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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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ORDER NO. 634/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 31 .08.2018
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 Aarish Altaf Tinwala

Respondent : Commissioner of Customs (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-438/2018-19 dated 14.08.
2018 passed by the Commissioner of Customs
(Appeals) Mumbai-III.



ORDER

This revision application has been filed by Shri Aarish Altaf Tinwala (herein after referred to as the Applicant) against the order No MUM-CUSTM-PAX-APP-438/2018-19 dated 14.08.2018 passed by the Commissioner of Customs (Appeals) Mumbai-III in appeal against the Order-In-Original No. Aircus/49/T2/130/2018 "C" Batch dated 21.06.2018 passed by the Assistant Commissioner Customs, CSI, Mumbai.

2. Briefly, the facts of the case are that the Applicant arrived at the CSI Airport, Mumbai from Colombo on 21.06.2018 by Jet Airways Flight No 9W-250. The detailed examination of his baggage, upon interception by the Customs Officers, resulted in the recovery of 30 packets of chocolates weighing 500 grams each and one bottle of liquor totally valued at Rs 35,200, which were in excess of the duty free allowance and had not been declared by the passenger.

3. The Original Adjudicating Authority vide his Order-In-Original Aircus/49/T2/130/2018 "C" Batch dated 21.06.2018 ordered confiscation of the impugned goods under Section 111 (d), (l) and (m) of the Customs Act, 1962, but allowed redemption of the goods on payment of redemption fine of Rs. 7,000/- and imposed penalty of Rs. 7,000/- under Section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeals) Mumbai-III, inter-alia on the grounds that since the impugned goods were purchased in India after entering the Indian Territory, the question of payment of duty does not arise; the import duty can be levied only when passenger imports the goods from outside India. He pleaded that since he had already entered the Indian Territory and made purchases from Indian duty free shop, hence, the impugned good cannot be called imported and no import duty is leviable. Therefore, he pleaded that the order passed original authority be set aside.



5. The Commissioner of Customs (Appeals vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-438/2018-19 dated 14.08.2018 dismissed the appeal of the applicant. The applicant has filed this Revision Application under Section 129 DD of the Customs Act 1962, inter-alia on the following grounds that;

5.1 The impugned order is contrary to the law and to the facts of the case; The Commissioner (Appeals) has committed a gross error in failing to appreciate that the applicant had not imported the goods and therefore not liable to pay Customs duty; The Commissioner (Appeals) erred in brushing aside the relevant fact that once the immigration officer affixes the immigration stamp in the passport of a passenger, it means that the passenger has entered India; duty free shops are inside Indian Territory and since the purchase was made by the Applicant after entering the Indian Territory: the question of payment of import duty does not arise.

5.2 The definition of import as provided in Section 2(23) of the Customs Act, 1962 definition of India provided in Section 2(27) of the Customs Act, 1962 read with Section 12 of the Customs Act, 1962, clearly states that duties of customs shall be levied on goods imported into, or exported from, India; the decisions of the Hon'ble Supreme Court and Hon'ble CESTAT cited by the Commissioner (Appeals) have been rendered in a totally different context of levy of commercial tax and service tax and not customs duty. Hence the facts and decision of those cases are not applicable in the present case.

5.3 It is therefore prayed the Central Government may be pleased to set aside the impugned Order-in-Appeal dated 14.08.2018; allow the revision application and pass such further order or orders as deem fit and necessary to render justice.



6. The Applicants requested for an early hearing as the goods being chocolates were perishable and if not properly refrigerated would soon perish resulting in a considerable loss to the Applicant. A personal hearing in the case was held on 24.08.2018, the Applicant Shri Aarish Altaf Tinwala attended the hearing and nobody from the department attended the personal hearing. The applicant re-iterated the submissions made in the Revision Application and pleaded that the Order in Appeal be set aside and goods being perishable, the case be adjudicated expeditiously.

7. The Government has gone through the case records and submissions made by the applicant. The case involves adjudication on the following issues-

- (i) Whether a Duty Free Shop, situated after the immigration at the arrival terminal of an International Airport, can be said to be within Indian Territory in the context of levy and collection of Customs duties?
- (ii) Whether the applicant would be liable to pay Customs Duties on the good purchased at the Duty Free Shop, if they exceed the duty free allowance?
- (iii) Whether the impugned order suffers from any legal infirmities and require remedial action?

8. The applicant has vehemently pleaded that once he has completed the immigration formalities, he is said to have entered Indian Territory. Thereafter the goods purchased from the Duty Free Shop situated in the Arrival Hall are not imported. Hence any such purchases made from the duty free shop are not liable for imposition of customs duties. Therefore the impugned goods have been wrongly confiscated by the Customs and should be released.

9. The Central Government is of the considered opinion that the contentions of the application are based on the erroneous belief and wrong interpretation of the law and settled legal positions.



