



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade, Mumbai- 400 005

F.No. 380/18/B/17-RA
F.No. 373/88/B/17-RA

Date of Issue: 14/06/2018

ORDER NO. ³⁴⁰⁻³⁴¹/2018-CUS (SZ)/ASRA/Mumbai DATED - 28.05.2018 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.

Revision Application No.	Applicant	Respondent	Order in Appeal
380/18/B/17-RA	Commissioner of Customs, New Customs House, Mangaluru.	Shri Laxman Singh, S/o Har Singh Bisht, Mangaluru, -575001	Order-in-Appeal No. 73/2017 dated 16.03.2017 passed by the Commissioner (Appeals), Bangalore-560071
373/88/B/17-RA	Shri Laxman Singh, S/o Har Singh Bisht - Mangaluru-575001	Commissioner of Customs, New Customs House, Panambur, Mangaluru.	Order-in-Appeal No. 73/2017 dated 16.03.2017 passed by the Commissioner (Appeals), Bangalore-560071

Subject :Revision Applications filed, under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. 73/2017 dated 16.03.2017 passed by the Commissioner (Appeals), BMTC Building, above BMTC Bus stand, old Airport Road, Domtur, Bangalore-560071.



ORDER

Commissioner of Customs, New Custom House, Panambur, Mangalore-10 (herein after referred to as the "Department") has filed this Revision Application 380/18/B/17-RA against the Order-in-Appeal No. 73/2017 dated 16.03.2017 passed by the Commissioner (Appeals), Bangalore-560071. A Revision Application 373/88/B/17-RA has also been filed against the same order by Shri Laxman Singh (hereinafter referred to as the 'Applicant')

2. Briefly stated the facts of the case are that the Applicant, arrived at Mangalore International Airport on 29.03.2016. He was intercepted while attempting to exit from Customs Green Channel. Examination of his hand baggage resulted in the recovery of assorted branded food stuff viz. protein supplement / protein compound mainly used in body building and muscle /body mass building packed in plastic containers and packets in commercial quantity valued at Rs. 61,000/- (Rupees Sixty one thousand only).

3 After due process of the law vide Order-In-Original No. 23/2016 (AP) dated 24.05.2016, Original Adjudicating Authority held that the goods brought were in commercial quantity. The value of the subject goods was determined at Rs. 61,000/- and confiscation of the subject goods was ordered under section 111(d), Section 111 (l), Section 111(m) and Section 111 (o) of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine of Rs. 12,500/- along with applicable Customs duties of Rs. 21,991/-. A Penalty of Rs. 10,000/- under Section 112 (a) of the Customs Act, 1962 and a further penalty of Rs. 6,000/- also imposed under Section 114AA of the Customs Act, 1962 was also imposed on the respondent. An amount of Rs. 50,000/- (Rupees fifty thousand only) deposited by the respondent was appropriated against the above government levies.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), Bangalore. The Commissioner of Customs (Appeals) Bangalore, vide his Order in Appeal No. 73/2017 dated 16.03.2017 allowed the appeal and set aside the Order in Original No. 23/2016 dated 24.05.2016 on the issue of imposition of Redemption Fine of Rs. 12,500/-, imposition of personal penalties of Rs. 10,000/- and Rs. 6,000/- against the respondent. The rest of the Order-in-Original No.



23/2016 dated 24.05.2016 remained undisturbed and appropriated amount was limited to duty element of excess baggage of Rs.21,991/- only.

4. The Department i.e. Commissioner of Customs, New Custom House, Panambur, Mangalore-10 feeling aggrieved against the said impugned Order in Appeal has filed this Revision Application interalia on the grounds that;

- 4.1 Shri Laxman Singh is a crew member, who flies to foreign countries quite frequently. Hence, he must be conversant with the Customs Law in general and Baggage Rules, in particular. The incidence occurred on 29/03/2016, when the Baggage Rules, 1998 were applicable. Rule 10 of the Baggage Rules, 1998 is applicable to the members of crew at the time of final pay off on termination of their engagement. Sub-rule (2) of Rule 10, stipulates that a crew member of an aircraft shall be allowed to bring items, gifts like chocolates, cheese, cosmetics and other petty gift items at the time of returning of the air craft from foreign journey for their personal or family use value of which shall not exceed Rs.1500/-. In the instant case, the goods brought by the respondent were not in the nature of petty gifts as stipulated in the sub-rule (2) of Rule 10, ibid; His readiness to pay duty, fine and penalty and immediate pre-deposit of Rs. 50,000 .00 /-stand testimony to this.
- 4.2 The declaration made by the Applicant as per Section 77 of the Customs Act, 1962, did not declare the goods (protein supplements) to Customs, and hence the same were liable for confiscation.
- 4.3 Once the goods are liable to confiscation, the same are required to be seized as stipulated under Section 110 of the Customs Act, 1962, therefore, the Order-in-Appeal is not proper and legal so far as it relates to setting aside the redemption fine of Rs. 12,500/ -. Confiscation leads to mandatory imposition of penalty by adjudicating authority under Section 112 of CA, 1962 as per the relevant sub-clause of the said section.

