



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

F.No. 371/58/B/2016-RA(MUM) / 4026 : Date of Issue : 22.09.2022

ORDER NO. 274 /2022-CUS (WZ)/ASRA/MUMBAI DATED 20.09.2022
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.

Applicant : Shri. Ahmed Ashraf Kalsekar.

Respondent : Pr. Commissioner of Customs, CSMI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-19 & 20/16-17 dated 28.04.2016
[S/49-683 & 684/2013/AP] passed by the Commissioner
of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri. Ahmed Ashraf Kalsekar (herein after referred to as the Applicant) against the Order-in-appeal No. MUM-CUSTOM-PAX-APP-19 & 20/16-17 dated 28.04.2016 [S/49-683 & 684/2013/AP] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). The brief facts of the case are that the applicant, had imported 20 nos of Signal Pistols and 20 nos of Signal Revolvers and the same had been detained upon his arrival by Flight EK-508 / 02.07.2010. The goods had been detained by Customs for obtaining NOC from the Police/Valuation/Clearance. The Police authorities in their report stated that the said goods does not fall under the definition of 'Arms' and that no licence under the Arms Act was required for its possession. However, the report stated that the said consignment had been imported for selling in the market and there was a possibility that these could be misused as weapons and the police had objected to the release of the consignment.

2(b). It was also alleged that the applicant had failed to declare the value of the said goods in the Customs Declaration Form submitted at the time of arrival and also failed subsequently, to produce any proof of the amount actually paid for purchasing the impugned goods. The detained goods were collectively valued at Rs. 4,12,230/- on the basis of prices available on the internet. Later, the said goods were seized as the same had been smuggled into India in contravention of the provisions of Section 77 of the Customs Act, 1962 and the Exim Policy in force framed under Foreign Trade (Development and Regulation) Act, 1992 and therefore, were liable to confiscation under Section 111(d), (l) and (m) of the Customs Act, 1962.

3. The Original Adjudicating Authority viz the Addl. Commr. Of Customs, CSMI, Mumbai. vide Order-In-Original No. ADC/SK/ADJN/01/2013-14 dated 28.05.2013 [(F.No. AIRCUS/49/M-II/26/2010)(S/14-04-44/2010-11 ADJN)] ordered for the absolute confiscation of the 20 nos of Signal Pistols and the 20 nos

of +Signal Revolvers, valued at Rs. 4,12,230/- under Section 11(d), (l), and (m) of the Customs Act, 1962. Also, a penalty of Rs. 1,00,000/- under Section 112(a) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-19 & 20/16-17 dated 28.04.2016 [S/49-683 & 684/2013/AP] did not find any illegality or impropriety in the impugned order passed by the original adjudicating authority and accordingly, rejected the appeal being devoid of merit.

5. Aggrieved with the aforesaid order dated 28.04.2016 passed by the Commissioner of Customs (Appeals), Mumbai – III, the Applicant has filed this revision application. It is noticed that the statement of facts have not been attached alongwith the FORM C.A.-8 filed by the applicant. The applicant has prayed for the release of the goods under Section 125 of the Customs Act, 1962 or re-export of goods and reduction in PP.

6. Online personal hearings in the case were scheduled for 15.09.2021 / 22.09.2021, 27.11.2021 / 02.11.2021, 02.12.2021. None appeared for the applicant or the respondent. Sufficient opportunities have been accorded to both the applicant as well as the respondent. Since, they both have failed to attend the personal hearings, the case is being taken up for a decision on the basis of evidence on record.

7. Applicant has filed for condonation of delay. Government notes that the revision application has been filed on 04.10.2016. The applicant has stated that the OIA dated 28.04.2016 was received by them on 08.05.2016. Government notes that the date of filing of the revision application falls within the extended period of 6 months (i.e. 3 months + 3 months) as prescribed in Section 129DD (2) of the Customs Act, 1962. Accordingly, Government, condones the delay.

8(a). Government has gone through the facts of the case. It is noted that 20 nos of Signal Pistols and 20 nos of Signal revolvers had been carried by the applicant in his baggage. Such a large quantity of signal pistols and signal revolvers indicates that the same is for commercial sale. In the OIO, Government notes that the original adjudicating authority (OAA) has held that commercial quantity is not covered under the ambit of bonafide baggage and import of such goods is not permitted and that the applicant had contravened the provisions more appropriately, para 2.20 of the Exim Policy (2009-2010) formulated under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 wherein a passenger is allowed to import bonafide household goods and personal effects only as his baggage. Section 2(33) of the Customs Act, 1962 lays that if any goods are imported in violation of the conditions imposed for such importation, then such goods shall be treated as prohibited goods. \

8(b). Government notes that initially the goods had been detained for the purpose of (i). scrutiny and verification by the Police whether the same falls within the ambit of the Arms Act and (ii). for ascertaining its value.

