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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. 380/48/B/WZ/2022-RA / 1772

Date of issue: 03.11.23

ORDER NO. 802 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.10.2023
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 : Pr. Commissioner of Customs, CSMI Airport, Mumbai
Respondent : Mr. Ashok J. Pandit
Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-1931/2021-22 dated 15.03.2022 [Date of
issue: 17.03.2022] [F. No. S/49-708/2021] passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application along with application for condonation of delay is filed by the Pr. Commissioner of Customs, CSMI Airport, Mumbai (here-in-after referred to as the 'Applicant-Department') against the Order-in-Appeal (OIA) No. MUM-CUSTOM-PAX-APP-1931/2021-22 dated 15.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. In the application for condonation of delay, the Applicant-Department has submitted that delay in filing the Revision Application happened due to non-receipt of documents from field formation for preparing the grounds of appeal and due to transfer and relieving of officers in the month of June & July 2022. The Government is condoning this delay of 85 days and is taking up the matter for deciding on merits.

3. Brief facts of the case are that Mr. Ashok J. Pandit (here-in-after referred to as the 'Respondent') arrived at CSMI Airport vide Flight No. LH-756 on 02.03.2020 and declared following goods before Customs - (i) '.22 LR Target Pistol' - 1 No. and (ii) '.38/.357 Match Revolver' - 1 No. As the respondent was not having the required documents for customs clearance, the said goods were detained for confirmation and verification. The respondent vide letter dated 11.03.2020 submitted the requisite documents and sought total exemption from customs duties on the impugned goods under Notfn.No.146/94-Cus dtd.13.07.1994.

4. However, the Original Adjudicating Authority (OAA) i.e., Assistant Commissioner of Customs, A-Batch (Uniform), CSMI Airport, Mumbai vide Order-in-Original (OIO) No. AIRCUS/T2/01/AC/SR/UNI-A/2021 dated 17.02.2021 held that the goods imported by the respondent as personal baggage were squarely covered under conditions of Notification No. 147/94-Cus dated 13.07.1994 and denied the exemption benefit under Notification No. 146/94-Cus claimed by the respondent and accordingly the goods were assessed to customs duty @ 50% ad valorem in terms of Notification no.

147/94-Cus along with SWS @ 10%. The respondent had already paid the duty totaling to Rs.2,75,907/- on 14.07.2020 'under protest'.

5. Aggrieved, the respondent filed an appeal before the Appellate Authority (AA) who vide impugned OIA allowed it while setting aside the impugned OIO. Hence, the Applicant-Department has filed the instant revision application on the following grounds:

- i. that it is undisputed that impugned goods were brought in as baggage by the passenger. The original authority has determined that benefit of Notification No. 147/94-Customs only would be applicable in case of goods brought in as baggage.
- ii. that it is very clear and unambiguous that the government has issued two notifications viz. Notification No. 146/94-Customs and Notification No. 147/94-Customs on the same date i.e. 13.07.1994. Some of the items covered are common. The languages of the notifications are very clear that only Notification No. 147/94-Customs would be applicable for goods imported as baggage. The Commissioner (Appeals) has extended the benefit of Notification No. 146/94-Customs by observing *"considering the merits of the case natural justice would prevail over technical issues and am inclined to extend the benefit of said Notification No. 146/94-Cus"*. The Commissioner (A) has extended the benefit of a notification, which is clearly not applicable to baggage imports, by simply treating the same as a technical issue. The government has issued one notification applicable to baggage imports and the Commissioner (A) has failed to determine the basis of extending benefit of a notification that does not cover baggage imports. It's a substantive question of law and may not be brushed aside simply by labeling the same as 'technical' only.

On the above grounds the Applicant-Department prayed to set aside the impugned OIA and restore the OIO.

6. Personal hearing in the case was held on 28.08.2023. The respondent, Mr. Ashok Pandit appeared for the personal hearing and submitted that he is eligible for benefit of Notification No. 146/94-Customs dated 13.07.94. He further submitted that he was not knowing that goods brought as baggage are charged to duty differently. He submitted that his import licence under Notification No. 146/94-Customs has been debited by the Department and money has been transferred through banking channels. No one appeared for the personal hearing on behalf of the Applicant-Department.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the main issue in the instant matter is - whether considering the facts and circumstances of the case, the benefit of exemption under Notification No. 146/94-Cus dated 13.07.94 can be extended to the goods brought in personal baggage by the respondent?

9. Government has gone through the facts of the case and observes that the respondent is a renowned sports person in the event 'Shooting' and has represented the nation in many international events. He had brought two sports goods - a pistol and a revolver, in personal baggage and sought exemption from whole of the duty of Customs under Notification No.146/94-Cus dated 13.07.94. However, observing that fire arms imported as personal baggage are specifically covered under Notification No.147/94-Cus dated 13.07.94, the Applicant-Department, ordered payment of duty as specified under said notification. Aggrieved, the respondent filed an appeal which was allowed and hence the instant Revision Application.

10. Government observes that AA has summarized the contents of the two Notifications under contention in the impugned OIA. The relevant para is reproduced below:

5.1 On perusal of the said notifications, I find that vide Notification No. 146/94-Cus Board has granted total duty exemption to specified sports goods, equipment and requisites and mountaineering equipment imported by National Sports Federation or by a sports person of outstanding eminence for training, Challenge cups and trophies, medals and prizes won by Indian players. The sports goods have been categorised and specifications are mentioned for the items at sr.no.2 XV 'Shooting' subject to condition that the said goods are imported into India by a renowned shooter for training purpose and such importer produces a certificate to the Dy./Asstt. Commissioner of Customs as the case may be from the National Rifle Association of India that the importer is a renowned shooter for availing the exemption benefit.

Whereas the Notification no. 147/94-Cus covers only 'Firearms and ammunitions' imported as personal baggage or as gifts exempted from Import Trade Control Restrictions or covered by Customs Clearance Permit or Import Licence issued by DGFT and the goods are for use of a renowned shooter who has been certified as such by NRAI.

Thus, Government observes that Firearms imported as personal baggage by a renowned shooter, are covered under latter notification.

11. Government observes that the OAA has relied upon certain case laws in the impugned OIO. In the case law of IVRCL Infrastructure and Projects Limited, the Hon'ble Supreme Court had relied upon it's judgment in G.P. Ceramics Pvt. Ltd v. Commissioner of Trade Tax — (2009) 2 SCC 90 wherein it had been held that - 'It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally.' Government observes that this judgment is in fact in favour of the respondent as there is evidently nothing on record to assert as to which eligibility criteria stipulated in Notification No.146/94-Cus dated 13.07.94 has not been complied by the respondent. Further, it is also observed that this notification does not specifically debars

import through personal baggage. The other case laws relied upon by the OAA are also on similar lines, viz. strict compliance of conditions stipulated in an exemption notification.

12. In this regard, Government also observes that even the Applicant-Department had initially tried to make available the exemption under Notification No.146/94-Cus to the respondent, as evident from the para No. 3.7 and 3.8 of the impugned OIO:

3.7 The Pax further submitted that he was invited for a meeting with Pr. Commissioner and Addl. Commissioner on 8-7-2020 and was offered to shift his pistols to Sahar Cargo where he can be extended duty free clearance which he accepted.

3.8 The Pax further submitted that due to some technical reason, the goods could not be shifted by Airport Customs to Sahar Cargo and therefore he could not file Bill of Entry and avail total duty exemption. His son and daughter in law could avail duty free clearance of identical guns on identical documents from the Sahar Cargo Customs in June 2020.

13.1 The findings of AA are also on the same page as apparent from para 5.2 of the impugned OIA:

5.2 I find that the appellant has submitted Import Permit No. NRAI/IMPP/692/2537/2016 dated 03.09.2016 indicating the above two models of Pistol and Revolver along with Amendment Sheet No.2 dated 10.10.2019 extending the import permit upto 03.03.2020. The certificate has been issued by the National Rifle Association of India certifying that the appellant Shri Ashok Pandit is a "Renowned Shot" in terms of DGFT Notification No. (RE-2010) 2009-2014 dated 8th February 2012 and is entitled to import above goods and also further certified that Shri Ashok Pandit is exempted from payment of customs duty in terms of Notification No.146/94-Cus dated 13.07.1994 as amended vide Notification No.101/2010-Cus dated 01.10.2010.

13.2 There is no doubt that the respondent is an eminent shooter and winner of many International and National Medals. He is also an Arjuna Awardee, the distinguished recognition given to a sports person by the Government of India and is covered in the highest level of exempted categories as laid down in the Ministry of Home Affairs. The respondent could not file Bill of entry due to technical reasons and Government finds his case to be genuine and to deny the benefit of total duty exemption vide Notfn.no. 146/94-Cus for the said reason is not justified as he has produced the requisite certificate for availing the said notification exemption.

13.3 Further, the import licence issued to the respondent under Notification No.146/94-Cus has been debited by the Department against import of impugned goods. Once the import licence issued under Notification No.146/94-Cus has been debited, the Applicant-Department's contention regarding the respondent not being eligible to this Notification ceases to have any force.

13.4 Therefore, Government observes that the respondent qualifies for exemption under said Notification No.146/94-Cus and denying the same would take away the essence of the said exemption Notification viz. to promote sports in the country.

14. In view of the above findings, the Government finds no reason to annul or modify the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1931/2021-22 dated 15.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and rejects the impugned Revision Application.


31/10/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER NO. 802 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.10.23

To,

1. Mr. Ashok J. Pandit,
Gajanan Bhavan, Gajanan Colony,
Goregaon (West), Mumbai - 400 062.
2. The Pr. Commissioner of Customs,
Terminal-2, Level-II,
Chhatrapati Shivaji Maharaj International Airport,
Sahar, Mumbai - 400 099.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard file.