

SPEED POST



F. No. 373/183/B/2016-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. 392/22-Cus dated 21-12-2022 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 No. CMB-CEX-000-APP-036-16 dated 18.02.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore.
- Applicant : Sh. Yousuff Tharupeedikayil Koya, Ernakulam.
- Respondent : The Commissioner of Customs, Tiruchirapalli.

ORDER

A Revision Application No. 373/183/B/2016-RA dated 14.09.2016 has been filed by Sh. Yousuff Tharupeedikayil Koya, Ernakulam (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CMB-CEX-000-APP-036-16 dated 18.02.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore. The Commissioner (Appeals) has modified the Order-in-Original No. 06/2015 dated 08.11.2015, passed by the Assistant Commissioner of Customs, Coimbatore Airport, to the extent of reducing penalty imposed under Section 112 of the Customs Act, 1962 to Rs. 3,00,000/-. Vide the above mentioned Order-in-Original, 40000 sticks of foreign origin cigarettes, valued at Rs. 6,00,000/-, recovered from the Applicant, were confiscated absolutely under Sections 111(d), 111(i), 111(m) and 111(o) of the Customs Act, 1962. Penalties of Rs. 6,00,000/- and Rs. 40,000/- were also imposed on the Applicant under Section 112 & 117, respectively, of the Act, *ibid*.

2. Brief facts of the first case are that the Applicant arrived, on 08.11.2015, at Coimbatore International Airport, Coimbatore, from Sharjah. 40000 no. of sticks of foreign origin cigarettes were recovered from him during search. During personal hearing before the original authority, it emerged that the Applicant brought the foreign origin cigarettes without valid declaration under Section 77 of the Customs Act, 1962 and the quantity was of commercial nature. The original authority, vide the aforesaid Order-in-Original dated 08.11.2015, confiscated the offending goods absolutely and imposed penalty as above. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been disposed of in the terms indicated in para 01 above.

3. The instant revision application has been filed, mainly, on the grounds that the order passed by the Commissioner (Appeals) is against law, weight of evidence and probabilities of case; that he had declared the entire cigarettes brought by him; that the goods were not liable for absolute confiscation on the ground that it did not contain statutory warning as prescribed under law; that imposition of personal penalty is very harsh and severe; and that the offending goods ought to have been allowed for re-export and entire penalty ought to have been set aside.

4. Personal hearing in the matter was fixed on 24.08.2021, 31.08.2021, 26.10.2021, 02.11.2021, 09.11.2022, 25.11.2022 and 21.12.2022. 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 revision application has been filed with a delay of 84 days which is attributed to the Applicant misplacing the challan dated 18.05.2016 towards payment of RA fee. Delay is condoned.

6. The Government has carefully examined the matter. It is evident that the foreign origin cigarettes were recovered from the Applicant. It is also 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 it emerged in the personal hearing that the goods were brought without any valid declaration under Section 77 of the Act, *ibid* and that the goods were of commercial nature. As such, the contention that the Applicant made declaration under Section 77 *ibid* is nothing but an afterthought.

7.1 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 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)}].

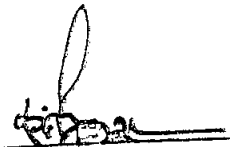
7.2 In the case of 'prohibited goods', the redemption thereof is discretionary, in terms of Section 125 of the Customs Act, 1962, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of 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) has correctly refrained from interfering with the discretion exercised by the original authority.

8. 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."*

9. The Government observes that the Applicant herein is a repeat offender. Besides this case of smuggling, the Applicant herein has been found involved in smuggling of foreign origin cigarettes, in an earlier case, at Chennai airport on 25.12.2016 and three other cases on 21.09.2015, 17.11.2015 and 01.09.2016 at Rajiv Gandhi International Airport, Hyderabad. The first case has culminated in GOI Order No. 383/22-Cus dated 15.12.2022 against the Applicant and the last three cases have culminated in GOI Order No. 388-389/22-Cus dated 20.12.2022 against the Applicant. Hence, the Government is not inclined to grant any relief to the Applicant herein in respect of penalty imposed.

10. 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. 342/22-Cus dated 21-12-2022

Copy to:

1. The Commissioner of Customs, Central Excise, & Service Tax (Appeals-I), 6/7, A.T.D Street, Race Course Road, Coimbatore-641018.
2. The Commissioner of Customs, No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.
6. Notice Board

ATTESTED



21.12.22

(लक्ष्मी राघवण)

(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