

SPEED POST



F. No. 380/55-58/B/SZ/2019-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...05/08/24.

Order No. 153-156/24-Cus dated 05-08-2024 of the Government of India passed by Smt. Shubhagata Kumar, 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. 49-52/2019 dated 29.03.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.
- Applicant : Pr. Commissioner of Customs, Bengaluru.
- Respondent : Sh. Nisar, Kasargod.
Sh. Abdul Ansari, Kasargod
Sh. Jayashankar, Bengaluru
Sh. Syed Goushe, Tumakuru

ORDER

A Revision Application No. 380/55-58/B/SZ/2019-RA dated 19.07.2019 has been filed by the Pr. Commissioner of Customs, Bengaluru (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. 49-52/2019 dated 29.03.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) vide the aforementioned Order-in-Appeal has rejected the appeals filed by the Applicant department against the Order-in-Original Nos. 09/2018-19 dated 08.08.2018, 10/2018-19 dated 08.08.2018, 13/2018-19 dated 10.08.2018 & 14/2018-19 dated 10.08.2018. The Commissioner (Appeals) has passed a common OIA as the Orders-in-Original were similar. Vide the above Orders-in-Original 40000, 40000, 113200 & 116200 no. of sticks of foreign origin cigarettes, valued at Rs. 5,20,000/-, 5,20,000/-, 16,98,000/- & 17,43,000/- respectively, recovered from Sh. Nisar, Kasargod, Sh. Abdul Ansari, Kasargod, Sh. Jayashankar, Bengaluru & Sh. Syed Goushe, Tumakuru (hereinafter referred to as Respondent-1, Respondent-2, Respondent-3 & Respondent-4, respectively) had been absolutely confiscated and penalties of Rs. 50,000/-, 50,000/-, 1,50,000/- & 1,50,000/- respectively, have been imposed under Section 112 of the Customs Act, 1962.

2. Brief facts of the first case are that the Respondent-1 & Respondent-2, arrived, on 06.08.2018 from Kuwait, and Respondent-3 & Respondent-4 arrived on 09.08.2018 from Singapore, at Kempegowda International Airport, Bengaluru. The aforementioned quantity of foreign origin cigarettes were recovered from their baggage during search. In their statements before the original authority, the Respondents stated that they had committed an offence by bringing the said cigarettes which are restricted/prohibited for sale in India and they were not in a position to pay the penalties and requested for the proceedings to be completed at the earliest without issue of show cause notice and personal hearing. The original authority, vide the aforesaid Order-in-Originals, confiscated the offending goods absolutely and imposed penalties as mentioned above. Aggrieved by the fact that two of the orders were not passed by the proper officer and in the other two cases, by a lower quantum of penalty imposed, the Applicant department filed appeals before the Commissioner (Appeals), which have been rejected as mentioned above.

3. The instant revision application has been filed mainly on the grounds that Deputy Commissioner of Customs was not the proper officer to adjudicate OIO Nos 13 & 14/2018-19 both dated 10.08.2019 in terms of CBIC's circular No. 23/2009 Customs dated 01.09.2009 read with notification No. 50/2018 Customs dated 08.06.2018 considering the value of the goods; that penalty imposed under Section 112 of the Customs Act, 1962 is even less than 10% of the value of the goods, and needs to be increased as it is not adequate or stringent enough in view of the nature of goods and since the goods were

attempted to be smuggled; and that penalty under Section 114AA should have been imposed upon the Respondents.

4. Personal hearing in the matter was fixed on 13.03.2024. No one appeared for either side nor was any request for adjournment received. Another hearing was fixed on 20.03.2024 in which only Sh. Nisar (Respondent-1) appeared who sought postponement of the personal hearing so that he could engage an advocate on his behalf. Another hearing was fixed on 08.04.2024 in which none appeared. However, an email dated 06.04.2024 was received from the Applicant department requesting to decide the case based on facts and circumstances of the case and another email dated 08.04.2024 was received from Sh. Abdul Ansari (Respondent-2) who requested to adjourn the matter as he could not consult his lawyer as he was out of station. Since sufficient opportunities have already been granted, the matter is taken up for disposal based on records.

