

**SPEED POST**



F. No. 373/133/B/2019-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..11/01/23

Order No. 214 /23-Cus dated 11-01-2023 of the Government of India passed by Ms. 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 C.Cus.No.I No. 09/2019 dated 23.01.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. S.Ramprakash, Chennai

Respondents : Pr. Commissioner of Customs, Chennai-I

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## **ORDER**

A Revision Application No. 373/133/B/2019-RA dated 23.01.2019 has been filed by Sh. S. Ramprakash, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal Order-in-Appeal C.Cus.No.I No. 09/2019 dated 23.01.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant against O-I-O No. 257/2017-18 dated 23.03.2018, passed by the joint Commissioner of Customs (Adjudication-Air), Chennai, wherein, a penalty of Rs.50,000/- was imposed on the Applicant.

2.1. Brief facts of the case are that acting on specific intelligence that some passengers namely S/Shri Namasivayam Sundar, Govindraj Krishnan Thennarasu and Rajesh Kumar Thennarasu would be arriving from Singapore by Flight No. IX685 on 05.11.2016 and that they would be carrying drugs/ medicines such as **Suxilep Capsules and fosfomycin Sodium injection**, in commercial quantities in their baggage, officers of DRI intercepted these passengers and examined their baggage. During the examination, besides other offending goods , 26 number of Suxilep bottles with 100 numbers of 250 mg capsules in each bottle and 20 numbers of Fosfomycin Sodium for injection 2.0 g having 10 vials in each packet were recovered from them. In the subsequent proceedings, the passengers admitted that they were approached by some person, who was arranged by the Applicant at Sh. Namasivayam's residence in Singapore, handed over the medicines in the commercial quantities for further handing over the same to the Applicant , without declaring to the customs, thereby evading payment of appropriate customs duty. As the said passengers were not possessing valid documents for the licit possession or valid registration or permission for the import of medicines from the Drug Controller of India, the said medicines were seized under mahazar proceedings dated 05.11.2016.

2.2. During Subsequent investigation, Sh. Namasivayam Sundar in his voluntary statement tendered under Section 108 of the Customs Act, 1962 stated that he had brought the recovered and seized medicines on instruction of the Applicant for monetary consideration. He further stated that he had brought such medicines for the Applicant on earlier occasions too, some of which were recovered from his residence at Chennai as the Applicant failed to collect them timely. In the investigation caused with the Applicant, the Applicant in his voluntary statement tendered under Section 108 of the Customs Act, 1962 accepted his association with Sh. Namasivayam Sundar and stated that earlier too Sh. Namasivayam Sundar had brought medicines for him in the same manner. Further, in his voluntary statement the applicant admitted that as the import cost of the medicines were much higher than the actual price of the medicines abroad, he had been asking Sh. Namasivayam Sundar to bring these medicines without declaring the same to customs. He also admitted that at that time he was not having the requisite drug license. Accordingly, for his acts of omission and commission, the Applicant was issued with a SCN, wherein, penalty on him under Section 112 of the act *ibid* was proposed. Vide O-I-O No. 257/2017-18 dated 23.03.2018, passed by the joint Commissioner of Customs (Adjudication-Air), Chennai, a penalty of Rs.50,000/- was imposed on the Applicant which has been upheld in the impugned O-I-A.

3. The revision application has been filed, mainly, on the grounds that both the orders of the lower authorities are not maintainable being beyond the scope of the show cause notice as no specific allegation was made against the Applicant in the Show cause notice; that the Commissioner (appeals) has merely upheld the original order on the basis of statements of other persons without corroborative evidence; that the provisions of Drugs and Cosmetic Act were not applicable in this case as the goods were hand carried; that the medicines were brought into India for humanitarian purpose ;that imposition of penalty on the applicant is harsh and uncalled for.

4. Personal hearing in the matter was held in virtual mode on 23.08.2023. Ms. V.Pramilla, Advocate attended the personal hearing for the Applicant and submitted that the SCN ought to have been quashed in light of Hon'ble Apex Court's judgment in the case of M/s Canon India. On merits she submitted that her clients were bonafide and the penalty of Rs.50,000 could have easily been paid by her client and the matter settled, but the tag of smuggling goods is not acceptable to her client. She states that her client has done no wrong as the medicines were merely received by him for free distribution to cancer patients and that he is involved in legal business and has never committed any infraction of law.

5.1. At the outset, it is observed that the Applicant has contested that the SCN itself was not maintainable in light of Hon'ble Apex Court's judgment in the case of M/s Canon India Private limited. A careful scrutiny of the judgment cited reveals that issue in that case pertained to re-assessment of goods which had already been assessed. Hon'ble Apex Court has held that-

*"20. From a conjoint reading of Sections 2(34) and 28 of the Act, it is manifest that only such a Customs Officer who has been assigned the specific functions of assessment and re-assessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under Section 2(34) of the Act is that of specific conferment of such functions."*

Thus, the Hon'ble Court held that officers of DRI were not the proper officer for the purpose of re-assessment as per the Customs Act, 1962. Government observes that the judgment in question was passed in reference to a demand of duty raised under section 28(4) of the Customs act, 1962, whereas, the issue involved in the instant matter is improper import of medicines in baggage in contravention of baggage rules under Section 79 of the Act *ibid* read with the provisions of Drugs and Cosmetics Act, 1940 and the rules made thereunder. The Applicant was held liable to be imposed penalty under Section 112 of the Act for his acts of omission and

commission. It has been elaborately explained by the LAA that the impugned medicines were smuggled into India by passengers on the instructions and at the behest of the Applicant. This fact has been corroborated by statements of the passengers under Section 108 of the act *ibid* as well as the Statement of the Applicant under Section 108 of the act *ibid*, wherein; he has specifically admitted the impugned medicines were smuggled into India on his instructions and on his behest. Therefore, the Government observes that the ratio of judgment of Hon'ble Apex Court is not applicable in the facts and circumstances of the matter in hand.

In view of the above the contention of the Applicant does not appear to be sustainable, hence, cannot be accepted.

5.2. It is also observed that instant application is before this revisionary authority in terms of section 129 DD of the Act *ibid*. Instant revision Application has been filed by the Application against an Order-in-Appeal passed by the Commissioner (Appeals) under Section 128 A of the act *ibid*, wherein, Appeal filed by the Applicant was rejected and the penalty of Rs.50,000/- imposed on the Applicant by the LAA under Section 112 of the Act *ibid* was upheld. Hence, the revisionary authority will restrict itself to the legality of the order passed by the Commissioner (Appeals) under Section 128A of the act *ibid*. From a careful scrutiny of the impugned OIA, it is observed that the Commissioner (Appeals) has *inter-alia* recorded in Para 9 of the impugned OIA that:

*"9. I have carefully .....and for a monetary benefit. Further, the appellant (Applicant herein) had also admitted in his statement that the said consignment of Suxilep 250mg and fosfomycin Sodium for injection were brought into India by Shri Namasivayam Sundar as instructed by him in commercial quantity and without any valid document for carrying the medicines and by not declaring to Customs as the import cost of the medicines were much higher than the actual price of the medicines abroad. Further , he has also agreed that Shri Namasivayam Sundar had also done so on at least three previous occasions for a monetary consideration i.e. seized at Chennai airport and at Shri Namasivayam Sundar's residence , were brought at his behest and were meant for delivery to him.*

***Thus, the mens rea to indulge in smuggling activity is clearly established.***

*The LAA has very elaborately discussed on this issue..... Even at the appeal stage, the appellant (Applicant herein) did not file any documentary evidence in support of his case."*

Thus, it can be clearly seen that the Commissioner(Appeals) has given a sound and logical reasoning while concurring with the LAA on the issue of imposition of penalty under Section 112 of the Act *ibid* on the Applicant herein. The Government finds no infirmity with the reasoning applied by the Commissioner (Appeals).

6. Further the Applicant has contended that no specific allegation was made against the applicant in the show cause Notice. On this contention, the Government observes that the LAA has very elaborately recorded salient portions of the statement tendered by the Applicant under Section 108 of the Act *ibid* before the investigating agency at Para 10 in his Order-In-Original. It is observed that in this statement, the Applicant has inter-alia stated "*that he assured to pay Sh. Namasivayam Sundar Rs.10,000/- for carrying the required medicine; that previously Sh. Namasivayam Sundar had brought Fosfomycin Sodium injection vials on earlier two occasions which was received from him and the Sh. Sundar was paid Rs.10,000/- for each occasion; that Sh. Namasivayam Sundar had brought Suxilep 250 mg capsules once earlier ; that he had asked Sh. Namasivayam Sundar to bring 30 nos of twin box containing totally 60 bottles of Suxilep 250 mg capsules; that he could not collect the medicines from Sh. Namasivayam Sundar as he was on a business trip abroad.*" It is further observed and which has also been recorded by the LAA, that in this statement on being asked as to whether the applicant had any valid document for the medicines carried into India by Sh. Namasivayam Sundar on all the four occasions, the Applicant stated that he did not have any valid document for bringing the said medicines into India. During the same statement, the applicant was asked as to whether he knew that the passengers were carrying medicines in their baggage without valid documents and without declaring to the Customs was against Baggage Rules. The Applicant had admitted that carrying medicines in

baggage without valid documents and without declaring to the Customs was against Baggage Rules. The Applicant had admitted that it was his mistake for asking Sh. Namasivayam Sundar to bring Suxilep 250mg capsules and Fosfomycin Sodium for injection into India without valid document and without declaring to the Customs. Thus , it is observed that on the basis of various acts of omission and commission admitted by the Applicant, it was alleged in the show cause notice that the applicant had rendered himself liable to be penalized under Section 112 of the act *ibid*. Hence, this contention of the applicant too doesn't appear to be sustainable, hence, cannot be accepted.


7. Another point contested by the Applicant is that the Commissioner (Appeals) has merely upheld the original order on the basis of statements of other persons without corroborative evidence. On this contention of the Applicant, the Government observes that a voluntary statement of Statement of Sh. Namasivayam Sundar, who had smuggled the impugned medicines under section 108 of the Act *ibid*, wherein, it was stated that the said medicines were smuggled on the instructions and on behest of the Applicant. Statement of Sh. Namasivayam Sundar was corroborated with the Applicant's own statement recorded under Section 108 of the Act *ibid*, wherein, the Applicant himself admitted that the impugned medicines and the medicines recovered from the residence of Sh. Namasivayam Sundar were smuggled into India on his instructions only. Therefore, the contention of the Applicant that the Commissioner (appeals) has merely upheld the original order on the basis of statements of other persons without corroborative evidence holds no ground in light of the fact that his own voluntary statement under Section 108 of the Act *ibid* corroborates statement of other persons.

8. Finally, the Applicant has contended that the medicines were brought into India for humanitarian purpose and as such penalty imposed on him is harsh and uncalled for. The Government observes that it is not merely the fact of bringing the impugned medicines into India but the manner in which the impugned medicines were brought in India, which is in question . Even if it is presumed that the

impugned medicines were brought into India for humanitarian purposes, the moot point is whether the law of land can be flouted, even if the avowed purpose for the same was philanthropic. That cannot be the case. Therefore the Government observes that the Applicant has knowingly done so, that too on multiple occasions, as accepted by him by his own admission as well as by the statements of Sh. Namasivayam Sundar which has been corroborated by the Applicant himself. The Applicant was free to obtain a regulatory drug licence and import the said medicines for his intended purposes. To the contrary, the Applicant with full knowledge of it being against the law, asked Sh. Namasivayam Sundar to bring the impugned medicines in violations of baggage rules and with an intent to evade customs duty. In light of above, the contention of the Applicant appears to be an afterthought, and hence is unsustainable.

9. In light of the above, the Government finds no reason to interfere in the impugned OIA.

10. Revision application is rejected.

  
11/9/23  
(Shubhagata Kumar)  
Additional Secretary to the Government of India

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Order No. 214/23-Cus dated 11-09-2023

Copy to:

1. The Principal Commissioner of Customs, Commissionerate-I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.



2. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3<sup>rd</sup> Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
3. Ms. V. Pramilla, Advocate, 8D2, 8<sup>th</sup> Floor, J.P.Towers, Nungambakkam, Chennai-600031.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

  
12/09/2023  
**ATTESTED**  
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