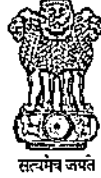


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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Mumbai-400 005

F.No. 373/16/B/14-RA / 4808

Date of Issue 04/11/19

ORDER NO. 29/2019-CUS (SZ)/ASRA/MUMBAI DATED 14.10.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Abdul Kader Kunhamoo

Respondent : Commissioner of Central Excise & Customs, Trivandrum

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 13 to 17/2013 dated 09.10.2013 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

ORDER

This revision application has been filed by Shri Abdul Kader Kunhamoo (herein after referred to as the Applicant) against the Order in appeal No. 13 to 17/2013 dated 09.10.2013 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

2. Briefly stated the facts of the case is that the applicant arrived at the Trivandrum Airport on 25.05.2013. He was intercepted and examination of his checked in baggage resulted in the recovery of a Gudang Garam Cigarettes and Malboro Gold Cigarettes totally valued at Rs. 1,12,000/- (Rupees One Lac Twelve thousand).

3. The Original Adjudicating Authority vide Order-In-Original No. 422/13 dated 25.05.2013 ordered absolute confiscation of the impugned goods under Section 111 (d) (i) (l) and (m) of the Customs Act,1962, and imposed penalty of Rs. 1,00,000/- (Rupees One lac) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 13 to 17/2013 dated 09.10.2013 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 are not in compliance with statutory requirements and hence in gross violation of the principles of natural justice; The Applicant does not have primary education and does not know to read and write and was not aware of the implication of putting his signature in column 7 of the seizure report as directed by the officers; There was no misdeclaration or misdeclaration of the goods and neither was there any concealment; The fact is that the Applicant made a true declaration of the goods; The Commissioner (Appeals) therefore ought to have permitted re-export; The only allegation raised against the Applicant is that the Cigarettes do not bear the stutory warning clearly indicating that the officers were convinced that the quantity of cigarettes

were not in commercial quantity and were brought for personal use and as gifts; The order of confiscation of bringing the goods in commercial quantity would not legally survive as the charge in this respect was not even orally explained to the Applicant; As a true declaration was made the goods should have been allowed for re-export and should not have been confiscated absolutely; The goods have been valued without complying with the Customs valuation rules and is more than 150% above the actual value.

5.2 The Applicant prayed for setting aside the confiscation of the gold and allow re-export exonerating him of penal consequences or at least reduce penalty and thus render justice.

6. A personal hearing in the case was scheduled in the case on 01.10.2019, the Applicant Shri Abdul Kader Kunhamoo appeared and submitted that the penalty imposed was Rs. One lac. The valuation of the goods is very high and the economic status of the Applicant is weak and he is a daily labourer and unable to pay any penalty and requested to waive the same.

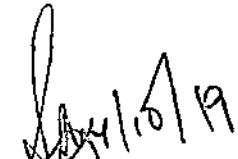
7. The Government has gone through the facts of the case. A proper written declaration of the impugned goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and inspite of carrying cigarettes which are restricted and hazardous. The cigarettes brought are also in commercial quantity, thus warranting absolute confiscation of the goods.

8. In view of the above facts, the Government is of the opinion that the absolute confiscation of the goods is justified and therefore liable to be upheld. However, The Applicant was a salesman and comes from an economically weak background. There is no past history of such misdemeanors. The Applicant has also alleged that the goods have been valued on the higher side and has requested for reduction of penalty. Government also observes that the penalty of Rs. 1,00,000/- (Rupees One lac) on the goods valued at Rs. 1,12,000/- (One lac, Twelve thousand) to be high and unjustified. The Applicant has pleaded for reduction of penalty and the Government is inclined to accept the plea.

9. The impugned Orders are therefore modified as below. The absolute confiscation of the goods is upheld. The penalty of Rs. 1,00,000/- (Rupees One lac) imposed under section 112 of the Customs Act,1962 is reduced to Rs. 10,000/- (Rupees Ten thousand).

10. Revision application is allowed on above terms.

11. So, ordered.


(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ~~29/2019-CUS-(SZ)/ASRA/~~ DATED ~~14.10.2019~~

To,

Shri Abdul Khader Kunhamoo, Poochakad, Thekupuram, Pallikara, Keekan
P.O., Kasargod 671 316.

Copy to:

1. The Commissioner of Customs, International Airport, Trivandrum.
2. Shri A. Ganesh, Advocate, F. Block179, IV Street, Annanagar,
Chennai 600 102
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.