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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. 373/31,32,33, & 34/B/15-RA / 2120
Issue

Date of
22.03.2021

ORDER NO. ⁸⁰⁻⁸³ /2021-CUS (SZ) / ASRA / MUMBAI/ DATED 16.03.2021 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. S. Sahil
: Shri S. Praveen
: Shri S. Vaishak
: Shri M. Tushar

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus
No. 1467 to 1470/2014 dated 13.08.2014 passed by the
Commissioner of Customs (Appeals) Chennai.

ORDER

These revision applications have been filed by : Shri. S. Sahil, Shri S. Praveen, Shri S. Vaishak, Shri M. Tushar against the order in Appeal no. 1467 to 1470/2014 dated 13.08.2014 passed by the Commissioner of Customs (Appeals), Chennai. As the facts of the case are identical and these cases have been addressed by one Appellate order, they are decided together.

2. Briefly stated facts of the case are that the applicants, all Indian Nationals had arrived at the Chennai Airport on 08.05.2014 and each brought with them an Aircraft maintenance tool kit each valued at Rs. 60,000/- (Rupees Sixty thousand). The Original Adjudicating Authority, confiscated the tool kits under Section 111 (d), (l), and (m) of the Customs Act, 1962 and allowed redemption on payment of redemption fine of Rs. 30,000/- (Rupees Thirty thousand). A penalty of Rs. 6,000/- (Rupees Six thousand) under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. Aggrieved by this order the Applicants filed appeals with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order C. Cus No. 1467 to 1470/2014 dated 13.08.2014 rejected the Appeal of the Applicant.

3. Aggrieved with the above Appellate orders, the Applicants have filed these revision applications alongwith an application for condonation of delay of 35 days, interalia on the grounds that.

3.1 The impugned order passed by the respondent is contrary facts circumstances of the case and the provisions of the Customs Act, 1962.

3.2 The applicants state that they are professional engineers who undertake work assigned by their company, which is maintenance of Aircrafts both within India and abroad. In this connection as their professional duty they have carried the said aircraft maintenance tools with them during their travel abroad.

3.3 The applicants state that the impugned goods do not belong to them and belonged only to the company. The said tools were not

intended for sale, and not brought to the country for commercial purposes and making profit.

3.4 The Applicants have submitted that the tools brought by them were handed over to the company and that they had taken the said tools abroad for the purposes of carrying their professional work alone.

3.5 Reliance in the case was placed on the case of UOI and Others Vs Khalil Kecherim of Teheran reported in 1983 (13) eld 941 (Del) " 10.

Section 80 talks of 'any article' which is dutiable or the import of which is prohibited and the expression 'any article' is comprehensive enough to include an article which is not a part of bona fide baggage as contemplated by Section 79 or 'personal effects' as specified by clause 3 of the Tourist Baggage Rules. It may be contained in the baggage of a passenger. If the passenger declares such an article under Section 77, he may still import it if he is prepared to pay the duty and if its import is not prohibited. If the passenger is not prepared to pay the duty and/or cannot produce the requisite import licence, he will not be allowed to clear it for import. In such a case, he may make a request to the proper officer to detain such article for the purpose of being returned to him on his leaving India. It does not matter if the article is in such quantities or is of such value that it is an article or merchandise and only requirement o cannot be said to be comprised in bona fide baggage or personal effects. The only requirement of section 80 is that such an article is contained in the baggage in the larger sense which includes the trunks and bags in which the luggage is contained. By making the declaration under Section 77 and the request under Section 80, the passenger expresses his intention not to import such an article. That being so, it cannot be said that such an article has been imported or attempted to be imported within the meaning of clause (d) of Section 111 or becomes liable to seizure under Section 110(1) of the Customs Act. I am, therefore, of the view that the term 'baggage' as used in Sections 77 and 80 of this Act, is not confined merely to bona fide baggage within the meaning of Section 79 of the Act or to personal effects as defined by clause 3 of the Tourist Baggage Rules, 1958 and includes any article contained in the Baggage even though it be in commercial quantities'.

From, the above observations it will be clear that it is a bonafide baggage of the Applicants though not 'personal effects' in the present case.

