

REGISTERED

SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/82/B/WZ/2023-RA/6558 Date of Issue : 06.09.2023

ORDER NO. 634/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.08.2023
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. Vijay Arjandas Rochlani.

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Subject : Revision Application filed, under Section
129DD of the Customs Act, 1962 against the Order-in-
Appeal No. MUM-CUSTM-PAX-APP-2562/2022-23
dated 03.03.2023 issued on 06.03.2023 through F.No.
S/49-1976/2022 passed by the Commissioner of
Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri. Vijay Arjandas Rochlani (herein after referred to as the Applicant) against the Order-In-Appeal No. MUM-CUSTM-PAX-APP-2562/2022-23 dated 03.03.2023 issued on 06.03.2023 through F.No. S/49-1976/2022 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that the applicant who had arrived from Bangkok on 01.10.2022 by Thai Airway Flight No. TG-317 was intercepted by Officers of Customs, Batch-C. The applicant had opted for green channel. Cosmetics listed at Table No. 1 below, totally valued at ₹ 1,20,900/- in commercial quantity was recovered from the applicant. It was noticed that the applicant did not have any clearance from the TOD as required for imported cosmetics nor did he carry a LMPC certificate for retail sale of goods in the country.

Table No. 01.

Sr. No.	Description of goods	Quantity in nos.	Value in ₹
1.	Nano Koljic Glu Max	78	31,200/-
2.	Gluta Berry	13	13000/-
3.	Kojic Soap	25	5000/-
4.	Body Scrub	42	8400/-
5.	Body Mask	23	4600/-
6.	Serum	34	13,600/-
7.	Collagen Lotion	12	6000/-
8.	Nail Paint	27	2700/-
9.	Sun Screen cream	10	2000/-
10.	Ready & White	24	9600/-
11.	Froza Gluta Pure	10	4000/-
12.	Body White Soap	8	800/-
13.	Gluta White Soap	30	6000/-
14.	Gluta Primme	10	5000/-
15.	Rice Milk Soap	32	4000/-
16.	Assorted Beads	-	5000/-
	Total Value in ₹ →	1,20,900/-	

- 2(b). The applicant waved off the personal hearing and in his averments before the Original Adjudicating Authority (OAA) submitted that he travelled abroad regularly to buy goods; that he sold it for a profit in various markets in India; that he had bought cosmetics as it fetched high margin; that he was aware that for import of cosmetics through cargo required various clearances hence he had attempted to smuggle the same as bonafide personal luggage.
3. After due process of the law, the Original Adjudicating Authority, viz Asstt. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. O3-34/22-23/PCG-'C' dated 01.10.2022 ordered for the absolute confiscation of the goods mentioned at Sl. No. 1 – 16 of Table No. 1 above, totally valued at ₹ 1,20,900/- under Section 111(d) of the Customs Act, 1962. Also, a penalty of ₹ 50,000/- was imposed on the applicant under section of 112 (a) of Customs Act, 1962.
4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who vide her Order-In-Appeal No. MUM-CUSTOM-PAX-APP-2562/2022-23 dated 03.03.2023 issued on 06.03.2023 through F.No. S/49-1976/2022 did not find any reason to interfere in the impugned OIO and upheld the same, in toto.
5. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds that;
- 5.01. that the applicant admitted the facts of possession and carriage of goods imported by him but denied the allegation/facts recorded in the impugned order that he had attempted to clear the goods without payment of customs duty by clearing himself through the green channel; that he had not been given free allowance; that the goods carried by him had been detained; that he had requested for an order without issuance of a written show

- cause notice; that he had requested to be heard in person; the OAA had held that the goods fall under category of prohibited goods; that he claims ownership of the goods;
- 5.02. that the goods imported by him were not prohibited goods; that prohibited goods was in relations to goods which cannot be imported such as arms, ammunition, drugs, etc; that the intention behind Section 125 of the Customs Act, 1962 was to clear that such goods would cause danger to health, welfare and morals of people and could not be imported in any case;
- 5.03. that no material had been brought on record to show that the goods were not freely importable; that OAA could uphold liability for confiscation under Section 111(d) for a prohibition under any other act, i.e. Drugs and Cosmetics Act, 1940; therefore the absolute confiscation and imposition of penalty was not sustainable;
- 5.03. that the applicant had not attempted to clear himself from the green channel; that he had reported at the red channel;
- 5.04. that there was no seizure of imported goods; the good had been detained and hence, the order of confiscation of the goods was not sustainable and no penalty could be imposed; that as per instruction no 01/2017 issued by the Board under F.NO. 591/04/2016-cus (AS) dated 8-2-2017 whenever goods are being seized, the proper officer must pass an appropriate order (seizure memo/order/etc.) clearly mentioning the reasons to believe that the goods were liable for confiscation; that in the present case, no seizure memo or order was issued by the proper officer; that on this issue they rely on the undermentioned case laws;
- (a). Patna High Court in the case of Union of India & ors vs Md.Mazid @ Md.Tufani on 20 July, 2011;
- (b). Bombay High Court in the case of Arvind Trading Company And Ors. vs State of Maharashtra And Ors. on 5 August, 1991;
- (c). Bombay High Court in the case of Dina Baldev Pathak vs Collector of Customs and Ors. on 20 March, 1961 : AIR 1962 Bom 290, (1961) 63 BOMLR 873;
- (d). Gujarat High Court in the case of Manilal Bhanabhai Patel vs Kaul And Ors. on 3 September, 1974: AIR 1976 Guj 134;
- (e). etc.
- 5.05. that the AA had failed to apply her mind in apprising the fact that no would mean no confiscation; that there was only detention of the goods; that such goods could not be confiscated; that detained goods can be released without any formality from the Customs Officer if he is satisfied that goods were not

- contraband, illegal etc; that they have relied on undermentioned case laws where it was clear that detention and seizure were not the same thing;
- (a). Delhi High Court in the case of Worldline Tradex Private Limited vs The Commissioner of Customs ... on 25 July, 2016;
- (b). Madras High Court in the case of Pro Musicals vs. Jt. Commr. of Customs (Preventive), Mumbai, 2008(227) ELT 182 (MAD);
- 5.06. that applicant had not been given any free allowance, though he was eligible for the same; that the portion of the baggage which did not have commercial quantity would be eligible for free baggage allowance;
- 5.07. that the applicant was eligible for redemption of the goods;
- 5.08. that the OIA dated 03.03.2023 of the AA was not an order on merits and not a speaking order; that OIA was not maintainable; that decisions should include findings and conclusions;
- 5.09. Some of the case laws referred by the applicant on the aforesaid issues are as under;
- (a). The Hon'ble Andhra Pradesh High Court in the case of Shaikh Jamal Basha vs Government of India - 1992 (91) ELT 227(AP)
- (b). In the case of Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai - 2006 (205) ELT 383 (Tri-Chennai),
- (c). in the case of Mohd Zia Ul Haque Vs Addl Commissioner of Customs, Hyderabad vide revision order no 443/12-Cus dated 8-8-12, 2014 (214) ELT 849 (GOI);
- (d). Yakub Ibrahim Yusuf vs CC, Mumbai 2011 (263) ELT 685
- (e). *Liberty Oil Mills Vs .Union of India*;
- (f). *C L Tripathi Vs. State Bank of India*
- (g). *Pitchaiah Vs. Andhra University*
- (h). *A.K.Kraipak Vs. Union of India*
- (i). Chintamoni Padhan v. Paika Samal;
- (j). In the case of M/s. Travancore Rayons Ltd. vs. The Union of India and others, AIR 1971 SC 862
- (k). In M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union and another, AIR 1973 SC 2758;
- (l). In Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India and another, AIR 1976 SC 1785;
- (m). Gujarat High Court in the case of Teststeels Ltd. vs Desai (N.M.) (Conciliation ... on 5 April, 1968;
- (n). etc

Under the aforesaid circumstances, the applicant has prayed that the impugned OIA passed by the AA be set aside; that the goods be released on payment of reasonable fine and penalty and to drop the proceedings.