5. The instant revision application has been filed with a delay of 4 days. The reason cited for the delay has been attributed to work pressure. The delay is condoned.

6. The Government has carefully examined the matter. As per Notification No. 50/2018 Customs (N.T) dated 08.06.2018 the monetary limit prescribed for adjudication of cases involving confiscation or penalty is as follows: -

S. No.	Customs Officer	Value of goods liable for confiscation
1	Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above rupees one lakh but not exceeding rupees ten lakhs.
2	A Gazetted officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs	Not exceeding rupees one lakh.

It is clear from the above table that Assistant Commissioner or Deputy Commissioner of Customs is not the proper officer to adjudicate cases where value of the goods is more than Rs. Ten lakhs. Hence it has to be held that OIO Nos 13 & 14/2018-19 both dated 10.08.2019 have been wrongly adjudicated by the concerned Deputy Commissioner of Customs whereas they ought to have been adjudicated by Joint/Additional Commissioner of Customs. Therefore, both orders are not in consonance with CBIC's Notification No. 50/2018 mentioned above and are *ultra vires* the legal provisions in this regard.

7. Now we come to the other two OIOs. It is on record that the foreign origin cigarettes were recovered from the Respondents. It is also on record that the Respondents had not made any declaration in respect of the offending goods carried by them, as required under Section 77 of the Customs Act, 1962. The Respondents had, in fact, waived show cause notices and admitted in their respective statements that the cigarettes were brought without pictorial warning and do not comply with the requirements under the regulations in force in India. Further, the cigarettes 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. Thus, the offending goods were correctly held liable to confiscation and consequently to penalty under Section 112 of the Customs Act, 1962.

8. As far as the penalty imposed under Section 112 is concerned it is the discretion of the adjudicating authority regarding the quantum of the penalty. 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 has not been made out. Hence, the government is not inclined to interfere in that decision.

9. The contention of the Applicant department is that penalty under Section 114AA is merited in this case.

Section 114 AA clearly states that *if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, he shall be liable to a penalty not exceeding five times the value of goods.*

The Government observes that in the instant case, the Respondents failed to declare the impugned goods and their value in the Customs Declaration Form furnished to

Customs, which was incorrect information as found when the search was conducted. Thus despite being well aware that import of foreign origin cigarettes without declaration is against the law, a false and incorrect declaration was made contrary to the provisions of Section 77 of the Customs Act, 1962. Therefore, the imposition of penalty under Section 114 AA by the original authority was warranted. However, the Government observes that the penalty under Section 114AA has not been imposed by the original or appellate authority and the government is not inclined to levy fresh penalty under section 114AA at this stage.

10. In view of above, the OIO Nos 13 & 14/2018-19 both dated 10.08.2019 are remanded back to the original authority and OIO Nos 09 & 10/2018-19 both dated 08.08.2018 are disposed of in above terms.

Shubhagata Kumar
5/8/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Pr. Commissioner of Customs
Airport and Air Cargo Complex
Kempegowda International Airport
Devanahalli, Bengaluru-560300.

Order No. 153-156 /24-Cus dated 05-08-2024

Copy to:

1. Sh. Nisar, S/o Sh. Hameed Poochakkad, Chirakkal House, Keekan, Pallikere, Kasaragod, Pallikere, Kerala-671316.
2. Sh. Abdul Ansari, S/o Sh. Pallinadaduke Abdulla Zainudeen, Parakkat House, Kollambady, Kasaragod, Kerala-671321.
3. Sh. Jayashankar, S/o Sh. Manoharan, No. 179, 5th Cross, Chamundi Nagar, RT Nagar Post, Bengaluru-560032.
4. Sh. Syed Ghouse, S/o Sh. Syed Abdul, Govt Hospital Road, Behind Lakshmi Temple, maruthy NGR Huliya, Chikkanayakanahalli, Tumakuru, Karnataka-560032.
5. The Commissioner of Customs (Appeals), BMTc Building, Above BMTc Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
6. PPS to AS(RA).
7. Guard File.
8. Spare Copy.
9. Notice Board

ATTESTED

Shailendra Kumar Meena
5/8/24

(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
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