8(c). The police authorities after due examination of the signal pistols and signal revolvers, in their report stated that these goods do not fall under the definition of 'Arms' and that no licence under the Arms Act, was required for its possession. However, the report stated that the said consignment had been imported for selling in the market and that there was every possibility that these weapons could be misused and the Police objected to release of the said consignment. The applicant had failed to obtain a NOC form the Police Authorities.

8(d). On the aspect of the value of the signal pistols and signal revolvers, it is observed that inspite of repeated directions, the applicant had failed to submit the proof of the actual amount paid for purchasing the goods. Later, after issuance of the SCN, the applicant produced an invoice, which was held to be an

afterthought. The value was obtained on the basis of similar data available over the internet.

8(e). Government notes that in the matters such as these i.e. pistols, revolvers etc, the report of the Police Authorities is crucial. In this case, the police have stated that though the subject goods are not 'Arms', considering the quantity involved which indicates that the same are for commercial sale, they (police) have expressed an apprehension that the signal pistols and signal revolvers could be misused and have objected to its release. This being a sensitive matter, involving the issue of law and order, the said report of the police cannot be discounted and has to be accorded the right credence.

8(f). The Government notes that in the OIA at para 6, the appellate authority has held as under;

"6. Regarding the other issue, I find that the police authorities though have found that the import of Signal Pistols / Signal Revolvers (Starters/ Blank Firers) are not covered under Arms Act however still they objected the release on the ground that these weapons could be misused. The police authorities in their report has addressed the imported Starters/Blank Firers as 'Weapons. From the name and nature of the goods it appears that the imported Starters Blank Firers are though incapable of shooting a projectile at anything still make a big noise and gunpowder flash but cannot hit anything with its bullet. I further find that in the Arms Act, 1959, imitation firearms are defined as "anything which has the appearance of being a firearm, whether it is capable of discharging any shot, bullet or otherwise missile or not". Thus, in view of the above, the imported blank firers/ starter are "imitation fire-arms". I further find that as per notification no. 35-Cus: dated 06.09.1930 as amended by Notification No. 15-Cus dated 22.01.1952, import of toy, dummy or imitation revolvers or pistols is restricted to cases in which a permit for import has been granted by the Commissioner of Police in case of import at any of the ports of Calcutta, Madras and Bombay and the District Magistrate in the case of import elsewhere. Thus, under the circumstances, the police authorities are the only competent authority which can allow the import of the imported starters/blank firers. However, as the police authorities have objected the release of the consignment, thus the imported starters/blank firers. However, as the police authorities have objected the release of the consignment, thus the imported Starters/Blank Firers became prohibited under Section 11 of the Customs Act, 1962. Under the circumstances, the lower authority has no option but to confiscate the impugned goods in absolute terms. As the appellant's act of omission and commission had rendered the goods liable to

confiscation under Section 11(d), (m) and (l) of the Customs Act, 1962 and

8(g). Government observes that in the OIO, the OAA has held that dutiable or prohibited goods which have not been included or in excess of those included in the declaration made under Section 77 of the Customs Act, 1962 are liable for confiscation.

9. Government finds that for the aforesaid reasons which elucidates the nature of the goods under import and coupled with the facts, a true declaration as required under section 77 of the Customs Act, 1962 for possession of any dutiable goods had not been submitted, therefore, the confiscation of the 20 nos of Signal Pistols and 20 nos of Signal Revolvers was justified and the applicant had rendered himself liable for penal action for his act of omission and commission.

10. 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".

11. 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, in the instant case also, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned goods "prohibited" and therefore liable for confiscation and the Applicants thus liable for penalty.

12. Also, in a recent case, discretion of the authorities to consider the release of the goods was decided by the Apex Court wherein in the case of M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

13. For the aforesaid reasons, especially considering the report submitted by the Police authorities, the non-co-operation of the applicant to divulge the true

value of the goods, etc, the Government does not find it necessary to interfere in the order of absolute confiscation passed by the lower adjudicating authority and which has been upheld by the appellate authority.

13. Considering that the goods are held to be confiscated absolutely, the request for re-export of the goods becomes is infructuous.

14. Considering the facts and value of goods as discussed above, the Government finds that the penalty of Rs. 1,00,000/- imposed under Section 112 (a) of the Customs Act, 1962 is appropriate and commensurate with the omissions and commissions committed and Government is not inclined to interfere with the same.

15. Thus, for the aforesaid reasons, the Revision Application filed by the applicant is dismissed.


(SHRAWAN KUMAR)

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

ORDER No. 274 /2022-CUS (WZ) /ASRA/MUMBAI DATED 20 .09.2022

To,

1. Shri. Ahmed Ashraf Kalsekar, 77/A, Sheriar Baug, 4th Floor, Flat No. Babulla Tank Road, R.M Bhatt Marg, Mumbai - 400 009.
2. Commissioner of Customs, Chhatrapati Shivaji International Airport, Avas Corporate Point, Makwana Lane, Behind S.M Centre, Andheri - Kurla Road, Andheri East, Mumbai - 400 059.

Copy to:

3. ~~Sr. P.S. to AS (RA), Mumbai.~~
4. File Copy.
5. Notice Board.