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SPEED POST



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

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F.No.371/29/B/WZ/2019-RA/6884 Date of Issue : 28/11/2022

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ORDER NO. 338 /2022-Cus (WZ) / ASRA / MUMBAI/ DATED 28.11.2022  
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.

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Applicant : Shri. Shailesh Dattatray Redij

Respondent : Commissioner of Customs (Import), Mumbai.

Subject : Revision Applications filed, under Section 129DD of the  
Customs Act, 1962 against Orders-in-Appeal Nos. MUM-  
CUSTM-APP-868-2018-19 dated 26.12.2018 issued on  
31.12.2018 through F.No. S/49-54/2015-ACC passed by  
the Commissioner of Customs (Appeals), Mumbai -III.

**ORDER**

This Revision Application has been filed by Shri Shailesh Dattaray Redij, (hereinafter referred to as "the Applicant") against Orders-in-Appeal Nos MUM-CUSTOM-APP-868-2018-19 dated 26.12.2018 issued on 31.12.2018 through F.No. S/49-54/2015-ACC passed by the Commissioner of Customs (Appeals), Mumbai -III.

2. Brief facts of the case are that the intelligence Officers of Directorate of Revenue Intelligence found that one Motorcycle, "Yamaha YZF-R-1, 1000 cc had been imported into India against Bill of Entry No. 131608 dated 22.11.2004 under the Transfer of Residence (TR) scheme by misuse of provisions of the EXIM policy 2002-07 (Public notice no. 3RE-2000/1997-2002 dated 31.03.2000). For this purpose importer had used the passport of one Shri Khan Mohammad Qamar Mohammad Noor, passport No. B0727345, the said Motorcycle was imported by resorting to undervaluation and to justify this, the importer had mis-declared the model and the year of manufacture of Motorcycle.

3. Investigation in the matter and statements of various persons involved revealed, that one Shri Indeeep Madan S/o Shri Jasbir S. Madan had entered into a 'Hire/Purchase agreement with Shri Khan Mohammad Qamar Mohammad Noor for the purchase impugned motorcycle in the month of September of year 2005 the market value of the said vehicle at that point of time was USD 13,000/ and he had paid INR 5,50,000 vide cheque no 355202 dated 09.09.2005 and the payment was made from their own firm M/s Nirankar Enterprises, New Delhi. Later on the said Yamha Motorcycle was seized vide panchnama dated 05.03.2008 along with the original registration book and released provisionally vide ORI letter date 05.03.2018 after submitting the demand draft of Rs 6,56,415/- as differential duty, Indemnity bond for Rs 10,00,000/- and bank guarantee of Rs 1,00,000/

4. On further investigation, it revealed that one Shri Shailesh Redij (the appellant), who had a firm named Ultimate Auto, where he used to repair Imported Motorcycle and used to give consultancy to clients who were interested in buying Imported Motorcycle. On request of Shri Indeeep Madan, the appellant told him about one Shri Krishan Rao, who was the owner of M/s Central Garage and facilitating import of motorcycle under TR scheme and would charge commission for the same and thereafter Shri Kishan Rao imported the Yamaha RI, YZF 1000 CC red colour motorcycle for Shri Indeeep Madan using the passport of one Mohammad Qamar Mohammad noor under the Transfer of Residence (TR) scheme by misuse of provisions of the EXIM policy 2002-07 (Public notice no. 3RE 2000/1997-2002 dated 31.03.2000). The actual FOB value of the impugned motorcycle at the time of import of USD 13000; however, in the impugned Bill of Entry dated 22.11.2004, the value was declared as Rs.45,450/-. Considering these facts, the show cause Notice was issued to the appellant alongwith the other persons involved in the import of the impugned motorbike. The case was adjudicated by the Adjudicating authority and the declared assessable value Rs 45,450/- of the impugned goods was rejected and enhanced to 7,18,000/- under Section 14 of the Customs Act 1962 read with Rule 4 and 9 of the Customs valuation rule 1988. The impugned motorcycle was confiscated under section 111(d) and 111(m) of the Customs Act for violations of Policy provisions and mis-declaration of description and value. However, redemption was allowed on payment of fine Rs. 2,15,000/- in lieu of confiscation. The adjudicating authority has confirmed the demand of differential duty of Rs.9,52.169/- under Section 28 alongwith the applicable rate of interest under Section 28 AB of the Customs Act, 1962 and imposed penalty on the persons involved in the import of the impugned motorcycle under Section 1.12 (a) & (b) and 114 A ibid. In case of the appellant, penalty of Rs.2,00,000/- (Rupees Two Lakh) has been imposed on him under section 112 (h) of the Customs Act, 1962.

5. After due process of the law, the original adjudicating authority (OAA) viz, Additional Commissioner of Customs (Import), Air Cargo Complex, Mumbai vide Orders-In-Original No. CAO/ADC/SKS/314/14-15/ADJ/ACC dated 10-12-

2014 (DOI : 16.12.2014) rejected the declared assessable value of Rs 45,450/- of the impugned goods and enhanced to 7,18,000/- under Section 14 of the Customs Act 1962 read with Rule 4 and 9 of the Customs valuation rule 1988. The impugned motorcycle was confiscated under section 111(d) and 111(m) of the Customs Act for violations of Policy provisions and mis-declaration of description and value. However, redemption was allowed on payment of fine Rs. 2,15,000/- in lieu of confiscation. The adjudicating authority has confirmed the demand of differential duty of Rs.9,52.169/- under Section 28 alongwith the applicable rate of interest under Section 28 AB of the Customs Act, 1962 and imposed penalty on the persons involved in the import of the impugned motorcycle under Section 1.12 (a) & (b) and 114 A ibid. In case of the applicant, penalty of Rs.2,00,000/- (Rupees Two Lakh) has been imposed on him under section 112 (h) of the Customs Act, 1962.

6. Aggrieved by these orders, the applicant had filed appeal with the Commissioner of Customs (Appeals), Mumbai – III who vide Order-in-Appeal Nos.MUM-CUSTM-AMP-APP-868/2018-19 dated 26.12.2018 dismissed the appeal of the Applicant holding the same to be devoid of any merits.


7. Aggrieved with the above order, the Applicant has filed the impugned revision application for setting aside the penalty imposed.

8. Personal Hearing was granted to the applicant on 13.09.2022, 11.10.2022 and 18.10.2022. Shri Shrey Lodha, Advocate appeared online for the hearing on 18.10.2022 and submitted that the matter has been agitated before wrong forum. He requested to withdraw the application for filing before appropriate forum.

9. Government notes that the applicant has himself requested for withdrawal of the Revision Application at the time of hearing for filing the appeal in the appropriate forum. In this case, 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 order-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. Under such circumstances, Government without going into the merits of the case, allows the applicant to withdraw the Revision Application

10. In view of above discussions, this Revision Application is dismissed as withdrawn and disposed off accordingly.

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

ORDER No. ~~338~~ /2022-CUS (WZ) /ASRA/MUMBAI DATED ~~23~~ .11.2022

To,

1. Shri. Shailesh Redij, M/s Ultimate Auto, Shop No. 9, Panchal House, Jayant Industrial Estate, Opposite Sobo Central, Tardeo, Mumbai-400034.

Copy to:

1. The Pr. Commissioner of Customs (Airport), Airport-I, CSI Airport, Terminal-2, Lével-2, Andheri (East), Mumbai – 400 099.
2. Additional Commissioner (Import), Air Cargo Import, Sahar, Andheri East, Mumbai-400099
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy,
5. Notice Board.