

SPEED POST



F. No. 375/52/B/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...16/11/21...

Order No. 260/21-Cus dated 16-11-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

- Subject : Revision Application filed, under Section 129DD of the Customs Act 1962 against the Order-in-Appeal No. 280-Cus/Apl/LKO/2019 dated 31.05.2019 passed by the Commissioner of Customs, GST & Central Excise (Appeals), Lucknow.
- Applicant : Sh. Mohd. Haris Ansari, Meerut.
- Respondent : Commissioner of Customs (Preventive), Lucknow.
- .....

**ORDER**

A Revision Application No. 375/52/B/2019-RA dated 28.08.2019 has been filed by Sh. Mohd. Haris Ansari, Meerut (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 280-Cus/App/LKO/2019 dated 31.05.2019 passed by the Commissioner of Customs, GST & Central Excise (Appeals), Lucknow. The Commissioner (Appeals) has modified the order of the Additional Commissioner of Customs, Preventive Commissionerate, Lucknow bearing no. 30/ADC/2018 dated 27.09.2018, wherein 08 Pcs of Drone Cameras (Phantom 4 PRO dji), valued at Rs. 10,80,000/-, recovered from the Applicant, were confiscated absolutely under Section 111(i), 111(l) and 111(m) of the Customs Act, 1962. Besides, a penalty of Rs. 1.25 Lakh was also imposed under Section 112(b) and Rs. 0.25 Lakh under Section 114AA of the Customs Act, 1962, on the Applicant by the original authority. The Commissioner (Appeals) has modified the order of the original authority to extent of allowing the option to redeem the confiscated Drone Cameras on payment of redemption fine of Rs. 2 Lakh in terms of Section 125(2) of the Act, ibid and at the applicable duty and charges. The penalty of Rs. 0.25 Lakh under Section 114AA has also been set aside.

2. Brief facts of the case are that the Applicant arrived, on 19.09.2017, at the CCSI Airport, Lucknow from Dubai and was handed over to the Customs authorities by Immigration Department. On examination of his baggage, two plastic bags containing 08 Pcs of Drone Cameras (Phantom 4 PRO dji), valued at Rs. 10,80,000/-, were recovered. The Applicant, in his statement dated 19.09.2017, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of above-mentioned Drone Cameras which he brought with an intent to earn goods profit, by delivering the same to Sh. Guddu in India, at the instance of one Sh. Sirajuddin, R/o Dubai. The Applicant could not produce any documents evidencing licit possession of the confiscated goods.

3. The revision application is filed, mainly, on the grounds that the redemption fine is on a higher side as the same has been done without quantifying the margin of profit; that personal penalty be set aside or token penalty be imposed; that while releasing the goods in compliance of the Commissioner (Appeal)'s Order, duty @ 38.5% has been

charged along with interest instead of duty @ 36.05% and that the excess duty and interest charged may be ordered to be refunded.

4. Personal hearing, in virtual mode, was held on 12.11.2021. Sh. S. S. Arora, Advocate appeared for the Applicant and reiterated the contents of RA. Sh. A. K. Mishra, Joint Commissioner appeared for the respondent department and supported the order of the Commissioner (Appeals).

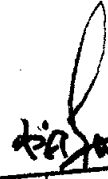
5. The Government has carefully examined the matter. It is observed that the impugned Order-in-Appeal is cryptic and non-speaking in as much as:

- (i) The issue of valuation of confiscated goods which is raised in the instant revision application, in the context of margin of profit, was also raised before the original authority who recorded specific findings in this regard. However, the impugned Order-in-Appeal is silent on this aspect.
- (ii) The original authority had ordered for confiscation of the goods under Section 111 (i), (l) & (m) of the Customs Act, 1962. The Commissioner (Appeals) has upheld the confiscation under Section 111(l) for contravention of Section 77 but there are no findings in respect of confiscation under Section 111 (i) & (m).
- (iii) It is held by Commissioner (Appeals) that the offending goods were not declared in terms of Section 77 but at the same time penalty under Section 114AA has been set aside on the grounds that no false and incorrect material was used. However, there is nothing forthcoming in the impugned Order-in-Appeal as to how the declaration which is incorrect in as much as it does not include the goods which were required to be declared mandatorily, in terms of the Customs Baggage Declaration Regulations, 2013 as amended vide Notification No. 31/2016-Cus (NT) dated 01.03.2016, did not warrant penal action under Section 114AA.

In view of the above, it will be in the interest of justice that the matter is remanded to the Commissioner (Appeals) for deciding the appeal afresh on merits.

6. The instant revision application also assails the duty and interest charged by the department while releasing the goods in pursuance of the Commissioner (Appeals)'s order. The Government observes that any grievance with reference to the implementation by the lower authorities of the order passed by Commissioner (Appeals) will have to be first taken up with the Commissioner (Appeals), in accordance with law. The action taken by the lower authorities cannot be directly agitated before the Government since in terms of Section 129DD, read with the first proviso to Section 129A (1) *ibid*, it is only the orders passed by the Commissioner (Appeals) that can be brought before the Government for revision. Thus, there is no merit in the revision application to this extent.

7. The revision application is disposed of in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Mohd. Haris Ansari,  
S/o Sh. Rizban Ansari,  
R/o H. No. 20, Azad Road,  
Gola Kuan-I, Meerut

Order No. 260/21-Cus dated 16-11-2021

Copy to:

1. The Commissioner of Customs, GST & Central Excise (Appeals), Lucknow
2. The Commissioner of Customs (Preventive), Lucknow
3. Advocate S. S. Arora & Associates, B-1/71, Safdarjung Enclave, New Delhi-110029
4. PA to AS(RA)
5.  Guard file

**ATTESTED**



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi