



F. No. 375/79/B/2020-R.A.
375/80/B/2020-R.A.
375/81/B/2020-R.A.
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 08/04/22

ORDER NO. 128-130/22 Cus dated 07-04 2022 of the Government of India, passed by Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air/639-641/19-20 dated 31.08.2020, passed by the Commissioner of Customs (Appeals), New Delhi.

APPLICANT : 1. Sh. Mohibur Rahman, Distt. Nagaon, Assam.
2. Sh. Mohd. Somsul Islam, Distt. Nagaon, Assam.
3. Sh. Mohd. Helal Uddin, Distt. Nagaon, Assam.

RESPONDENT : Commissioner of Customs, IGI Airport, New Delhi.

ORDER

Three Revision Applications, bearing Nos. 375/79/B/2020-R.A., 375/80/B/2020-R.A. and 375/80/B/2020-R.A., all dated 31.12.2020 have been filed by Sh. Mohibur Rahman, Distt. Nagaon, Assam, Sh. Mohd. Somsul Islam, Distt. Nagaon, Assam and Sh. Mohd. Helal Uddin, Distt. Nagaon, Assam (hereinafter referred to as the Applicant 1, Applicant 2 and Applicant 3, respectively), respectively, against the Order-in-Appeal No. CC(A)Cus/D-I/Air/639-641/19-20 dated 31.08.2020, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, New Delhi, bearing No. 228/Adjn./2018 dated 24.05.2018, whereby 71 kgs of Agarwood Chips, which were recovered from the Applicants, have been absolutely confiscated under Section 113 of the Customs Act, 1962. A penalty of Rs. 1,60,000/- has also been imposed on the Applicant 1, of Rs. 2,00,000/- on Applicant 2 and of Rs. 2,08,000/- on Applicant 3, under Section 114 of the Customs Act, 1962.

2. Brief facts of the case are that on receipt of specific intelligence, the Applicants were apprehended on 27.02.2017, by the DRI officers while departing for Kuwait via Mumbai. On being asked if they were carrying any contraband/prohibited items, the Applicants replied in negative. On search of their baggage, a total of 71 kgs of Agarwood was recovered. All three of the Applicants admitted in their statements dated 28.07.2017, tendered under Section 108 of the Customs Act, 1962, that the wooden chips found in their baggage were of Agarwood; that they were carrying it to Kuwait as the same was sold at high premium in international market; that they were aware that export of Agarwood was not allowed; that they did not have any licit document or any transport permit for carrying the Agarwood that was recovered from them, out of India, nor did they have any CITES Certificate for its export; and that they were in this illegal trade for pecuniary motive. Being a

prohibited item, the Agarwood chips were confiscated absolutely by the original authority and a penalty of Rs. 1,60,000/- was imposed on the Applicant 1, of Rs. 2,00,000/- on Applicant 2 and of Rs. 2,08,000/- on Applicant 3. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which have been rejected.

3. The revision application has been filed, mainly, on the grounds that the offending goods are not prohibited goods and may be released on payment of fine under Section 125 of Customs Act, 1962.

4. Personal hearing was held on 07.04.2022, in virtual mode. Sh. Tarun Chawla, Advocate, appeared for the Applicants and reiterated the contents of the RAs. He also relied upon the Tribunal's decision in the case of Mohd. Raju Hussain [2016 (331) ELT 595 (Tri-Kol)] to seek redemption of the seized goods. None appeared for the Respondent Department nor any request for adjournment has been received. Hence, the matter is taken up for decision on the basis of records available.

5. The Government has examined the matter carefully. The lower authorities have brought out that the export of Agar Wood (*Aquilaria Agallocha*) in any form, is **prohibited**, being an endangered wild flora species in Appendix-II of the CITES Convention. The export of CITES species requires a CITES permit of export which has not been produced by the Applicants. Hence, the export of the subject goods is undoubtedly prohibited.

6. The Applicant has prayed that the offending goods may be released on redemption fine under Section 125 of Customs Act, 1962. The Government observes that in terms of Section 125, the option to release 'prohibited goods', on redemption fine, is discretionary. Hon'ble Supreme Court has, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)], affirmed this position. In the case of Raj Grow Impex [2021 (377) ELT 145

(SC)], 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; and 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, after extensive application of several judgments of the Apex Court, has held that "*non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference*". The Hon'ble High Court has further held that "*when discretion is exercised under Section 125 of the Customs Act, 1962, the twin test to be satisfied is 'relevance and reason'*". In the present case, the original authority has refused to allow redemption keeping in view that the goods were prohibited for export. It is also observed from the technical evidence that the Applicants herein were trading in the aforesaid prohibited goods and were frequently visiting foreign countries for this purpose. Hence, the Government holds that the original authority has exercised his discretion for relevant and reasonable considerations. As such, no grounds are made out to interfere with the discretion exercised by the lower authority as upheld by the Commissioner (Appeals). The case laws relied upon are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Court, as above.

7. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Sh. Mohibur Rahman,
R/o Vill-Bishnupolli, A. K. Azad Path,
Ward No. 18, P. S. Hojai, Distt. Nagaon,
Assam-782 435.
2. Sh. Md. Solmsul Islam,
R/o Gopal Nagar,
Hojai, Distt. Nagaon,
Assam-782 435.

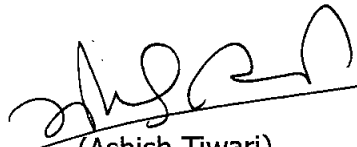
3. Sh. Mohd. Helal Uddin,
R/o 19, Donkigaon, Gopal Nagar, Hojai,
Distt. Nagaon,
Assam-782 435

Order No. _ 128-13D/22-Cus dated 07-04-2022

Copy to:

1. The Commissioner of Customs (Appeals), NCH, New Delhi.
2. The Commissioner of Customs, IGI Airport, New Delhi.
3. Sh. Tarun Chawla, Advocate, G-77, Lajpat Nagar-II, new Delhi-110 024.
4. PA to A.S.(RA).
5. ☒ Guard File.
6. Spare Copy.

ATTESTED


(Ashish Tiwari)
Assistant Commissioner (RA)