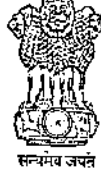


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GOVERNMENT OF INDIA
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(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 373/304/B/SZ/2018-RA / 126

Date of Issue 14.02.22

ORDER NO 59/2022-CUS (SZ)/ASRA/MUMBAI DATED 10.02.2022 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. Thameem Ansari S/o. Nagoor Meeran

Respondent : Commissioner of Customs & Central Excise,
Madurai - 625 002.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. TCP-CUS-000-APP-159-18 dated 08.08.2018 [A.No. C24/44/2018-TRY(CUS)] passed by Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappali - 620 001.

ORDER

This revision application has been filed by Shri. Thameem Ansari S/o. Nagoor Meeran (herein referred to as Applicant) against the Order-in-Appeal No. TCP-CUS-000-APP-159-18 dated 08.08.2018 [A.No. C24/44/2018-TRY(CUS)] passed by Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappali – 620 001. The passport no. of the applicant / address as per the details recorded in Order-in-Original are Z4366257 dated 20.11.2017 [Old No. M2711195] and 39/32, Jan Mohamed Street, Triplicane, Chennai (residential address).

2. The brief facts of the case are that on 18.01.2018, the applicant who is a frequent traveller returned from Hong Kong to Madurai Airport by flight no. UL-0137 / 18.01.2018 and brought 4 nos. of DJI Phantom PRO Drone in dismantled condition. Each drone was valued at Rs. 1,22,000/- and totally, the 4 drones had a value of Rs. 4.88,000/-. The goods were restricted items requiring prior clearance of the DGCA and import licence from DGFT in terms of DGFT Notification no. 16 dated 27.07.2016. The applicant had not produced any requisite prior clearance from DGCA / DGFT nor declared the goods and since, the goods were non-bonafide baggage the same were liable for confiscation under the provisions of the Customs Act, 1962 readwith Foreign Trade (D&R) Act, 1992 and therefore the 4 drones had been seized under the Customs Act, 1962 for taking further necessary action.

3. The adjudicating authority i.e. Assistant Commissioner of Customs, Customs Airport, Madurai vide Order-in-Original No. OS. No. 2/2018 – Batch A dated 18.01.2018 ordered for the absolute confiscation of the goods valued at Rs. 4,88,000/- under Section 111 (d), (1), (m) and (o) of the Customs Act, 1962 read with Section 3 (3) of the Foreign Trade (Development & Regulation) Act, 1992. A penalty of Rs. 10,000/- under Section 112 (a) of Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved with the Order, the applicant filed an appeal before the Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappali – 620 001 who vide Order-in-Appeal No. TCP-CUS-000-APP-159-18 dated 08.08.2018 [A.No. C24/44/2018-TRY(CUS)] upheld the (i). absolute confiscation of the 4 nos of DJI Phantom PRO Drones, totally valued at Rs. 4,88,000/- and (ii). the penalty of Rs. 10,000/- which had been imposed by the original adjudicating authority under Section 112 (a) of the Customs Act, 1962.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application inter alia on the grounds that;

- 5.1. that the order of the respondent is against the law, weight of evidence and circumstances and probabilities of the case
- 5.2. that instead of keeping the electronic goods in the warehouse where its price is depreciating very day, the applicant has pleaded to allow the re-export of the 4 nos of drones under Section 80 of the Customs Act, 1962.
- 5.3. that reliance is placed on the Order (i). passed by the Additional Commissioner of Customs (Air) Chennai in Order-in-Original No. OS. No. 243/of 2016 on 12.09.2018 in r/o. SENTHIL KUMAR and (ii). OS No. 183/2017 Batch – D passed by Asstt. / Dy Commr. Of Customs, Chennai in r/o Chinniah Dileep Kumar where the drones have been have been allowed to be re-exported on payment of the redemption fine and penalty.
- 5.4. that only spare parts / service pars of drone was brought and it was not drone in dismantled form. The conclusion of the adjudication authority that it is a full drone is totally incorrect and hence, goods may be re-examined.
- 5.5. that the notification no. 16-2015-2020 dated 27.07.2016 of DGFT is applicable only to drones and not spare parts.
- 5.6. that the value of the drones / parts have been assessed on the higher side.
- 5.7. that baggage allowance had been denied to the applicant.

Under the circumstances, the Applicant has prayed to the Revision Authority to set aside the impugned Order-In-Appeal and allow the re-export of the goods, reduce the personal penalty and to render justice.

7. Personal hearings in the case was scheduled through the video conferencing mode for 03.12.2021 / 09.12.2021. Smt. Kamalamalar Palanikumar, Advocate requested to prepone the personal hearing to 07.12.2021 as she would be coming to Mumbai. Accordingly, the advocate attended the hearing on 07.12.2021. She reiterated her written submission and during the hearing furnished a further citation i.e. GOI Order no. 373/98/B/2018-RA dated 29.11.2018 passed by the Revisionary Authority, Mumbai.

8. The Government has gone through the facts of the case. The Government observes that the applicant had not declared the goods. Also, it has been pointed out that the applicant was a frequent traveler and had brought the impugned goods which were restricted items and did not produce the prior clearance of the DGCA and the import licence from the DGFT required in terms of DGFT notification no. 16 dated 27.07.2016. The Government finds that the confiscation of the gold is therefore justified.

9. At the outset the Government notes that the impugned goods are restricted items and prior permissions specified in the notification are required to be obtained. In this case, the applicant had not obtained the required permissions from DGCA and DGFT. Hence, the release of the goods to the applicant is precluded. However, the Government notes that the applicant has made a plea to allow the re-export of the impugned goods. The applicant has relied upon the Order no. 373/98/B/2018-RA(MUM) dated 29.11.2018 of the GOI in the case of Kadher Meera wherein re-export of similar drones had been allowed on payment of a redemption fine. Therefore, the Government inclined to take a lenient view to accept the plea of the applicant to re-export the goods. Government notes that in a recent judgement pronounced by the Apex Court in the case of M/s. Raj Grow Impex [*CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 - Order dated 17.06.2021*], release of restricted goods for re-export have been allowed on payment of

redemption fine and penalty. The order of absolute confiscation of the goods in the impugned order passed by the appellate authority therefore, needs to be modified.

10. Taking into consideration the foregoing facts, the Government allows the redemption of the confiscated goods i.e. 4 nos of DJI Phantom PRO Drones, totally valued at Rs. 4,88,000/- for re-export. The said 4 nos of DJI Phantom PRO Drones are ordered to be redeemed for re-export on payment of redemption fine of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only). The Government notes that the penalty of Rs. 10,000/- under Section 125 of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

11. The revision application is allowed on the above terms.

Shrawan
10/2/22
(SHRAWAN KUMAR)

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

ORDER No. 39 /2022-CUS (SZ) /ASRA/ DATED 08.02.2022

To,

1. Shri. Thameem Ansari S/o. Nagoor Meeran, 39/32, Jan Mohamed Street, Triplicane, Chennai
2. The Commissioner of Customs & Central Excise, Central Revenue Buildings, B.B Kulam, Madurai - 625 002

Copy to:

1. Shri. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai - 600 001.
2. St. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.