3.6 The applicants state that Section 112(a) is attracted if a person, by his act or omission in relation to any goods, renders such goods liable for confiscation under Section 111 or if he is in any way concerned in dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111. Therefore, the proposed penalty and fine on the applicant is untenable in law and on facts.

3.7 With regard to this reliance is followed on the following case. Hindustan Steel Ltd., Versus State of Orissa reported in 1978 (2) E.L.T (J159)(S.C.) which states "*No penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona-fide belief that the offender is not liable to act in the manner prescribed by the statute*". In the case of Suryakiran International Vs. Commissioner of Customs, Hyderabad reported in 2010 (259) E.L.T. 745 "*There is no finding that SIL was guilty of dishonest or contumacious conduct in wilful defiance of law. The Commissioner ordered penalty holding that mensrea was not necessary to impose penalty. We find that the Hindustan. Steel Ltd., case, cited by the appellants, the Apex court had held that penalty cannot be imposed on a person just because the law provided for the same unless the person concerned was guilty of dishonest or contumacious conduct in willful defiance of law*".

The Revision Applicants cited more judgments in support of their case, and prayed that the Hon'ble Revision Authority may set aside the impugned Order in Appeal with consequential relief and thus render justice.

4. Personal hearings in the case were scheduled to be held on 05.07.2018, 04.09.2019 and 15.10.2019. Due to change in the Revisionary authority personal hearings were again scheduled on 08.12.2020, 15.12.2020, 22.12.2020 and 25.02.2021. Nobody from the department or the Applicants attended the said hearings the case is therefore being decided on merits.

5. The Government has gone through the facts of the case. The Applicants in their application for condonation of delay have stated that as they were out

of station on their Companies assignments, they could not file the Revision Application within the prescribed time. The Government notes that the delay is within condonable limits and condones the delay in filing this application and proceeds to decide these cases on merits.

6. The Applicants have submitted that they are professional engineers and employees with M/s Air Works India Engineering Pvt. Ltd. and undertake aircraft maintenance within India and abroad, as assigned by their Company. In the course of their work they had carried the tool kits provided by the company and brought the same back on their return to India. These tools were not brought for commercial profit or sale. Government however notes that if these tools belonged to the Company the Applicants work for, and if these tools were taken from India and were to be brought back into India, a proper declaration should have been filed before their exit from the country. As the Applicants had not declared the tool kits when leaving the country, the Applicants are liable for penal action.

6. Government notes that the Applicants have submitted the copies of the allotment of the tools by M/s Air Works India Engineering Pvt. Ltd., to each of the Applicants. Government has also observed the nature of the goods, the circumstances under which they were being brought back. The value of the goods is also not very large. This misdemeanor does not appear deliberate and there does not appear to be a malafide intention on behalf of the Revision Applicants, it was more of a technical lapse. Further, the redemption fine imposed on the Applicant is 50% of the value of the goods, the penalty imposed is 10 % and adding the customs duty involved it almost constitutes the value of the goods. In view of the above a reasonable view in the matter is merited. Under the circumstances the Order in Appeal is required to be modified and the redemption fine reduced reasonably.

7. Taking into consideration the foregoing discussion, Government, reduces the redemption fine imposed from Rs.30,000/- (Thirty thousand) to Rs. 6,000/- (Rupees Six thousand) on each of the Applicants. The penalty of Rs. 6,000/- (Rupees Six thousand) is also reduced to Rs. 3,000/- (Rupees Three

thousand) on each of the Applicants. The impugned Order in Appeal stands modified to that extent.

8. Revision application is partly allowed on above terms.

Shrawan
16/3/21
(SHRAWAN KUMAR)

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

ORDER No. ⁸⁰⁻⁸³/2021-CUS (SZ) /ASRA/mum&ft DATED 16.03.2021

To,

1. Shri Vaishak, S/o Shri Sasiprakash, Kunnatheeri House, Kavungal, Mallapuram, Kerala 676505.
2. Shri Sahil, S/o Shri Shangari, H. No. 12, Gali 02, ABADI, Vijayanagar, Amristar 143 026.
3. Shri Tushar, S/o Shri Mankar, Al Kavatha, Khurd Post, Ghoti, Ghatanji Dist, Yavatmal, 445 306.
4. Shri Praveen, S/o Shri Sankar, 40, JJ Nagar, Nehru Street, Coimbatore 641 018.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.