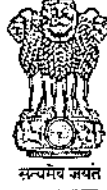


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre,
Centre - I, Cuffe Parade,
Mumbai-400 005

F.No.371/366 & 367/B/WZ/2018--RA/6102 Date of Issue: 01/11/2022

ORDER NO. 307-308/2022-Cus (WZ) / ASRA / MUMBAI/ DATED 31.10.2022
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. Karl Pandey

Respondent : Commissioner of Customs (Prev), Mumbai.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962 against Orders-in-Appeal Nos.
(i). MUM-CUSTM-PRV-APP/505/17-18 dated 14.09.2017
issued on 15.09.2017 through F.No. S/49-571/2014-
Prev
and
(ii). MUM-CUSTM-PRV-APP/542/17-18 dated 26.09.2017
issued on 05.10.2017 through F.No. S/49-269/2015-
Prev

Both passed by the Commissioner of Customs (Appeals),
Mumbai -III.

ORDER

These two Revision Applications have been filed by Shri Karl Pandey, (hereinafter referred to as "the Applicant") against Orders-in-Appeal Nos. (i). MUM-CUSTOM-PRV-APP/505/17-18 dated 14.09.2017 issued on 15.09.2017 through F.No. S/49-571/2014-Prev and (ii). MUM-CUSTOM-PRV-APP/542/17-18 dated 26.09.2017 issued on 05.10.2017 through F.No. S/49-269/2015-Prev, both passed by the Commissioner of Customs (Appeals), Mumbai - III.

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 imported motorcycles (Superbikes) of International brands such as Honda, Suzuki, Yamaha, Harley Davidson, Kawasaki etc in disassembled form and had cleared the same at Kolkatta, NhavaSheva and other ports as "parts of motorcycle" which attracted basic Customs Duty @7.5 to 10% ad valorem+other Customs Duties. The modus operandi was to import complete motorcycles in guise of parts and the values declared to Customs was of these individual parts. The Basic Customs Duty on complete motorcycles is 100% ad valorem. All these consignments had been imported under cover of fictitious IEC's. The consignments of these so called "parts" had then been transported to Mumbai and Pune and then re-assembled into complete motorcycles. Forged Bills of Entry were prepared to show import of complete motorcycles and these motorcycles were registered at RTOs on the basis of such forged Bills of Entry. These locally assembled complete superbikes were thereafter sold to gullible buyers. The same modus operandi was used to import and sell a (i). Yamaha R-1 – 1000 cc motorcycle bearing Registration No. MH-02-AT-9869 and (ii). Suzuki Hayabusa 1300cc motorcycle bearing Registration no. MH-02-AF-100 both of which had been confiscated under section 111(d) and 111(m) of the Customs Act for violations of Policy provisions and mis-declaration of description and value.

3. Investigations by DRI revealed that the Applicant had admitted to having sold both the subject superbikes bearing registration nos. MH-02-AT-9869 and

MH-02-AF-100 for a commission and also that the money had been collected by him. Applicant was aware that these motorcycles were illegally imported but had dealt with the sale of the impugned motorcycle.

4. After due process of the law, the original adjudicating authority (OAA) viz, Joint Commissioner of Customs (Prev), Adjudication Section, R & I Division, Mumbai vide two separate Orders-In-Original bearing nos i.e. (i). JC/R&I/JS/23/2014-15 dated 23.07.2014 (DOI : 18.08.2014) issued through F.No. S/14-4-01/11 Adj (DRI/MZU/E/1/08/PT.94) and (ii). JC/R&I/JS/52/2014-15 dated 28.03.2015 (DOI : 31.03.2015) issued through F.No. S/14-4-02/13 Adj (DRI/MZU/E/1/2009/PT.93), besides the others involved in the case, had imposed a penalty of Rs. 1,00,000/- and Rs. 2,00,000/- respectively, under Section 112(b) of the Customs Act, 1962 on the applicant.

5. Aggrieved by these orders, the applicant had filed two separate appeals with the Commissioner of Customs (Appeals), Mumbai – III who vide two separate Orders-in-Appeal Nos. (i). MUM-CUSTM-PRV-APP/505/17-18 dated 14.09.2017 issued on 15.09.2017 through F.No. S/49-571/2014-Prev **and** (ii). MUM-CUSTM-PRV-APP/542/17-18 dated 26.09.2017 issued on 05.10.2017 through F.No. S/49-269/2015-Prev dismissed both the appeals of the Applicant holding the same to be devoid of any merits.

6. Aggrieved with the above orders, the Applicant has filed these two revision applications for setting aside the penalty imposed.

7. Government has examined the matter and it is observed that the motorcycle parts were imported under cover of Bills of Entry which were filed under Section 46 of the Customs Act, 1962 for clearance of the same through various seaports. 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 orders-in-appeal and the dispute is

regarding import of the motorcycle parts as normal cargo cleared at the port. Therefore, the Government does not have jurisdiction to deal with these Revision Applications.

8. In view of above discussions, Government is of opinion that the issue involved in these cases do not fall within the jurisdiction of this authority and hence, the issue is required to be agitated before the proper legal forum, i.e. Tribunal, if the Applicant deems fit to do so. The 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.

9. These two revision applications filed by the applicant are thus, rejected as being non-maintainable for lack of jurisdiction.


(SHRAWAN KUMAR)

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

ORDER No. ³⁰⁷⁻308/2022-CUS (WZ) /ASRA/MUMBAI DATED 31.10.2022

To,

1. Shri. Karl Pandey, Room No. 5, 2nd Floor, 643, Gulshan Terrace, Parsi Colony, Near Parsi Agiary, Dadar, Mumbai - 400 014.

Copy to:

1. The Commissioner of Customs (Prev), New Customs House, Ballard Estate, Mumbai - 400 001.
2. Assistant Commissioner (P), Revenue Recovery Cell, R & I, Mumbai, 11th Floor, Revenue Recovery Cell, New Custom House, Mumbai - 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy,
5. Notice Board.