373/395/B/14-RA
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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. 373/395/B/14-RA/250 Date of Issue 08/05/2018

ORDER NO.270/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Abhuthahir

Respondent :Commissioner of Customs (Airport), Madurai.

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MAD-CEX-000-APP-44 to 48/2014 dated 07.08.2014 passed by the Commissioner of Customs (Appeals) Madurai.

ORDER

This revision application has been filed by Shri Abhuthahir (herein after referred to as the "Applicant") against the order in Appeal No. MAD-CEX-000-APP-44 to 48/2014 dated 07.08.2014 dated 07.08.2014 passed by the Commissioner of Central Excise (Appeals) Madurai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 10.02.2014. Examination of his baggage resulted in recovery of mobiles, which were held to be in commercial quantity as detailed below;

Sl. No.	Description of Goods	Quantity	Amount (in Rs.)
1	Viga 50000 Spray	50	73,500/-
2	Deadly Shark 48000 Spray	200	3,35,860/-
3	Excel Power	125	65,625/-
4	Super Dooz 34000 Spray	625	7,87,500/-
5	Eros Cream	60	84,000/-
		Total	**13,46,485/-**

3. The Original Adjudicating Authority, vide its Order in Original No. 41/2014 Batch A dated 31.01.2014 confiscated the goods referred above valued at Rs. 13,46,485/-, as being in commercial quantity and non-bonafide baggage under Section 111 (d), (l), (o) and (m) of the Customs Act,1962. But allowed the Applicant to redeem the goods for re-export on payment of Rs.6,00,000/-. A penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of(Appeals). Commissioner of Central Excise (Appeals) Madurai, vide his Order-in-Appeal No MAD-CEX-000-APP-44 to 48/2014 dated 07.08.2014 rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that.

5.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; The valuation of the goods is higher than the actual value; Adjudication Authority has contended that the Applicant is a frequent traveller as such the Right to travel is a constitution right; the only allegation is that the goods are in commercial quantity, however the goods have not been brought for commercial use. The Applicant was allowed the goods to be redeemed for for re-export Rs. 6,00,000/- and a penalty of Rs. 1,00,000/-; The penalty is more than 5%, and the Adjudicating Authority has not kept in mind that the margin of profit and the R.F, P.P. is more than the actual value of the goods. The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

5.3 The Revision Applicant cited various judgments in support of his case and prayed for setting aside the Order and reduce the redemption fine and personal penalty and thus render justice.

6. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of the goods was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is clear that the goods have been brought in commercial quantity. The Applicant has admitted that the same have been brought for commercial sale. Goods brought in such huge commercial quantities cannot be termed as bonafide baggage. Further, the Adjudicating Authority in the Order in Original has elaborated that the items brought are formulations which fall in the definition of drugs under section 3(b) of Drugs and Cosmetic Act. Such items can be imported only through specified ports as per

circular */2010-Cus dated 26.03.2010 read with rule 138 and 43 A of the Drugs and Cosmetics Rules. Import of such goods cannot be permitted even on payment of duty. The goods are in commercial quantity and have been blatantly brought by the Applicant in contravention of the provisions and in violation of the Customs Act,1962 and under the circumstances confiscation of the goods is justified. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the goods and imposed penalty. Government also holds that the quantum penalty should be such that it acts as a deterrent. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority and rejected the Appeal of the Applicant. The Government therefore finds no reason to interfere with the Order-in-Appeal.

8. The Order-in-Appeal No MAD-CEX-000-APP-44 to 48/2014 dated 07.08.2014 passed by the Commissioner of Central Excise (Appeals), Madurai is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

27.4.18

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

ORDER No.270/2018-CUS (SZ) /ASRA/Mumbai DATED 27.04.2018

To,

Shri Abhuthahir
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

True Copy Attested

27.4.18

SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

1. The Commissioner of Customs, Airport, Madurai
2. The Commissioner of Central Excise (Appeals) Madurai.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File.
5. Spare Copy.