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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. 373/85/B/16-RA ³

Date of Issue 16/07/2018

ORDER NO. 424/2018-CUS (SZ)/ASRA/MUMBAI DATED 18.06.2018 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.

Applicant : Shri. Kaleel Ahmed Shahul

Respondent : Commissioner of Customs, Madurai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MAD-CUS-000-APP-067-16 dated 06.05.2016 passed by the Commissioner of Central Excise (Appeals), Madurai.



ORDER

This revision application has been filed by Shri Kaleel Ahmed Shahul (herein referred to as Applicant) against the order No. MAD-CUS-OOO-APP-067-16 dated 06.05.2016 passed by the Commissioner of Central Excise (Appeals), Madurai.

2. Briefly stated facts of the case are that the applicant, an Indian national had arrived at the Madurai Airport on 23.07.2015. Examination of his baggage resulted in the recovery of 103 cartons of Djaram Black cigarettes valued at Rs. 92,700/- and 13.5 kgs of saffron valued at Rs. 9450/-. The Original Adjudicating Authority, vide order No. 58/2015 - Batch B dated 23.07.2015 absolutely confiscated the above goods totally valued at Rs. 102150/- (One lac Two thousand One hundred and Fifty) under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 26,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Madurai The Commissioner of Central Excise (Appeals), Madurai, vide his order No. No. MAD-CUS-OOO-APP-067-16 dated 06.05.2016 rejected the Appeal of the Applicant.

4. The applicant has filed this Revision Application interalia on the grounds that;

4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; The Applicant claims only saffron and not the cigarettes; the Applicant had declared the saffron and pleaded for its release on payment of duty or allow re-export, but it was not heeded by the Authorities; Iranian Saffron is 50% lesser value than Kashmir saffron, But it has been valued at on the higher side: Simply because of not declaring the department cannot become the owner of the goods;



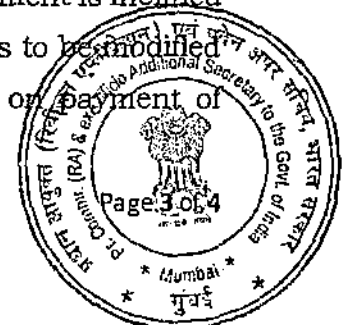
4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for re-export of the goods or release the saffron and reduce personal penalty and render justice.

5. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals in favor of his case. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the goods were not declared by the Applicant as required under Section 77 of the Customs Act, 1962, and under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant was intercepted before he exited 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.

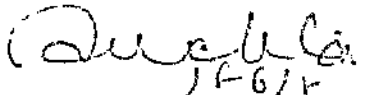
8. The Government also observes that the adjudication authority has relied upon internet prices for arriving at the value of the goods. The Hon'ble Supreme Court in the case of M/s Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs, New Delhi reported in 2000(117) ELT 49 (Tribunal) has categorically stated that "Documents displayed on internet, being unsigned are not reliable and cannot be relied upon to calculate value". It is also observed that the higher valuation of the goods by the adjudication authority has led to imposition of higher penalty. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export of the Saffron on redemption fine and personal penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods is liable to be allowed for re-export on payment of redemption fine and penalty.



9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated saffron for re-export in lieu of fine. The saffron totally valued at Rs. 9,450/- (Nine thousand Four hundred and fifty) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 5,000/- (Rupees Five Thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 26,000/- (Rupees Twenty six thousand) to Rs.2,500/- (Rupees Two thousand Five hundred) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered.


(ASHOK KUMAR MEHTA)

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

ORDER No. 424/2018-CUS (SZ) /ASRA/ MUMBAI

DATED 18.06.2018

To,

Shri Kaleel Ahmed Shahul
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

Attested

Copy to:

1. The Commissioner of Customs, Madurai
2. The Commissioner of Central Excise (Appeals), Madurai
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.


SANKARSAN MUNDA
Joint Commissioner of Customs & C. Ex.

