

**SPEED POST**



F. No. 380/128/B/2016-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... 23/12/22

Order No. 397/22-Cus dated 23-12-2022 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. 255/2016 dated 31.03.2016, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicants : The Principal Commissioner of Customs, Air Customs, Bengaluru.

Respondent : Shri Abhishek Baddimani, Dharwad

\* \* \*

**ORDER**

Revision Application No. 380/128/B/2016-RA dated 11.07.2016 has been filed by the Principal Commissioner of Customs, Air Customs Commissionerate, Bengaluru (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 255/2016 dated 31.03.2016, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, on an appeal filed by Shri Abhishek Baddimani, Dharwad (hereinafter referred to as the Respondent), set aside the Order-in-Original No. 482/2015 dated 07.11.2015, passed by the Additional Commissioner of Customs, Airport, Bengaluru.

2. Briefly stated, the Respondent herein arrived at the Kempegowda International Airport, Bengaluru from Kuala Lumpur, on 16.08.2015. The Respondent was intercepted by the Customs officers while passing through the Green Channel. Upon search of his baggage, 450 packets of Phytoscience Double Stem Cell, valued at Rs. 16,87,500/-, were recovered. The Respondent had not made any declaration in respect of the goods recovered from him in the Customs Declaration Form. In his statement dated 23.08.2015, the Respondent stated that he had purchased the subject goods from Kuala Lumpur for an amount of Rs. 36,000/- and in addition Rs. 2,00,000/- was also paid for which no bill was given to him; that he had brought these goods at the instance of Shri Hanumanth Gouda, his friend, for sale in local market for profit; that these products are health supplements used to control sugar in diabetes and heart patients and to control high cholesterol in obese patients; that he had intentionally not declared the subject goods in the Customs Declaration Form and was exiting through the Green Channel. The Respondent waived the show cause notice, vide letter dated 12.09.2015, and requested for a lenient view to be taken. The original authority, vide aforesaid OIO dated 07.11.2015, ordered for absolute confiscation of the subject goods under Section 111(d) and (m) of the Customs Act, 1962, read with Section 3(3) the Foreign Trade Act, 1992. Penalties of Rs. 5,06,250/- and Rs. 3,37,500/- were also imposed on the Respondent herein under Section 112 and Section 114AA, respectively, of

the Customs Act, 1962. The appeal filed by the Respondent herein has been allowed by the Commissioner (Appeals) and the Order-in-Original dated 07.11.2015 has been set aside.

3. The revision application has been filed, mainly, on the grounds that the goods are in commercial quantity and do not constitute bona-fide baggage; that the Respondent had ticked 'No' for Sl.No. 1 against all the items in the Customs Declaration Form under Section 77 *ibid*; that the Respondent had, in his statement recorded under Section 108, admitted to the wrong declaration with intention to avoid detection by Customs and to evade payment of Customs duty; that the Commissioner (Appeals) has omitted to deal with the issue of contravention of the provisions of Section 111 (d) and provisions of Standards of Weight and Measures (Packaged Commodities), Rules, 1997 and the provisions of FSSAA, 2006; that the Respondent had made a false declaration on his Customs Declaration Form and, therefore, he is liable to penalty under Section 112 and under Section 114AA of the Act.

4. Personal hearings in the matter were fixed on 11.11.2022, 25.11.2022 and 22.12.2022. In the personal hearing held, in virtual mode, on 11.11.2022, Shri Abhishek Baddimani, Respondent, appeared and submitted that a written reply was filed by him in reply to the RA filed by the department, which he would email immediately. He stated that he had brought the goods for use of his parents who are diabetic and not for commercial purpose. His statement was recorded under threat and coercion. The Written Reply dated 26.09.2016 was subsequently received on email. In the personal hearing held, in virtual mode, on 22.12.2022, Shri Abhishek Baddimani, the Respondent stated that he had nothing further to add to the submissions already made in the PH held on 11.11.2022. Upon being asked, Shri Abhishek confirmed that he had not made the requisite pre-deposit of 7.5% of the penalty imposed on him by the original authority while filing appeal before the Commissioner (Appeals). No one appeared for the Applicant department on any of the dates, nor any request for adjournment has been received. Since sufficient opportunities have been granted, it is presumed that the department has no oral submissions to make in the matter.

