

SPEED POST



F. No. 373/37/B/2017-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. 15/12/22

Order No. 383/22-Cus dated 15.12.2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal C.Cus I No. 18/2017 dated 24.01.2017, passed by the Commissioner of Customs (Appeals), Chennai.

Applicant : Sh. Yousuff Tharupeedikayil Koya, Ernakulam.

Respondent : The Pr. Commissioner of Customs, Anna International Airport, Chennai.

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ORDER

A Revision Application No. 373/37/B/2017-RA dated 02.03.2017 has been filed by Sh. Yousuff Tharupeedikayil Koya, Ernakulam (hereinafter referred to as the Applicant) against the Order-in-Appeal C.Cus I No. 18/2017 dated 24.01.2017, passed by the Commissioner of Customs (Appeals), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Deputy Commissioner of Customs, Anna International Airport, Chennai, bearing OS No. 976/2016 dated 25.12.2016, wherein, 46000 sticks of foreign origin cigarettes (Dunhill), valued at Rs. 4,60,000/-, recovered from the Applicant, were confiscated absolutely under Sections 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Penalty of Rs. 46,000/- was also imposed on the Applicant under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Applicant arrived, on 25.12.2016, at Anna International Airport, Chennai, from Dubai. 46000 nos of foreign origin cigarettes (Dunhill) were recovered from him during search. During personal hearing before the original authority, the Applicant stated that he brought the goods for commercial purpose to make profit out of it. The original authority, vide the aforesaid Order-in-Original dated 25.12.2016, confiscated the offending goods absolutely and imposed penalty as above. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The instant revision application has been filed, mainly, on the grounds that the Order passed by the original authority and confirmed by Commissioner (Appeals) are against law, weight of evidence and probabilities of case; that the goods were declared by the Revision Petitioner under Section 77 of the Customs Act, 1962; that once the goods are declared the passenger could not be subjected to any penal action; that once goods are declared under Section 77 then question of goods being bonafide or non-bonafide does not arise; that the goods ought to have been permitted to be re-exported; and that absolute confiscation is harsh and penalty imposed is severe.

4. Personal hearing in the matter was fixed on 02.11.2021, 01.12.2021, 07.12.2021, 11.11.2022, 08.12.2022 and 15.12.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

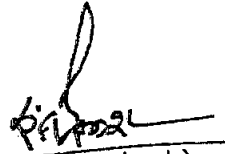
5. The Government has carefully examined the matter. It is evident that the foreign origin cigarettes were recovered from the Applicant. It is on record that the Applicant had not made any declaration in respect of the offending goods carried by him, as required under Section 77 of the Customs Act, 1962. The Applicant had, in fact, waived show cause notice and admitted during the personal hearing that the goods were brought for commercial purposes. As such, the contention that there was no misdeclaration is not borne out from records and appears to be just an afterthought.

6. Further, the offending goods have been imported in violation of Foreign Trade (Exemption for application of Rules in certain cases) Order, 1993 read with para 2.26 of Chapter 2 of the Foreign Trade Policy 2015-20, as these provisions allow import of only bonafide household goods and personal effects as part of the passenger baggage as per the limits, terms and conditions thereof prescribed in the Baggage Amendment Rules, 2014. Moreover, import of cigarettes should comply with DGFT notification no. 108 (RE-2008) 2004-09 dated 05.06.2004 and the Ministry of Health and Family Welfare notification no. GSR 182(E) dated 15.03.2008. Also, the provisions of Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 require that every package of cigarette or any other tobacco product shall have the specified health warning in the manner specified in the schedule to the Rules. As the offending goods are foreign origin cigarettes which have been imported in contravention of the conditions/statutory requirements subject to which they could have been legally imported, these have, thus to be treated as 'prohibited goods' [Ref. Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC), Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & RajrGrow Impex LLP {2021 (377) ELT 145 (SC)}]. Hence, their absolute confiscation is in accordance with the provisions of Section 125 of the Customs Act, 1962. The question of permitting re-export, under Section 80 of

the Act, *ibid*, also does not arise as the requisite declaration was not made under Section 77 *ibid*.

7. In the facts and circumstances of the case, the penalty imposed by the original authority and upheld by the Commissioner (Appeals) is just and fair.

8. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Yousuff Tharupeedikayil Koya,
No. 7/1143, Kappalandi Mukku
Mattancherry, Kochi
Ernakulam, Kerala-682002.

Order No. 383 /22-Cus dated 15.12.2022

Copy to:

1. The Pr. Commissioner of Customs, Anna International Airport, Chennai-600027.
2. The Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai-600001.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.
6. Notice Board

ATTESTED



2022/12/15

Assistant Secretary (RA Unit)
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