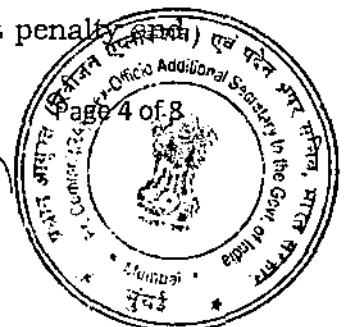
The Department cited various assorted judgments and boards policies in support of their case, and inferring that the Commissioner (Appeals) has grossly erred in admitting new evidences and therefore, the Order in Appeal is contrary to the provisions of Customs Appeals Rules, 1982.



5. Shri Laxman Singh, has filed the Revision Application No.373/88/B/17 against the same impugned Order-in-Appeal No. 73/2017 dated 16.03.2017 interalia on the grounds that:

- 5.1 the impugned order passed by the adjudicating authority and Commissioner (appeals) is in violation of principles of natural justice.
- 5.2 the adjudicating authority ought not to have imposed excess duty and determining the excess value for the goods and the adjudicating authority has acted beyond his power in a harsh, and a serious miscarriage of justice and is contrary to law and against the settled principles of law.
- 5.3 the adjudication authority has lost sight of the fact that on 25-03-2016 at 6:16:32 p m, the appellant has purchased the items for his personal use since he is a body builder and he has been participating in several body building competitions. He has paid 1213 Dirhams for the said goods by using his debit card of State Bank of India. The Xerox copy of the bank transaction details, invoice and bank passbook are produced along with this appeal memorandum and the value of the goods brought by the appellant is Rs.22,063.17 which have been wrongly assessed and valued at Rs.61,000/-. There is no reason or findings how the adjudicating authority has arrived to the conclusion that it is a commercial quantity.
- 5.4 The learned adjudicating authority lost sight of the fact that he has been never intercepted by the Customs officials at Mangaluru International Airport but the appellant himself has declared the possession of the said goods by pooling the same by all the cabin crew of the said flight namely Ms. Arti Kongole, Mr. Rohit Meshram and Mr. Echunghemo Kithan. The non-collection of the CCTV footage from the Mangaluru International Airport by the department is fatal to the case of the customs.
- 5.5 the learned adjudicating authority ought to have considered and appreciated that the applicant has not smuggled any goods and he has not brought any contraband, prohibited goods in the liberalized regime, ought not to have confiscated the goods, since there is no other contra or incriminating material against the appellant. Hence impugned order is bad in law and on this score alone the impugned order is liable to be set aside.

In view of the above, Shri Laxman Singh, applicant prayed for setting aside the order in Appeal and refund the sum of Rs. 50,491 /- collected towards fine & penalty.



duty and prayed that a lenient view may be taken against the appellant in the interest of justice and equity.

6. A personal hearing in the both the Revision Applications was held on 16.05.2018. the Shri Laxman Singh, applicant in Revision Application No.373/88/B/17 and respondent in Revision Application No.380/18/B/17 attended the hearing and reiterated the submissions filed through Revision Application. Shri A.K. Choudhary, Deputy Commissioner, Mangaluru International Airport, attended the hearing on behalf of the Department and reiterated the submissions filed in their Revision Application and pleaded that the Revision Application filed by the department be allowed and Revision Application filed by Shri Laxman Singh be dismissed.

7. Since both the Revision Applications emanate from the single Order-in-Appeal No. 73/2017 dated 16.03.2017 passed by the Commissioner (Appeals), Domtur, Bangalore, the Government after having carefully gone through the case records and submissions made by the Revision applicants in their respective Revision Applications and the counter arguments, discusses and decides this in this single order.