5.1 The Government has carefully examined the matter. At the outset, it is observed that the Respondent herein had not made the pre-deposit of 7.5% of the penalty imposed on him by the original authority, as required in terms of Section 129E of the Customs Act, 1962, while filing his appeal before the Commissioner (Appeals). The said Section 129E provides that the Commissioner (Appeals) "shall not entertain any appeal" unless the requisite pre-deposit is made. The use of word 'shall' makes it evident that requirement of pre-deposit is mandatory. Further, there is no provision in Section 129E, which empowers the Commissioner (Appeals) to waive the requirement of pre-deposit. However, the Government observes that despite this statutory position, the Commissioner (Appeals) has proceeded to entertain the appeal filed by the Respondent herein even though the requisite pre-deposit was admittedly not made. Therefore, the impugned Order-in-Appeal cannot be sustained on this ground alone.

5.2.1 Even on merits, the Government finds that the Commissioner (Appeals) has decided the appeal incorrectly, for the following reasons :

- (i) The Respondent had carried 450 packets of the subject goods which are in the nature of food supplements. In the statement recorded under Section 108, the Respondent had admitted that he had brought the goods at the instance of his friend, Shri Hanumanth Gouda with the intention to sell in India for profit. Though, in the personal hearing held on 11.11.2022, it has been claimed by the Respondent that he had brought the goods for his parents who are diabetic, the quantity, i.e., 450 packets makes it evident that the goods were not for personal use, but were imported in commercial quantity. It would also appear that the statement recorded under Section 108 has not been retracted by the Respondent. It is to be noted that in terms of Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993, read with para 2.26 of Chapter 2 of the Foreign Trade Policy, 2015-20, import of only bona-fide household goods and personal effects as part of the baggage is allowed as per terms and conditions thereof prescribed in the Baggage Amendment Rules, 2014. As brought out by

the Original Authority, the goods cannot, therefore, be considered to be 'bona-fide baggage'.

- (ii) The Respondent had made a mis-declaration/made a false declaration on the Customs Declaration Form by ticking 'No' against all items at Sl. No. 1 thereby representing that he was carrying no dutiable or prohibited goods. This declaration was required to be made under Section 77 of the Customs Act, 1962.
- (iii) There is nothing forthcoming in the order of Commissioner (Appeals) finding any fault with the findings of the original authority regarding contravention of the Legal Metrology (Packaged Commodities), Rules, 2011.

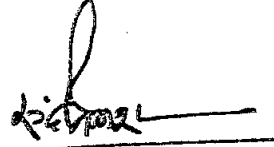
5.2.2. In view of above, it is apparent that the goods were imported in contravention of the conditions/statutory requirements subject to which they could have been legally imported. Therefore, they have to be treated as 'prohibited goods' for the purposes of Customs Act, 1962 [Ref. Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC)}, Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}].

5.2.3 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) ELT 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) ELT 1154 (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 oblique motive." Such a case has not been made out.

5.2.4 In view of above, the impugned Order-in-Appeal cannot be sustained on merits as well.

6. The revision application is accordingly allowed and the order of the original authority is restored, except that, keeping in view the facts and circumstances of the case, penalty imposed on the Respondent herein is reduced to Rs 1,00,000/- and Rs. 50,000/- under Section 112 and Section 114AA, respectively, of the Customs Act, 1962.



(Sandeep Prakash)

Additional Secretary to the Government of India

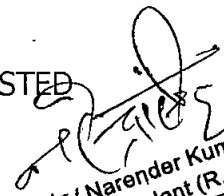
The Principal Commissioner of Customs,  
Airport & Air Cargo Complex,  
Air India Sats Air Freight Terminal,  
Devanahalli,  
Bengaluru – 560 300.

Order No. 397/22-Cus dated 23-12-2022

Copy to:

1. Shri Abhishek Baddimani, S/o Shri Nigappa, No. 202, M B Nagar, Koppadkeri, Janatha Plot, Dharwad – 580 008.
2. The Commissioner of Customs (Appeals), C.R. Building, P.B. No. 5400, Queen's Road, Bengaluru – 560 001.
3. PA to AS(RA).
4. Guard File.
- ✓ 5. Spare copy
6. Notice Board.

ATTESTED



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