10. Section 2(11), Section 2(25) and Section 2(27) of the Customs Act 1962 states as under-

“Section 2: Definitions- *In this Act unless the context otherwise requires-*

- (11) **“customs area”** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by the Customs Authorities;
- (25) **“imported goods”** means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;
- (27) **India** -Includes the territorial waters of India. “

11. The Central Government however observes that the duty free shops though being physically located in Indian Territory, are specifically treated as being located outside the Customs Territory of India. Duty free shops are located in the Customs Area defined under Section 2(11) and it includes any area where the imported goods or export goods are kept before clearance by Customs authorities. Goods sold by Duty free shops are not duty paid goods and such goods are deposited in a customs bonded premises/ware houses, licensed under Section 58A of the Customs Act,1962 without payment of duty. Section 71 clearly mandates that no goods shall be taken out of a ware house except clearance for home consumption, exportation or removal to another ware house or as otherwise provided by this Act. It is thus clear that such goods need to suffer Customs duty on being exported by duty free shops and imported by passenger in terms of Section 77 of the Customs, Act 1962. The contention of the Applicant that he had entered Indian Territory after immigration formalities and having brought goods within the confines of Indian Territory and is therefore not liable to pay customs duty is not legally sustainable.

12. The Hon'ble Supreme Court of India in the case of **M/s Hotel Ashoka vs The Assistant Commissioner of Commercial Taxes and Anr (Civil Appeal No. 2560 of 2010)**, reported in (2012)-3-SCC 204 has held that-



"18. It is an admitted fact that the goods which had been brought from foreign countries by the appellant had been kept in bonded warehouses and they were transferred to duty free shops situated at International Airport of Bengaluru as and when the stock of goods lying at the duty free shops was exhausted. It is also an admitted fact that the appellant had executed bonds and the goods, which had been brought from foreign countries, had been kept in bonded warehouses by the appellant. When the goods are kept in the bonded warehouses, it cannot be said that the said goods had crossed the customs frontiers.

The goods are not cleared from the customs till they are brought in India by crossing the customs frontiers. When the goods are lying in the bonded warehouses, they are deemed to have been kept outside the customs frontiers of the country and as stated by the learned senior counsel appearing for the appellant, the appellant was selling the goods from the duty free shops owned by it at Bengaluru International Airport before the said goods had crossed the customs frontiers."

"30. They again submitted that 'in the course of import' means 'the transaction ought to have taken place beyond the territories of India and not within the geographical territory of India'. We do not agree with the said submission. When any transaction takes place outside the customs frontiers of India, the transaction would be said to have taken place outside India. Though the transaction might take place within India but technically, looking to the provisions of Section 2(11) of the Customs Act and Article 286 of the Constitution, the said transaction would be said to have taken place outside India. In other words, it cannot be said that the goods are imported into the territory of India till the goods or the documents of title to the goods are brought into India.

Admittedly, in the instant case, the goods had not been brought into the customs frontiers of India before the transaction of sales had taken place and, therefore, in our opinion, the transactions had taken place beyond or outside the custom frontiers of India."



therefore, in our opinion, the transactions had taken place beyond or outside the custom frontiers of India."

13. In view of aforementioned findings of Hon'ble Supreme Court, the definition of Section 2(27) of the Customs Act 1962 would not apply, when seen in the context of levy Customs duty or imposition of Taxes on any transaction effected at Duty Free shop located in the Customs Area beyond and outside the Customs Frontiers of India. Even Section 2(11) of the Customs Act read with Article 286 of the Constitution of India also affirms the conclusion arrived at by the Hon'ble Supreme Court of India in the aforementioned case.

14. Therefore, the Central Government, in view of the above holds that the transactions effected at the Duty Free Shops at the arrival or departure of the International Airports in India, might have taken place within the geographic territory of India, but for the purposes of levy of Customs Duties or any other taxes, the area of Duty Free Shops shall be deemed to be the area beyond the customs frontiers of India. Although, the applicant bought goods from Duty Free shop at CSI Airport Mumbai, the same are deemed to be imported from across the Customs Frontiers of India and customs duty is payable on such goods. Since the applicant crossed the green channel without declarations and without payment of customs duty, the department has rightly proceeded against the Applicant.

15. The Applicant did not declare the dutiable goods as required under section 77 of the Customs Act, 1962 in spite of carrying goods whose value exceeded the duty free allowance. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Original adjudicating authority has therefore, rightly confiscated the goods, allowed redemption of the same under section 125 of the Customs Act, 1962 and imposed penalty. The contention of the Applicant that he has not violated any provisions of the law is therefore not legally sustainable.

16. The Central Government, therefore holds that Commissioner of Customs (Appeals), Mumbai has rightly upheld the impugned Order of the Original Adjudicating Authority dated 21.06.2018 in the Original Aircus/49/T2/130/2018 "C" Batch dated 21.06.2018 of the original adjudicating



authority. The Revision Application is therefore liable to be dismissed. The Appellate order No. MUM-CUSTOM-PAX-APP-438/2018-19 dated 14.08.2018 passed by the Commissioner of Customs (Appeals) Mumbai-III is therefore upheld as legal and proper.

17. Revision application is accordingly dismissed.

18. So, ordered.

Ashok Kumar Mehta
31.8.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 634/2018-CUS (WZ) /ASRA/MUMBAI, DATED 31.08.2018

To,

Shri Aarish Altaf Tinwala
c/o 8 Century Apartments,
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ATTESTED

S.R. Hirulkar
31-8-18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, CSI International Airport, Mumbai
2. The Commissioner of Customs (Appeals), Mumbai-III.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

*Recd original copy
ord No: 634/2018-cus(WZ)
ASRA / Mumbai / Dated 31.8.2018*

Rajendra V. Dalvi
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Rajendra

