

SPEED POST



F. No. 373/442/B/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. 06/09/24.

Order No. 187/24-Cus dated 06-09-2024 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. TCP-CUS-000-APP-074-19 dated 16.09.2019 passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. H. Padmakumar, Trivandrum

Respondent : The Commissioner of Customs (P), Tiruchirappalli

ORDER

A Revision Application, bearing No. 373/442/B/2019-RA dated 04.11.2019, has been filed by Sh. H. Padmakumar, Trivandrum (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-074-19 dated 16.09.2019, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs, Airport, Tiruchirappalli, bearing No. TCP-CUS-PRV-JTC-11/19 dated 27.02.2019, except to the extent of reducing the penalty imposed upon the applicant from Rs. 6,00,000/- to Rs. 3,00,000/-. Vide the aforesaid OIO six different drugs brought by the Applicant herein, totally valued at Rs. 65,77,000/-, had been absolutely confiscated under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Besides, a penalty of Rs. 6,00,000/- was also imposed on the Applicant, under Section 112(a)&(b) of the Act, *ibid*.

2. Brief facts of the case are that the Applicant, an Indian Passport Holder, arrived from Colombo to Madurai on 08.02.2018 and was intercepted by the Customs Officers on the basis of suspicion. Upon the examination of his check-in baggage the following drugs as mentioned in the table below were recovered: -

S.No.	Product description	No. of Boxes		No. of vial/unit/tablet
1	Propionate Textosferene (100 mg) (10 ml) vial	4 Boxes	100 units per box	400
2	Oxymetholene 50 mg./tablet	1 Box	100 units per box	100
3	Stenozolol 10 mg tablet	4 Boxes	100 units per box	400
4	Stenozolol 100 mg/ml 10 ml vial	4 Boxes	100 units per box	400
5	Decanan 250 mg/ml	1 Box	100 units per box	100
6	Tren 4 (Rapid Tranbalone Acetate 100 mg/ml 10 ml vial	4 Boxes	100 units per box	400
	TOTAL	18 Boxes		1800

The Senior Drugs Inspector, Madurai Zone valued the medicines and certified the value of the medicines to be Rs. 65,77,000/-. In his statement dated 08.02.2018, recorded under Section 108 of the Customs Act, 1962, the applicant stated inter-alia that he did not possess any valid license/permit to import the above said items into India; that he did not know that the said goods are restricted items for import; that one person named Papan met him at Hotel Paradise, Bangkok and requested him to take his luggage i.e. 2 carton boxes to Madurai; that one person would collect the same from him at Madurai; that he had put some nutritional medicines valued at Rs. 1,00,000/- approximately in the said luggage and for which Papan would give him Rs. 5,000/- and bear the ticket charges from Bangkok to Madurai; that he agreed to do this work for monetary benefit only; that he did

not know actually what was kept inside the luggage till the Customs officers opened it; and that he did not know the medicines are restricted for import and he involved in such activity for the sake of money only. The matter was adjudicated by the original authority vide aforesaid order dated 27.02.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) which has been rejected, however the penalty imposed was reduced as mentioned above.

3. The revision application has been filed mainly on the grounds that medicines are not prohibited items; that value of the medicines is very high; that absolute confiscation of the impugned goods is not valid; that Section 112 (a) and 112(b) of the Customs Act cannot be applied against the applicant simultaneously; that re-export of the impugned goods ought to have been allowed; and that penalty be set aside.

4. Personal hearing was fixed for 22.03.2024, which was postponed to 08.04.2024 on the request of the applicant vide his email dated 19.03.2024. No one appeared for the personal hearing on 08.04.2024. Personal hearing was again fixed for 10.05.2024. In the hearing held on 10.05.2024, Sh. S. Renganathan, Advocate appeared for the applicant and submitted that the applicant came from Colombo to Madurai with drugs and medicines which were seized by Customs and the applicant was also prosecuted for bringing drugs and medicines in violation of the rules in this regard. He submitted that since the applicant has been acquitted in the criminal case for the same matter, the adjudication proceedings should also have been dropped. He prayed for the OIA to be quashed and the penalty to be set aside. He has filed written submissions on 18.04.2024 which are taken on record. Vide the written submissions it has been submitted that the applicant was prosecuted on the same set of facts and was acquitted on 22.12.2022 based on merits of the case by the learned Additional Judicial magistrate, Madurai in C.C No. 1155/2019. No one appeared for Respondent's side. As such, it is presumed that the respondent has nothing to add in the matter.

5. The Government has carefully examined the matter. The Government observes that the learned Additional Judicial Magistrate, Madurai held in para 23 of the order dated 22.12.2022 *"If we take the case of prosecution that the drugs that are seized in this case is prohibited in India for human consumption, then the drugs so seized would not fall within the ambit of sec. 3(1)(h) of Foreign trade (exemption from application of rules in certain cases) order 1993 because once the medicine to be imported is prohibited in India, then the question of restriction would not arise. But the prosecution has filed complaint on both aspects against the accused. Even then the prosecution was not able to prove that the accused has smuggled restricted items of medicines which is also prohibited. Mere confiscation under sec.111 of the Act would not simply attract penal provisions under the Act. The prosecution has to prove that the accused has smuggled prohibited goods that*

are liable to be confiscated under the Act. But the prosecution has failed to prove that the goods that are smuggled by the accused is of restricted as well as prohibited."

Further, the valuation of the medicines as Rs. 65,77,000/- was done by Senior Drugs Inspector, Madurai Zone, however there is nothing on record to establish how the valuation was arrived at.

6. 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.

7. 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 5 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.

Shubhagata Kumar
6/9/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. H. Padmakumar
S/o Sh. Harihara Iyer
TC 42/572-1, MLA Road
Vallakkadavu PO
Trivandrum-695008

Order No. 187/24-Cus dated 06-09-2024

Copy to:

1. The Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. S. Renganathan, Advocate, 1B/5-Bharathiar 3rd Street, S.S Colony, Madurai-16.
4. PPS to AS(RA)
5. Guard File
- ✓ 6. Spare Copy
7. Notice Board

Shailendra Kumar Meena
6/9/24
ATTESTED (Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India