



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

F.No. 373/254/B/14-RA / 1627

Date of Issue 03.03.2021

ORDER NO 18/2021-CUS (SZ)/ASRA/MUMBAI DATED 26.02.2021 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 Mohammed Talib Ahmed

Respondent : Commissioner of Customs(Airport), Bangalore

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 03/2014 Cus (B) dated 16.04.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Mohammed Talib Ahmed (herein after referred to as the Applicant) against the Order in appeal No. 03/2014 Cus (B) dated 16.04.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the officers of DRI, Bangalore on specific intelligence intercepted the Applicant, who had arrived from Dubai on 11.04.2012, at the exit after he cleared himself through the green channel. The detailed examination of his baggage resulted in the recovery of goods namely, Zebra ball pens, 'Beanne' Extra Pearl Cream, Perfumes viz . Viktor & Rolf 90 ml Cartier Declaration 100 ml, Lovely 100 ml, Alien 60 ml, Fahrenheit by Dior 200 ml, Very Sexy by EDP 100 ml, Armani Code 75 ml, Kouros 100 ml, Hebamos Cigar 5 boxes, (each containing 25 cigars), Graham London Model Chronofighter Oversize GMT SI No. 1093 with Watch Passport in the Dell Laptop bag, Graham London Model Chronofighter Oversize GOAT SI. No. 0744 in the Dell Laptop bag, Palette Colour Cream. Big, circular, OMEGA wall clock in Carton with Baggage Tag No. EK914424 and Dell Vostro 1540 Laptop in Laptop bag. The goods were totally valued at Rs. 10,86,320/- (Rupees Ten lakhs Eighty six thousand Three hundred and twenty.).

3. The Original Adjudicating Authority vide Order-In-Original No. 17/2013 dated 27.02.2013 ordered confiscation of the impugned goods, but allowed redemption on payment of Rs. 2,00,000/- (Rupees Two lakhs) as redemption fine and imposed penalty of Rs. 1,00,000/- (Rupees One lakh) on the Applicant under Section 112 (a) & (b) of the Customs Act, 1962. A penalty of Rs. 50,000/- (Rupees Fifty thousand) was also imposed under section 114AA of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 03/2014 Cus (B) dated 16.04.2014 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application, interalia on the grounds that;

5.1 The impugned order passed by the Commissioner (Appeals) upholding the OiO passed by the original authority is totally vitiated and liable to be set aside for the following facts, reasons and grounds.

5.2 It is apparent from the facts of the case that goods such as watches, perfumes, beauty cream, wall clock etc were seized by the Customs officials on 12-04-2012 from the possession of the applicant, that in the present case the applicant had deliberately mis-declared that the total value of dutiable goods imported him was as Rs 25,000/- and whereas the value determined by the department is Rs 10,86,320/-.

5.3 It is respectfully submitted that the value of the goods in question has been taken without any rationale and hence wholly unacceptable for the following reasons. It is apparent that the value of goods, except Sl. No 12 & 13 of the Annexure to SCN, has been determined by the department. There appears to be no legal basis for determining the said value of the goods in question. However, the determination of the two watches in question (Sl. No 12 & 13 of the Annexure to SCN) appears to be absolutely without any basis. The value had been apparently been determined after obtaining cost details through email from one Mr Prashant Kalani. This opinion was given by the said Prashant Kalani on 02-07-2012 whereas the goods were seized from the possession of the appellant on 12-04-2012. While Mr. Prashant Kalani had given his opinion about Model OVGS.B26AA1O5, the watches seized from the appellant were 'Graham London Model Chronofighter' as seen Mahazar dated 12-04-2012. From these two documents there is no corroboration about the value given by Mr. Prashant Kalani does not tally or corroborate with each other and therefore the M.R.P. mentioned cannot be accepted. The physical examination done by Mr. Prashant Kalani was not in the presence of the appellant and on this ground also the valuation cannot be accepted. Further the designation, the status, the organization for which the said Mr. Prashant Kalani is working has not been disclosed. Therefore, the allegation of smuggling two watches cannot be sustained and the Adjudication order is liable to be set aside.

