



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/324/B/2019-RA / 7099 : Date of Issue 30.12.2022

ORDER NO. 714/2022-CUS (WZ)/ASRA/MUMBAI DATED 29.12.2022 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. Atul Shah

Respondent : Principal Commissioner of Customs, CSMI Airport,
Mumbai

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.MUM-
CUSTM-PAX-APP-102/19-20 dated 22.05.2019 [Date of issue:
24.05.2019 issued through F.No. S/49-127/2018 passed by
the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This Revision Application has been filed by Shri. Atul Shah (herein referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-102/2019-20 dated 22.05.2019 [Date of issue: 24.05.2019] issued through F.No. S/49-127/2018 passed by the Commissioner of Customs (Appeals), Mumbai - III. This Revision Application is on the limited issue of imposition of penalty on him.

2. Brief facts of the case are that on 11.02.2017, the Customs Officers at CSMI Airport, Mumbai intercepted one passenger viz, Mr. Ahunanya Obinna (hereinafter referred to as the passenger) who was to depart to Nairobi by Kenya Airways Flight No KQ-211. Detailed examination of the 08 baggages of the passenger resulted in the recovery of assorted medicines valued at Rs. 18,67,131/-. The medicines were seized under Panchanama dated 11.02.2017 under the reasonable belief that the same were attempted to be smuggled out of India without prescription and purchase bill and No Objection certificate from the Additional Drug Controller (ADC) office which was a violation of the provisions of the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetic Rules, 1945 and the Customs Act, 1962. In subsequent statements, the passenger interalia stated that he was engaged in the pharmaceutical business and that he had purchased the impugned medicines from the Applicant who was a partner M/s S. Himatlal &Co. and that he used to buy medicines from M/s S. Himmatlal & Co which were exported to Nigeria but this time he bought the medicine personally and paid US\$ in cash. The Applicant in his statement admitted that he used to receive the payment in USD in their account and export the medicines after obtaining the ADC's NOC. He further stated that in the instant occasion he had received cash of US\$ 4950 from the passenger which was deposited in his bank account, and sold the medicines without seeking any permission from the ADC.

3. After, due process of law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/167/2017-18 dated 27.02.2018 issued through F.No. 14-4-

06/2017-18 Adjn [SD/INT/AIU/31/2017-AP'A] ordered the absolute confiscation of the seized assorted medicines totally valued at Rs. 18,67,131/- under Section 113(d) of the Customs Act 1962 and imposed a penalty of Rs. 1,60,000/- on the passenger under Section 114(i) and (iii) of the Customs Act, 1962. Penalty of Rs. 1,00,000/- was imposed on the Applicant under Section 114(iii) of the Customs Act, 1962.

4. Aggrieved by this Order-In-Original, the Applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who on the grounds that the penalty imposed on the Applicant was harsh and excessive and praying to set aside the penalty imposed on him. The AA vide his Order-in-Appeal No. MUM-CUSTOM-PAX-APP-102/2019-20 dated 22.05.2019 [Date of issue: 24.05.2019] issued through F.No. S/49-127/2018 upheld the OIO in respect of the penalty imposed on the Applicant.

5. Personal hearing in the case was scheduled for 22.09.2022. Shri Prakash Shingrani, Advocate appeared for the personal hearing on behalf of the Applicant and submitted that the Applicant has been imposed penalty without any basis. He further submitted that the Applicant was not concerned/aware how medicines sold by them would be carried or dealt with by the buyer. He requested to drop the penalty.

6. Government has gone through the facts of the case and the available records. Government finds that this application is only on the limited issue of imposition of penalty on the Applicant. The passenger was intercepted in his attempt to take out assorted medicines without proper documents such as purchase bills and No Objection Certificate from the Additional Drug Controller, as required by the Drug and Cosmetics Act, 1940 and Rules 1945.

7. The Applicant by his own admission has stated that the passenger had been dealing with him/his firm since September 2016 and had been exporting the medicines through his agent, after obtaining the NOC from the Additional Drug Controller, after receipt of the funds through banking channels or from the passenger in person. Government notes that in the instant case, the Applicant has received the payment of US\$4950, in cash and had not obtained the NOC from the Additional Drug Controller despite knowing that the goods were meant for being taken abroad.

8. Government notes that the aspect of the limited issue of penalty of Rs. 1,00,000/- on the Applicant under Section 114(iii) of the Customs Act, 1962 had been looked into in great detail by the lower authorities while rejecting his appeal.

9.1. The Government notes that all aspects of the case have been looked into by the Appellate Authority. The AA at Para 5 of the impugned Order-in-Appeal has stated as follows

"5. I have gone through the facts and submissions of the case and find that the appellant was regularly supplying the medicines to his foreign buyer M/s Excel Charis Pharm. Chem. Ltd. and exports were being made through Air Cargo complex, Mumbai. I find that in the instant case the appellant was aware of the fact that the medicines sold by him to Mr. Ahunanya Obinna was meant to be taken abroad by Mr. Ahunanya Obinna in person without obtaining the ADC NOC. I find that the appellant knowingly and willingly aided and abetted in illegal export of the impugned medicines via Baggage mode in commercial quantity in contravention of the Baggage Rules, 1998 and other allied acts and provisions of Customs Act, 1962."

9.2 The Applicant, in the Revision Application has neither countered the observations of the Appellate Authority nor has been able to bring any contrary evidence. Moreover, the records indicate that the Applicant having dealt with the passenger earlier and supplied medicines, ought to have necessary precautions to ensure that the procedures/documents be followed particularly in the case of a sensitive product like medicines. However, Government finds that the penalty of Rs. 1,00,000/- imposed on the Applicant under Section 114(iii) of the Customs Act,

1962 is excessive. Government reduces the same to Rs. 50,000/- (Rupees Fifty Thousand only)

10. The Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. *AM* /2022-CUS (WZ)/ASRA/MUMBAI DATED 20.12.2022

To,

1. Shri. Atul Shah, 5/37, Vishnu Mahal, 59-D Road, Churchgate, Mumbai 400 020.
2. Pr. Commissioner of Customs, Level - II, Terminal - 2, Chhatrapati Shivaji Maharaj International Airport, Mumbai - 400 059.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Shri Prakash Shingrani, (Advocate), 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400 051
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.