

SPEED POST



F. No. 373/25/B/2020-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 09/08/24...

Order No. 151 /24-Cus dated 02-08-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. HYD-CUS-000-APP-072-18-19 dated 30.11.2018 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : Sh. Prakash Bansilal Ghoran, Pune

Respondent : Pr. Commissioner of Customs, Hyderabad

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ORDER

A Revision Application, bearing No. 373/25/B/2020-RA dated 24.01.2020, has been filed by Sh. Prakash Bansilal Ghoran, Pune (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-072-18-19 dated 30.11.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs Rajiv Gandhi International Airport, Hyderabad, bearing No. 41/2018-Adjn.Cus(ADC) dated 30.05.2018, vide which 12000 sachets of 'Superlife STC 30' brought by the Applicant herein, totally valued at Rs. 40,58,040/-, had been absolutely confiscated under Sections 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Besides, penalties of Rs. 4,00,000/- & Rs. 10,000/- were also imposed on the Applicant, under Section 112(a)(i) & Section 114AA of the Act, *ibid*. The applicant initially filed an appeal before the Hon'ble CESTAT against the aforementioned Order-in-Appeal which vide order dated 06.11.2019 dismissed the appeal on the ground that it has no jurisdiction to decide any appeal in respect of an order which relates to any goods imported or exported as baggage. Hence the present revision application.

2. Brief facts of the case are that the Applicant, an Indian Passport Holder, arrived from Kuala Lumpur at Rajiv Gandhi International Airport, Hyderabad on 09.07.2017, and was intercepted by the Customs Officers at the exit gate of the international arrival hall, while he was passing through the Green Channel. The Applicant was asked whether he was in possession of any dutiable or prohibited goods to which the applicant replied in the negative. Thereafter he was asked to produce the Indian Customs Declaration Form which was supposed to be filled in by him to which he replied that he was not in possession of any such form. Upon examination of his checked-in bag 12000 sachets of 'Superlife STC 30' were found. When enquired regarding the invoices/documents of the offending goods, he could not produce any document. Thereafter he was asked to declare the value of the goods to which he stated that he was not fully aware of the value. Thereafter the officers ascertained the total value to be Rs. 40,58,040/- on the basis of online search.

In his statement dated 09.07.2017, recorded under Section 108 of the Customs Act, 1962, the applicant stated inter-alia that he is engaged in shipping and logistics business; that he had gone to Malaysia on a business visit and came to India along with 12000 sachets

of 'Superlife STC 30' sachets in his checked-in baggage; that he got the goods from one Kamaraj Annamalai who is a Malaysian citizen; that the said goods are used as food supplement, weight management, and also for other health purposes and he did not have any document relevant to the goods; that he intentionally did not declare the goods to the Customs officials and passed through the green channel by carrying these goods in his checked-in bag to avoid detection by the Customs officials so as to evade payment of Customs duty; that he brought the goods mentioned in panchanama dated 09.07.2017 to start a local business; and that he had done this to meet his adverse financial situation.

The matter was adjudicated by the original authority vide aforesaid order dated 30.05.2018. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) which has been rejected.

3. The revision application has been filed mainly on the grounds that various submissions with regard to evidentiary value of the website information etc., and case laws cited by the applicant were not considered by the lower authority; that the applicant had provided invoice of the dealer of the manufacturer of the subject goods along with the delivery challan and certificate of analysis etc.; that Customs had made enquiry with the supplier and he had confirmed the price. Enhancement of value even after getting confirmation from the supplier in response to the enquiry made by Customs is not correct; that even if the goods are prohibited for import, there is no bar in releasing; and that the penalty of Rs. 4,10,000/- in a case of import of goods valued around Rs. 2 lakhs, that too brought for distribution as samples, is on the higher side.

4. Personal hearing was fixed on 19.04.2024, but no one appeared for either side. It was again fixed for 01.05.2024 which was postponed on the request of Sh. C.S. Srinivas, Consultant for the applicant vide his letter dated 01.05.2024 citing ill health as the reason. Hearing was again fixed for 13.05.2024 which was again postponed to 20.05.2024 on the request of Sh. C.S. Srinivas vide his letter dated 10.05.2024 citing parliamentary elections as the reason. In the hearing held on 20.05.2024, Sh. Sesha Srinivas, Advocate submitted that the applicant brought the impugned food supplements from Malaysia, valued around 40 lakhs which were confiscated absolutely and penalty was also levied. He submitted that

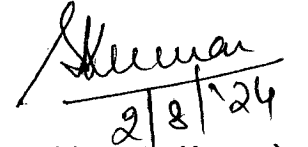
the website which was relied upon by the adjudicating authority for the valuation was not shared with the applicant; the relevant extract was not made a relied upon document (RUD), though cross-examination of the officer was allowed. He further submitted that the officer concerned had verified the purchase invoice with the seller and the value as per the invoice was only around Rs. 84000/- approximately. He submitted that samples are allowed to be brought in baggage upto a value of Rs. 3 lakhs, a fact also acknowledged in the OIO. He prayed for reduction in penalty and in case any money has been obtained from the auction of the goods confiscated, he sought that to be given back to the applicant. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the Respondent department has nothing to add in the matter.

5. The applicant initially filed an appeal before the Hon'ble CESTAT on 25.03.2019 against the OIA dated 30.11.2018 which was received by him on 19.12.2018. The Hon'ble CESTAT vide order dated 06.11.2019 dismissed the appeal on the ground as mentioned in para 1 above. Hence, the present revision application is filed.

6. The Government has carefully examined the matter. The Applicant has challenged the value adopted by the adjudicating authority. It is observed that at the time of seizure, the total value of the seized goods was appraised as Rs. 40,58,040/-. The applicant was asked to declare the value to which he replied that he was not fully aware of the value neither he could not produce any document/invoice for the purchase of the same. This value was arrived at on the basis of search on the open web i.e. on website www.lazada.com. Further, as noted from para 30 of the Order-in-Original comparative rates of the same product as was in different countries then was obtained and thereby the rate was finalized. The procedure adopted for determining the value of the impugned goods has been done on the basis of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, it is seen from the records that the adjudicating authority had sent an email to the manufacturer of the impugned goods asking for the correctness of the quoted price and the genuineness of the invoice. The manufacturer has confirmed the same vide his return reply on email.

7. In view of the aforesaid facts and circumstances of the case, it would be in the interest of justice that the matter is remanded to the original adjudicating authority for deciding the matter afresh after considering all the evidence and all aspects of the case, and after following the principles of natural justice.

8. The revision application is, accordingly, allowed by way of remand to the original adjudicating authority, with directions to consider the case afresh as per para 6 above and after giving the Applicant an opportunity to be heard and to pass a comprehensive, reasoned and speaking order within three months from the date of receipt of this order. So, ordered.


2/8/24

(Shubhagata Kumar)

Additional Secretary to the Government of India


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S/o. Sh. Chunilal Bansilal Ghoran
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Order No. 151 /24-Cus dated 02-08-2024

Copy to:

1. Pr. Commissioner of Customs, GST Bhavan, L.B Stadium Road, Hyderabad-500004.
2. The Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500004.
3. M/s. YSR Associates, Advocates and Consultants, E-510, 5th Floor, SVSS Nivas, Road No. 1, Czech Colony, Opposite Gokul Theatre, Erragadda, Hyderabad-500018.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED


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