5.4 The original authority had held that the applicant had failed to produce any documents with regard to purchase, possession and transport of the said goods, as a result of which provisions of the Act have been violated since the

goods seized are of commercial quantity. If the goods had been brought from a hawker, the original authority was not justified insisting on purchase documents failing which the provisions of the Act are violated. The Joint Commissioner had also failed to specifically state as to which provision of the Act required bills to establish legal possession of the goods brought in baggage.

5.5 The respondent has relied on Rule 9 of the Customs Valuation Rules, 2007, without indicating the provisions of Rule 12 under which the declared value had been rejected. There is no mention about the non applicability of Rule 12 of the said Valuation Rules. Therefore adoption of value of Rs 10,86,320/- was totally incorrect and is not maintainable.

5.6 The original authority has failed to correctly appreciate as to what are 'prohibited goods'. He has wrongly held the baggage goods undeclared as 'prohibited goods'. The definition of prohibited goods has been well explained by the Hon'ble Tribunal in the case of Yakub Ibrahim Yusuf vs. CC Mumbai [2011(263) ELT 685 (Tri-Mum)]. In this case the scope of prohibited goods as held by the Hon'ble Tribunal refers to goods like arms, ammunition, addictive drugs, whose import in circumstances would danger or do detriment to health, welfare or morals of people. It does not refer to goods whose import is permitted subject to restriction which can be confiscated but liable to be released on payment of Redemption Fine since they do not cause danger or detriment to health.

5.7 Finding that watches were brought in commercial quantity is opposed to facts. As mentioned in Annexure to the SCN indicates that none of the goods were brought in commercial quantity, the allegation is totally without basis especially with regard to the watches since the appellant had brought only two watches which, by no stretch of imagination can be called as 'commercial quantity' Therefore, the watches seized will have to be released unconditionally.

5.8 The learned original authority has imposed redemption fine of Rs 2,00,000/- under the provisions of Section 125 of the Act in lieu of the confiscation of the goods. The said authority has imposed penalty of Rs 1,00,000/- on the appellant under Section 112(a) of the Act and Rs 50,000/-

under Section 114AA of the Act. The order as regards imposition of penalties has been upheld by the appellate authority without valid reasons. It is submitted that the imposition of the redemption fine and penalties in question is extremely harsh and unjust and as the value of goods seized itself has been arrived at without any rationale. Hence it is prayed that the redemption fine and penalties may be waived in the interest of justice.

5.9 The Applicant, prays for setting aside the order in Appeal and allow the Appeal with consequential relief. Pass such other order as may be deemed fit and proper in the facts and circumstances of the matter involved herein and thus render justice.

7. Personal hearings in the case was scheduled in the case on 05.04.2018, 21.08.2018. In view of the change in Revisionary authority, another opportunity of personal hearing was extended on 03.02.2021 and 17.02.2021. Nobody attended the hearing on behalf of the department. The Advocate for the Applicant attended the personal hearing on 17.02.2021. He re-iterated the submissions already made in the revision application and submitted that the value adopted was on the higher side. He requested for a lenient view as most of the goods are no longer useful.

8. The Government has perused the case records carefully and observes that the Applicant was intercepted by the officers after he had passed through the green channel at the exit. He had declared the value of the goods at Rs. 25,000/- (Twenty five thousand) which was far below the actual value of the goods. A proper declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore confiscation of the goods is sustained, and the Applicant is liable for penal action.