6. Personal hearings in the case was scheduled for 19.07.2023, 25.07.2023. Shri. Prakash Shingarani appeared before me on 25.07.2023 and submitted that applicant bought small quantity of cosmetics for personal use. He further submitted that cosmetics is not prohibited and original and appellate authorities have committed gross injustice by absolutely confiscating these goods. He contended that these are not prohibited goods, therefore, redemption must be given on appropriate RF and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the goods i.e. cosmetics and had cleared himself through the green channel. The applicant was a frequent traveler and was aware of the law. The act of attempting to clear the goods was pre-meditated and deliberate with a clear intention to evade payment of Customs duty. The applicant had clearly failed to make a truthful declaration of the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Also, the quantity of the goods indicated that it was not for personal use. Had the applicant not been intercepted, he would have gotten away without paying Customs duty on the imported cosmetics and other items recovered from his possession. The Government finds that the confiscation of the goods i.e. imported cosmetics was therefore, justified.

8. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om

Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that “ *if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus clear that the goods, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of the said, would squarely fall under the definition, “prohibited goods”.

9. Further, in para 47 of the said case the Hon’ble High Court has observed “*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....*”. Thus, failure to declare the goods and failure to comply with the prescribed conditions has made the impugned goods “prohibited” and therefore liable for confiscation and the applicant thus, liable for penalty.

10. Hon’ble Supreme Court in 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] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

11. Government notes that no tangible evidence / proof that the cosmetics contained any banned substance, cosmetics were not fit for human consumption, were within six months of the expiry date, were not labelled etc, had been made out. A case that the samples of the impugned cosmetics had been sent for analysis or a reference had been made to the Drug and Cosmetics Authorities had not been made out. Procedure on how to deal with goods which are in commercial quantity have been explained in the extant Circulars. The same does not seem to have been applied to this case. Government finds that value of the goods brings out that this case is more a case of mis-declaration rather than organised smuggling. A case that the applicant is a habitual offender had not been made out. Under the circumstances, Government finds that the absolute confiscation of the

impugned cosmetics is harsh and unjust and is inclined to allow the goods to be redeemed on payment of a redemption fine.

12. Government finds that the penalty of ₹ 50,000/- imposed on the applicant for value of goods of ₹ 1,20,900/- under Section 112(a) of the Customs Act, 1962 is harsh and not commensurate with the omissions and commissions committed. Therefore, Government is inclined to revise the same.

13. In view of the above, the Government is inclined to modify the impugned OIA no. MUM-CUSTOM-PAX-APP-2562/2022-23 dated 03.03.2023, to the extent that the absolute confiscation of the Cosmetics held therein is set aside and modifies the OIA and allows the impugned goods mentioned at Table No. 1 above, to be redeemed on payment of a redemption fine of ₹ 25,000/- (Rupees Twenty Five Thousand only), alongwith applicable customs duties. The penalty imposed by the OAA and upheld by the AA, is revised to ₹ 15,000/- (Rupees Fifteen Thousand only).

14. Revision Application filed by the applicant is disposed of on the above terms.

Shrawan
3/18/23
(SHRAWAN KUMAR)

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

ORDER No. 634/2023-CUS (WZ) /ASRA/MUMBAI DATED 31.08.2023

To,

1. Shri. Vijay Arjandas Rochlani, Plot BK No. 1080, R. No. 9,10,11, O.T Section, Ulhasnagar, Thane.
2. Pr. COMMISSIONER OF CUSTOMS, CSMI Airport, Level-2, Terminal-2, Sahar, Andheri (West), Mumbai – 400 099.

Copy To,

1. Shri. Prakash Shingrani, Advocate, 123, Himalaya House, Palton Road, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3.~~ File Copy.
4. Notice Board.