

REGISTERED
SPEED POST



F.No. 375/65/B/15-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 15/7/18

Order No. 41/18-Cus-dated 14-3-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/ICD/Air-1205/2015 dated 23.9.2015 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Sanjeev Kumar, Chandigarh

Respondent : Commissioner of Customs, New Custom House, New Delhi

ORDER

A Revision Application No.375/65/B/15-RA dated 22.12.15 is filed by Mr. Sanjeev Kumar, resident of Ropar Distt., Punjab (hereinafter referred to as the applicant) against the Order-In-Appeal No.CC(A)Cus/ICD/Air-1205/2015 dated 23.9.2015, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the appeal of the applicant has been partly allowed by reducing the penalty from Rs.1.00 lakh to Rs.50000/- under Section 117 of the Customs Act, 1962.

2. The brief facts involved in the present proceeding are that one passenger namely Shri Rajesh Kumar was intercepted on airport at New Delhi while he arrived from Korea via Bangkok on 3.11.12 and the imported goods of the value of Rs.1545000/- were recovered from him by the Customs Officers. Shri Rajesh Kumar informed the Custom officers that some of the goods namely 150 gms. of gold, two cameras, electric bed sheets, mobile phone, and LED T.V. were brought by him on the request of the applicant. The applicant also in his statement recorded on 10.1.13 confirmed that he had requested Shri Rajesh Kumar to bring these goods. Similarly, some of the goods were brought by Shri Rajesh Kumar for another person namely Shri Sandeep Kumar. The proceedings were initiated against all the 3 persons, Shri Rajesh Kumar, Shri Sandeep Kumar and the applicant and penalty of Rs.1.00 lakh was imposed on Shri Sandeep Kumar as well as the applicant vide Order dated 28.3.14. Both filed an appeal before the Commissioner of Customs (Appeals) and two separate Orders dated 23.9.15 in respect of the applicant and Order dated 29.4.15 in respect of Mr. Sandeep Kumar were passed by the Commissioner (Appeals). While the Commissioner (Appeals) has set aside the penalty on Mr. Sandeep Kumar vide his Order dated 29.4.15, he has only reduced the penalty from Rs.1.00 lakh to Rs.50000/- in case of Mr. Sanjeev Kumar. Hence, the present revision application has been filed mainly on the ground that he has not contravened any provision of the Customs Act and had nothing to do with the illegal importation of goods by Mr. Rajesh Kumar.

3. Personal hearing was held on 12.3.18 and it was attended by Shri S.S.Arora, Advocate, for the applicant and Shri Sanjay Kumar, ACO, for the respondent. Shri Arora reiterated that the Commissioner (Appeals)'s Order is erroneous and discriminatory in as much as Commissioner (Appeals) has himself set aside the penalty on Mr. Sandeep Kumar against whom identical case was made by Customs. However, Shri Sanjay Kumar, ACO, pleaded that OIA is just and proper.

4. The Government has examined the matter and it is noticed that except the fact that the applicant had requested Mr. Rajesh Kumar to bring some goods for him from abroad, there is no evidence to show that he had asked Mr. Rajesh Kumar to bring the foreign goods by smuggling thereof. The applicant had not even paid any advance money also to Mr. Rajesh Kumar from which it is implied that he had intended to make payment only after goods were handed over to him. Hence, on the basis of the applicant's mere request to Mr. Rajesh Kumar to bring imported goods, it cannot be held that the applicant had violated any provision of Customs Act or abetted any such contravention. Therefore, Government finds that applicant's case is not covered under Section 117 of the Customs Act. Further, the Government agrees with the applicant that in the identical case of Mr. Sandeep Kumar, the Commissioner (Appeals) himself has held that evidences are not crystal clear to prove that Mr. Sandeep Kumar contravened any provision of the Customs Act and had abetted any such contravention. Further, the Order of the Commissioner (Appeals) setting aside the penalty on Mr. Sandeep Kumar has also not been agitated before the Government by filing a revision application as per the records of this Office. Thus, even the Revenue has accepted that the penalty is not warranted on Mr. Sandeep Kumar. Since Mr. Sanjeev Kumar had also requested Mr. Rajesh Kumar to bring imported goods like Mr. Sandeep Kumar had requested, the Government is convinced that no penalty can be imposed on Mr. Sanjeev Kumar also.

5. In view of the above discussions, the OIA is set aside and the revision application is allowed.

R.P. Sharma
14.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

Mr. Sanjeev Kumar,
Village Ghanauli,
Distt-Ropal, Punjab-140001

Order No. 41/18-Cus dated 14-3-2018

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Additional Commissioner of Customs, IGI Airport, New Delhi-110037
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

(Debjit Banerjee)
STO (Revision Application)