on them.

7. Personal hearing in the matter was scheduled for 12.11.2018. Thereafter, upon the change of the revisionary authority personal hearing through the virtual video conferencing mode had been scheduled for 16.11.2021 / 23.11.2021, 11.01.2022 / 28.01.2022. No one appeared for the applicants. Sufficient opportunities have been given in this case. The case is being taken up for a decision based on the evidence available in the records.

8. The Government has examined the matter and it is observed that the impugned car i.e Chrysler 300 C Saloon had been imported under cover of a Bill of Entry which was filed under Section 46 of the Customs Act, 1962 for clearance of the same through Nhava Sheva seaport. Whereas, as per first proviso to Section 129A read with Section 129DD of Customs Act, 1962, a revision application can be filed before the Government against the order-in-appeal, if it relates to the issue of baggage, drawback of duty and short landing of the goods. But no such issue is involved in the above mentioned order-in-

appeal and the dispute is regarding import of the high end car as normal cargo cleared at the port. Therefore, the Government does not have jurisdiction to deal with these Revision Applications.

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 same was required to be agitated before the proper legal forum, i.e. Tribunal, if the Applicant deems fit to do so. These revision applications are 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. These two revision applications are thus rejected as being non-maintainable for lack of jurisdiction.

Shrawan
15/09/22
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ²⁶⁶⁻²⁶⁷ /2022-CUS (WZ) /ASRA/MUMBAI DATED 15.09.2022.

To,

(i). Shri. Guru Swarup Shrivastava, Flat No. 701/601, Oberoi Sky Heights, 3rd Cross Lane, Lokhandwala Complex, Andheri (East), Mumbai 400 053.

(ii). Shri. Mehar Shrivastava, Flat No. 701/601, Oberoi Sky Heights, 3rd Cross Lane, Lokhandwala Complex, Andheri (East), Mumbai 400 053.

(iii). Commissioner of Customs (NS-V), Nhava Sheva, Jawaharlal Nehru Custom House, Tal.-URAN, District - RAIGAD, Maharashtra - 400 0707.

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