9. It is a fact that the pens, cigars, perfumes were commercial in quantity and this has not been disputed by the Applicant. He disputes the value of the goods in question, stating that it has been taken without any rationale and hence wholly unacceptable. It is however observed that the Applicant has disputed the value adopted by the adjudicating authority but has not come forward with the true value of the goods. Under the circumstances disputing the value of the above goods appear to be unreasonable. Further, the Original adjudicating authority has in his order dated 27.02.2013, at para 15 notes that "*The pax has failed to produce any documents with regard to purchase, possession and transport of the said goods.*"

The Applicant himself admits in para 6 of his grounds of Appeal that “ *If the goods had been brought from a hawker, the original authority was not justified insisting on purchase documents failing which the provisions of the Act are violated.*” The Applicant thus accepts that he does not have the documents with regards to the impugned goods. In his statements given during the course of investigations he has admitted that the goods were attempted to be smuggled into the country. The Mahazar drawn at the Bengaluru Airport on 12.04.2012, soon after the seizure, before independent panchas, clearly records that the Applicant agreed with the quantity and value of the items mentioned in the annexure to the Mazahar. The Government therefore does not feel the need to venture into the aspect of valuation of the above goods.

10. In addressing the valuation of the two Graham watches seized, it is observed that the Mahazar dated 12.04.2012 states “*The SIO asked Shri Mohammed Talib Ahmed if he had any valid documents showing purchase and licit possession of the above goods., for which Shri Mohammed Talib Ahmed informed that he was not in possession of any documents evidencing purchase or possession of the above goods. On being asked about the two Graham brand watches Shri Mohammed Talib Ahmed informed that were genuine, original watches and were costly. The SIO then ascertained that the retail market value of each of the Graham watches was USD 9010 (approx). So, the market value of the two Graham watches works out to USD 18,020 i.e., Rs. 9,19,020/- (@Rs. 51 per USD).*” The Mahazar also further clarified that “*The SIO informed that as the two watches were of reputed brands and as Shri Mohammed Talib Ahmed claimed both the watches to be genuine and original, ascertaining the authenticity and correct value of the watches cannot be done at present. Shri Mohammed Talib Ahmed informed that the two watches were brought by him for sale in India for making profit.*” It is with this background that during the course of investigations a private valuer was called in, who ascertained the M.R.P. value of the watch as Rs. 5,54,400/-. The values of the watches taken in the Mahazar therefore appears to be reasonable. The Applicant has stated that he had brought the impugned goods for sale in India and profit from the sale. Government notes that for ensuring a profit the purchase price of the product has to be known, it is therefore clear that the Applicant has refrained from submitting the purchase price with tainted motives. He consistently disputes the valuation without providing any justifiable evidence in support of his case. In the absence of proper evidence the Government therefore would not like to venture into this aspect of the case.

11. Government notes that the original adjudicating authority in its order dated 27.02.2013, using the discretion accorded under section 125 of the Customs Act, 1962, allowed the goods to be redeemed on payment of redemption fine and penalty. The Appellate authority has upheld the said order. The Government, observes that the redemption fine of Rs. 2,00,000/- (Rupees Two Lakhs) and the penalty of Rs. 1,00,000/- (Rupees One lakh) imposed under section 112(a) and (b) of the Customs Act, 1962 on the goods totally valued at Rs. 10,86,320/- (Rupees Ten lakhs Eighty six thousand Three hundred and twenty) is appropriate. Government however observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA, the penalty of Rs. 50,000/- (Rupees Fifty thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

12. The impugned Order is modified as detailed above. Revision Application is partly allowed.

Shrawan
26/02/21
(SHRAWAN KUMAR)

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

ORDER No. 48/2021-CUS (WZ) /ASRA/

DATED 26.02.2021

To,

1. Shri Mohammed Talib Ahmed, S/o Siddibaba Ummer Saheb, Ruqaiya Mansion, Opp Usmania Masjid, Nawaiat Colony, Bhatkal Post, Karnataka- 581 320.

Copy to:

2. The Commissioner of Customs(Airport), C. R. Building, Queens Road, Bangalore - 560 001.
3. Shri Pradyumma G. H., Advocate, C/o Kentree Consultants Pvt. Ltd., No. 371, 2nd Floor, 8th Main Road, Sadashiv Nagar, Bangalore- 560080.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. Spare Copy.