

SPEED POST



F. No. 373/147/B/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 16/01/23

Order No. 11 /23-Cus dated 16-01-2023 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. HYD-CUS-000-APP-138-17-18 dated 19.03.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : Sh. Gandhi Harish Kaku Muljimal, Mumbai

Respondent : Pr. Commissioner of Customs, Hyderabad

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ORDER

A Revision Application No. 373/147/B/2018-RA dated 15.05.2018 has been filed by Sh. Gandhi Harish Kaku Muljimal, Mumbai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-APP-138-17-18 dated 19.03.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 60/2017-Adjn.Cus (ADC) dated 28.07.2017, passed by the Additional Commissioner of Customs, Hyderabad, on the grounds that the pre-deposit of duty amount was not made in terms of Section 129E of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant herein arrived at the RGI Airport, Hyderabad from Dubai, on 29.09.2016. He was intercepted by the Customs officers at the exit gate after he had crossed the Green Channel. Upon search of his baggage, assorted quantities of i-phones of various specifications, i-pods, camera, perfumes, saffron, cigarettes, gutka, rolling tobacco and gold items were recovered. The value of gold items weighing 697.5 gms. was appraised as Rs. 15,20,300/-, whereas the total value of other items was appraised as Rs. 34,95,791/-. The original authority, after following the principles of natural justice, ordered for absolute confiscation of cigarettes, gutka and rolling tobacco, totally valued at Rs. 38,679/-. Remaining items, including the gold items, collectively valued at Rs. 49,77,412/- were also ordered to be confiscated under Sections 111 (d) 111 (l) of the Customs Act, 1962 but an option to redeem the goods on payment of fine of Rs. 7,50,000/- was given. It was further ordered that the appropriate duties of customs and charges shall also be paid, in respect of goods allowed to be redeemed, in terms of Section 125 (2) of the Act *ibid*. A penalty of Rs. 10,00,000/- was imposed on the Applicant herein under Section 112 (a). The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), on the grounds that though the Applicant had made a pre-deposit of Rs. 75,000/- (i.e. 7.5% of the penalty amount), he had failed to pre-deposit an amount of Rs. 1,34,577/-, being 7.5 per cent of the customs duty sought to be evaded.

3. The revision application has been filed, mainly, on the grounds that in the present case, there is no demand of customs duty under Section 28 and that the Customs duty is to be paid only at the time of redemption of goods; that the goods continued to be in the custody of the department and have not been redeemed; that, therefore, there is no question of depositing pre-deposit corresponding to the Customs duty at this stage. Several averments have been made on the merits of the case as well.

4. Personal hearing in the matter was fixed on 28.11.2022, 23.12.2022 and 04.01.2023. In the personal hearing held, in virtual mode, on 04.01.2023, Sh. S.S Arora, Advocate appeared for the Applicant and reiterated the contents of RA. He stated that the goods in question have not been cleared/redeemed and the question of payment of duty would arise only when they clear the goods. Therefore, there is no requirement to make pre-deposit against the duty amount. No one appeared for the Respondent department on any of the dates fixed for hearing nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has examined the matter carefully. The issue involved in the present revision application is whether, in the facts and circumstances of the case, the Applicant herein was required to make a pre-deposit of 7.5 per cent of the duty payable on goods, in respect whereof an option of redemption has been given but not yet exercised, as a pre-deposit in terms of Section 129E *ibid*, for his appeal to be maintained before the Commissioner (Appeals).

5.2 Relevant extracts of Section 129E of the Customs Act, 1962 are as under:

"Section 129 E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal: The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

- (i) Under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;*
- (ii) Against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*"

Thus, the mandate of Section 129E is clear- where duty is in dispute, 7.5 per cent of the duty under dispute is required to be pre-deposited. The question that arises is whether in the present case, duty is in dispute.

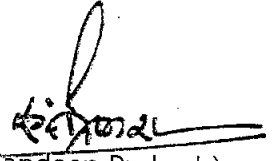
5.3 It is observed that the original authority has not quantified the duty amount payable nor the applicable rate has been indicated. The order only states that the "appropriate duties of the Customs and other charges" shall be paid in terms of Section 125 (2) *ibid*. In the appeal filed by the Applicant herein, there is no challenge to the applicability of duty nor has the Applicant averred that he is not willing to pay the applicable duty and charges. Further, the Applicant has not yet exercised the option to redeem the goods. It is only when he chooses to exercise this option that the authorities concerned would quantify the duty by applying the rate, as applicable, and the duty so quantified will be communicated to the Applicant for payment. Thus, the dispute, if any, in respect of duty would arise at the stage of redemption, in the present case.

5.4 On the other hand, the Commissioner (Appeals) has inferred that the duty is also in dispute, as valuation is under challenge. Accordingly, the Commissioner (Appeals) has, on the basis of valuation finalised by the original authority, calculated the duty payable and held that 7.5 per cent of the same was required to be pre-deposited in terms of Section 129E. In other words, the Commissioner (Appeals) has held that duty is in dispute as there is a dispute about valuation of goods. The Government observes that the Customs Act, 1962 makes a distinction between the disputes involving value of goods for the purposes of assessment and those involving the rate of duty of Customs. This is apparent from the scheme of Section 130E of the Act whereby appeals in case of any order passed by the Appellate Tribunal relating to the determination of any question having relation to the rate

of duty of Customs or to the value of goods for purposes of assessment are provided to lie before the Hon'ble Supreme Court. The usage of word 'or' in Section 130E makes it clear that the rate of duty of Customs and value of goods for purposes of assessment are two different subject matters. It is true that in the case of goods attracting duty at ad-valorem rate, quantum of duty would depend upon valuation of the goods. But, if the leviability of duty and applicable rate thereof are not under challenge the quantum of duty is only consequential. Further, after the insertion of new Section 129E, with effect from 06.08.2014, the Board had, vide Circular No. 984/08/2014-CX dated 16.09.2014, clarified that pre-deposit "is to be paid on the amount of duty demanded or penalty imposed". In the present case, as already brought out hereinabove, the amount of duty itself has not been quantified nor has the applicable rate been mentioned by the original authority. Further, as brought out hereinabove, the demand of duty, if any, would arise only when the Applicant redeems the goods. It is obvious that if the Applicant does not avail of the option of redemption, no duty can be demanded from him. In this light also, at this stage, it would be premature to infer that duty is in dispute.

5.5 As such, in the facts and circumstances of this case, the impugned Order-in-Appeal cannot be sustained.

6. In view of the above, the impugned Order-in-Appeal is set aside and the revision application is allowed by way of remand to the Commissioner (Appeals) with a direction to decide the appeal filed by the Applicant herein on merits.



(Sandeep Prakash)

Additional Secretary to the Government of India

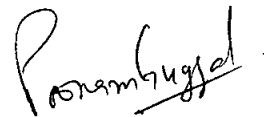
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Order No. 11 /23-Cus dated 16-01-2023

Copy to:

1. Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, Kendriya Shulk Bhawan, L.B. Stadium Road, Basheerbagh, Hyderabad-500004.
2. Pr. Commissioner of Customs, GST Bhawan, L.B. Stadium Road, Basheerbagh, Hyderabad-500004.
3. M/s. S.S Arora & Associates B1/71, Safdarjung Enclave, New Delhi-110029.
4. PS to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



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