8. Government takes up the Revision Application filed by the department, i.e RA, No. 380/18/B/17-RA. The Government observes that The Applicant, Shri Laxman had not declared any value of dutiable goods being imported / brought by him in his accompanied baggage. The examination of the baggage revealed that while coming from Dubai, he had brought the Protein Supplements in commercial quantity and therefore the confiscation of the goods is justified. Secondly, Government observes that copy of Bill enclosed by the applicant is not an authenticate copy and cannot be correlated with the Bank Statement enclosed by the applicant. Government, therefore finds no infirmity in the method of valuation adopted by the Adjudicating Authority. Hence, the plea of overvaluation is not acceptable and the value adopted by the adjudicating authority and upheld by Commissioner (Appeals) is sustained and does not warrant interference.

9. In addressing the issue of Commissioner (Appeals) having admitted new evidences. The Government observes that the Hon'ble High Court of Madras in case of M/s Sheth Impex Vivo Solutions P. Ltd. Vs Commissioner of Customs (Import), Chennai, in C.M.A. No. 3180 of 2009 [2017 (349) B.L.T. 261



(Mad.)] , decided on 2-12-2016, quoting Rule 5 of the Customs Appeals Rules, 1982, has stated that the *"the Commissioner (Appeals) has proceeded as if there is an absolute bar contained in Rule 5 from entertaining any such additional evidence. Clearly, the approach adopted by the Commissioner (Appeals) is erroneous."* . Thereby inferring that there is no bar in admitting the new evidence. Further, the government observes that the issue of purchasing the protein supplements for self-use, was brought before the Adjudicating Authority as per para 17 of the order in original which was not considered and disregarded as not genuine by the Adjudicating Authority. As such, indicating that the evidence was not new as assumed by the Department.

9. Further, the Applicant was intercepted before he attempted to cross the green channel, The goods were not ingeniously concealed. There are no previous offences registered against the Applicant. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised.

8. The Government Further, notes that Applicant has appeared in person for the personal hearing and his physical disposition reveals that he is engaged in the sport of Bodybuilding. It is common knowledge that the entire focus of the sport is show of musculature and the same necessitates the consumption of protein supplements to augment the process of muscles building. This process involves physical exercises with weights for periods extending from 3-5 years and more. The quantity of consumption depends on the dietary habits of the Bodybuilder, whether he is a vegetarian or non vegetarian etc, and therefore the quantity though appearing as commercial for a lay person, may not be much for the sports person. The Government, therefore in the interest of sport promotion prefers to accept the Applicants submission that the protein supplements were brought for self-consumption and not for commercial sale, and would prefer to take a lenient view in the matter.



9. In view of the aforesaid discussions, Government holds that the order of the Commissioner (Appeals) setting aside the imposition of Redemption fine and personal penalties in the Order in Original No. 23/2016 dated 24.05.2016 to be is legal and proper. Therefore, Government holds that the impugned Order in Appeal No.73/2017 dated 16.03.2017 passed by Commissioner of Customs (Appeals) Bangalore, needs to be upheld and the Revision Application filed No.380/18/B/17-RA filed by the department is liable to be dismissed. As discussed in para 8 above, the Government does not agree that with the over valuation claimed by the Applicant in his Revision Application No.373/88/B/17-RA.

19. In view of the above, Government upholds the impugned Order in Appeal No. 73/2017 dated 16.03.2017 passed by Commissioner of Customs (Appeals) Bangalore as legal and proper and Revision Application No. 380/18/B/17-RA filed by the Commissioner of Customs, New Customs House, Panambur, Mangaluru and Revision Application No.373/88/B/17-RA filed by Shri Laxman Singh, are dismissed as devoid of merit.

20. So, ordered.

(Signature)
25.5.2018

(ASHOK KUMAR MEHTA)

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

340-341

ORDER No. /2018-CUS (SZ) /ASRA/MUMBAI

DATED 23.5.2018.

To,
Shri Laxman Singh,
S/o Har Singh Bisht,
Flat No. 704, Venkataramana Towers,
Bhavanhi Street, Mangaluru,
(Dakshina Kannada District) -575001.

True Copy Attested

(Signature)
21/6/18

एस. आर. हिरुलकर
S. R. HIRULKAR

Copy to:

1. The Commissioner of Customs, New Custom House, Panambur, Mangalore-10
2. The Commissioner of Customs (Appeals), BMT Building, above BMT Bus stand, old Airport Road, Domtur, Bangalore-560071.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.



F.No. 373/88/B/17-RA

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