

SPEED POST



F. No. 380/01/B/2017-RA
F. No. 380/02/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. 21/12/22

Order No. 388-389/22-Cus dated 20-12-2022 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 Applications filed, under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. HYD-CUS-000-APP-091 & 092-16-17 dated 31.10.2016 & HYD-CUS-000-APP-118-16-17 dated 21.12.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.
- Applicant : Pr. Commissioner of Customs, Hyderabad.
- Respondent : Sh. Yousuff Tharupeedikayil Koya, Ernakulam.

ORDER

Two Revision Applications No. 380/01/B/2017-RA dated 10.02.2017 & 380/02/B/2017-RA dated 02.03.2017 have been filed by the Pr. Commissioner of Customs, Hyderabad (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. HYD-CUS-000-APP-091 & 092-16-17 dated 31.10.2016 & No. HYD-CUS-000-APP-118-16-17 dated 21.12.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad. The Commissioner (Appeals) has modified the Order-in-Original Nos. 125/2015 dated 21.09.2015, 129/2015 dated 17.11.2015 & 54/2016 dated 01.09.2016 to the extent that the goods confiscated were allowed to be redeemed to Sh. Yousuff Tharupeedikayil Koya, Ernakulam (hereinafter referred to as the Respondent). Vide the above Orders-in-Original 39200 sticks of foreign origin cigarettes, valued at Rs. 3,09,800/-; 39000 sticks of foreign origin cigarettes & 115 packets of tobacco, valued at Rs. 3,89,000/-; and 36000 sticks of foreign origin cigarettes, valued at Rs. 1,80,000/-, respectively, recovered from the Applicant, were confiscated absolutely under Sections 111(d), 111(l) and 111(o) of the Customs Act, 1962. Penalty of Rs. 28,000/-, Rs. 20,000/- and Rs. 10,000/- were also imposed on the Applicant under Section 112 of the Act, *ibid*.

2.1 Brief facts of the first case are that the Respondent arrived, on 21.09.2015, at Rajiv Gandhi International Airport, Hyderabad, from Bahrain. 39200 no. of sticks of foreign origin cigarettes were recovered from him during search. During personal hearing before the original authority, the Respondent stated that he brought the goods for sale in Hyderabad and the same were not declared by him to evade customs duty. The original authority, vide the aforesaid Order-in-Original dated 21.09.2015, confiscated the offending goods absolutely and imposed penalty as above. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), which has been modified as mentioned above.

2.2 Brief facts of the second case are that the Respondent arrived, on 17.11.2015, at Rajiv Gandhi International Airport, Hyderabad, from Bahrain. 39000 no. of sticks of foreign origin cigarettes and 115 packets of tobacco, valued at Rs. 3,89,000/-, were recovered from him during search. During personal hearing before the original authority, the

Respondent stated that he brought the goods for sale in Hyderabad and the same were not declared by him to evade customs duty. The original authority, vide the aforesaid Order-in-Original dated 17.11.2015, confiscated the offending goods absolutely and imposed penalty as above. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), which has been modified as mentioned above.

2.3 Brief facts of the third case are that the Respondent arrived, on 01.09.2016, at Rajiv Gandhi International Airport, Hyderabad, from Bahrain. 36000 no. of sticks of foreign origin cigarettes were recovered from him during search. During personal hearing before the original authority, the Respondent stated that he brought the goods for sale in Hyderabad and the same were not declared by him to evade customs duty. The original authority, vide the aforesaid Order-in-Original dated 01.09.2016, confiscated the offending goods absolutely and imposed penalty as above. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), which has been modified as mentioned above.

3. The instant revision applications have been filed, mainly, on the grounds that the Order passed by the Commissioner (Appeals) appears to be not legal and proper to the extent it permits redemption for the purpose of re-export; and that re-export can be allowed only when the passenger makes a true declaration under section 77 of the Customs Act, 1962 and the Respondent did not fulfill the condition of making true declaration.

4. Personal hearing in the both the matters were fixed on 22.10.2018, 19/20.11.2018, 17.09.2021, 24.09.2021, 27.10.2021, 02.11.2021, 16.11.2022, 08.12.2022 and 16.12.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have already 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 Respondent. It is also on record that the

Respondent 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 Respondent had, in fact, waived show cause notice and admitted during the personal hearing that the goods were brought for sale in Hyderabad and the same were not declared by the Respondent to evade customs duty. As such, the contention that the Respondent did not fulfill the condition of making true declaration under section 77 of the Customs Act, 1962 is correct.

6.1 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 and tobacco 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)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}].

6.2 In the case of 'prohibited goods', the redemption thereof is discretionary, in terms of Section 125 of the Customs Act, 1962, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of Raj Grow Impex (supra), the Hon'ble Supreme Court has held "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant*

considerations." Further, in the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court has held that *"when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason".*" Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive."* Such a case is not made out. Hence, the Commissioner (Appeals) could not have interfered with the discretion exercised by the original authorities.


7.1 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*. Hon'ble Allahabad High Court has, in the case of Commissioner of Customs, Lucknow vs. Deepak Bajaj {2019(365) ELT 695(All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 *ibid*. Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur vs UOI {2009 (241) ELT 521 (Del.)}, held that re-export *"cannot be asked for as of right.....The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export."*

7.2 Therefore, the Commissioner (Appeals) has also erred in allowing re-export of the offending goods.

8. The Government observes that the Applicant herein is a repeat offender. Besides three cases of smuggling involved in the subject Revision Applications, the Respondent herein had been found involved in smuggling of foreign origin cigarettes, in an earlier case, at Chennai airport on 25.12.2016. This case has culminated in GoI Order No. 383/22-Cus dated 15.12.2022 against the Respondent. Therefore, the indulgence shown

by the Commissioner (Appeals) in ordering redemption and allowing re-export is even more unmerited.

9. In view of the above, the revision applications are allowed and the orders of original authorities are restored.


(Sandeep Prakash)

Additional Secretary to the Government of India


Pr. Commissioner of Customs
L.B. Stadium Road, Basheerbagh
Hyderabad-500004

Order No. 388-389/22-Cus dated 2012-2022

Copy to:

1. Sh. Tharupeedikayil Koya Yousuff, 7/1143, Kappalandimukku, Mattancherry (PO), Kochi, Ernakulam-682002.
2. The Commissioner of Customs & Central Excise (Appeals), L.B. Stadium, Basheerbagh, Hyderabad-500004.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.
6. Notice Board

ATTESTED


20.12.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
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