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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 373/65-69/2022

706

Date of Issue: 21.02.2022

ORDER NO 84-88 /2022-CUS (SZ)/ASRA/MUMBAI DATED 18.02.2022
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 Mohammed Ashraf,
Proprietor of M/s H.K. Agri Products ,
Door No. 240/1B Manikolalu Haklady Village,
Kundapura Taluk Udupi Dist. Karnataka-576235.

Respondent: Commissioner of Customs, Mangalore

Subject : Revision Application filed, under Section 129DD of the Customs
Act, 1962, against the Order-in-Appeal No. 29-33/2020 dated
17.02.2020 passed by the Commissioner of Customs(Appeals),
Bangalore.

ORDER

This Revision Application has been filed by Shri Mohammed Ashraf, Proprietor of M/s H.K. Agri Products (hereinafter referred to as "the applicant"), Door No. 240/1B Manikolalu Haklady Village Kundapura Taluk Udupi Dist. Karnataka-576235, against the Order-in-Appeal No. 29-33/2020 dated 17.02.2020 passed by the Commissioner of Customs(Appeals), Bangalore.

2. Brief facts of the case are that the importer M/s H.K. Agri Products was importing Dried Raw Cashew Nuts in shell and was processing the same for export from their factory. The officers of Customs initiated investigation that the importer had imported raw cashews under Advance Authorisation availing full exemption of Customs duties under notification No. 18/2015- Cus dated 01.04.2015 and transferred or sold to different units/ premises other than those declared in the Advance Authorisation and had not re-exported any part of the same, thus contravening the provisions of the conditions of the notification. It was found that two bills of entry Nos. viz 7271876 dated 28.10.2016 and 7283452 dated 31.10.2016 were filed for the import during October 2016 which were cleared against Advance Authorisation No 0710110466 dated 30.09.2016. The importer had executed necessary bonds, and bank guarantees with Customs, a prerequisite to avail the notification. The show cause notice was issued to the applicant and Sri Sai Logistics and Shipping - Customs broker and transporter to M/s H.K. Agri Products. The noticees were also informed of the option for settlement of their case in terms of the provisions contained in Chapter XIV A of the Customs Act, 1962 subject to the fulfillment of conditions contained in the Act. The matter was adjudicated vide OIO No. 34/2019 dated 30.03.2019/15.04.2019. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of Customs(Appeals), Bangalore., who vide Order-in-Appeal No. 29-33/2020 dated 17.02.2020 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government.

4. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal. It is observed that the applicant is aggrieved by the Commissioner (Appeal), Bangalore's OIA No. 29-33/2020 dated 17.02.2020 and the Revision application is filed against the same. Government reproduces the text of Section 129DD here for easy reference:

" SECTION 129DD : Revision by Central Government.- (1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

Explanation. - For the purposes of this sub-section, "order passed under section 128A" includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees :

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, -

(a) in any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28 "

5. Government finds that Section 129 DD read with proviso to Section 129 A (1) of Customs Act, 1962 empowered the Central Government to revise or review the appellate orders passed by Commissioner of Customs (Appeals) if such order related to:-

- i) Any goods imported or exported as baggage;
- ii) Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at the destination;

iii) Payment of drawback as provided in Chapter X and the rules made there under.

6. In the instant case the issue that the diversion of goods and non fulfillment of the conditions contravening the Notification No. 18/2015- cus dated 01.04.2015 do not fall under the jurisdiction of this office. In the result, the revision application filed by the Applicant are not maintainable under Section 129DD of the Customs Act, 1962.

7. In view of the above discussion, the Government is of the opinion that the issue involved in this case does not fall within the jurisdiction of this authority and the application is not maintainable for want of jurisdiction in terms of Section 129DD of the Customs Act, 1962.

8. In view of the above discussions, the revision applications filed by the Applicant are dismissed as non-maintainable due to lack of jurisdiction.

Shrawan
18/2/22
(SHRAWAN KUMAR)

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

8A-88
ORDER No. /2022-CUS (SZ)/ASRA/Mumbai DATED 18.02. 2022

To,

Shri Mohammed Ashraf,
Proprietor of M/s H.K. Agri Products ,
Door No. 240/1B Manikolalu Haklady Village,
Kundapura Taluk Udupi Dist. Karnataka-576235.

Copy to:

1. The Commissioner of Customs, New Customs House, Panambur, Mangluru- 575010.
2. The Commissioner of Customs(Appeals), Bengaluru Commissionerate, BMTc Building, Above BMTc Bus Stand, Domlur, Bengaluru-560071.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.