

**SPEED POST**



F.No. 373/375/B/SZ/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. 19/2/24.

Order No. 49/24-Cus dated 16.02.2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal C.Cus. I. No. 165/2019 dated 30.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Basheer Ali Kulam Mohamed Ibrahim, Thoothukudi

Respondent : The Principal Commissioner of Customs, Chennai-I

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**ORDER**

Revision Application No. 373/375/B/SZ/2019-RA dated 17.09.2019 has been filed by Shri Basheer Ali Kulam Mohamed Ibrahim, Thoothukudi (hereinafter referred to as the Applicant) against the Order-in-Appeal C.Cus. I. No. 165/2019 dated 30.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals-I) has modified the Order-in-Original bearing OS No. 56/2019-Batch-D dated 26.01.2019 passed by the Assistant Commissioner of Customs (Airport), Anna International Airport, Chennai and give free allowance of two cartons of cigarette and upheld the order of absolute confiscation of rest of the remaining cigarettes seized and penalty imposed on the Applicant.

2. The original authority vide above said Order-in-Original bearing OS No. 56/2019-Batch-D dated 26.01.2019, had confiscated absolutely 3600 numbers of Benson & Hedges Cigarettes sticks valued at Rs. 36,000/-, recovered from Applicant under Section 111(d), 111(l), 111(m) & 111(o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 along with cigarettes and other tobacco products (P & L) Rules, 2008. Besides, a Personal Penalty of Rs. 5,000/- was also imposed on the Applicant under Section 112 (a) of the Act, *ibid*.

3. Brief facts of the case are that, after four days stay abroad, the Applicant arrived at Anna International Airport, Chennai on 26.01.2019. He was intercepted at the exit point of the arrival hall by Customs officers. It has found that the Applicant was a frequent traveller and had brought 3600 numbers of Benson & Hedges Cigarettes sticks valued at Rs. 36,000/- which were in commercial quantity and also did not comply with the provisions of Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act, 2003. He attempted to clear the above items without declaring the same to Customs officials and trying to evade customs duty. He had not complied with the Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011. The purpose to import the impugned goods in baggage was to make profit by selling the same. The Applicant had a previous offence in the month of August, 2018 attempting to smuggle gold by concealing

it in his rectum. The impugned goods were seized by the Customs officers and the matter was adjudicated by the adjudicating authority vide the aforesaid Order-in-Original bearing OS No. 56/2019-Batch-D dated 26.01.2019. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, who has modified the said order vide Order-in-Appeal C.Cus. I. No. 165/2019 dated 30.08.2019. Aggrieved by this order, the Applicant filed the instant revision application.

4. The instant revision application has been filed mainly on the grounds that order of the adjudicating authority is against law, weight of evidence and circumstances and probabilities of the case. It is prayed to return the goods, set aside the impugned order and to permit the Applicant to re-export the impugned goods and also to set aside/ reduce the penalty.

5. Personal hearing in the matter was fixed on 19.01.2024. On behalf of the Applicant, Smt. Kamalamalar Palanikumar, Advocate vide her letter dated 19.01.2024 requested that an order be passed based on the available records and to show leniency while passing the order. None appeared from the Respondent's side nor anything has been heard from them in this matter, hence it is presumed that the department has nothing to add in the matter.

6. The Government has carefully examined the matter. It is observed that the Applicant was intercepted at the exit point of the arrival hall after passing through the Customs Green Channel. The Applicant admitted to the recovery of impugned goods from his baggage without declaring to the Customs, without payment of Customs duty and for a monetary consideration. The Applicant was a short visit passenger, brought impugned goods in commercial quantity which were not compliant with the provisions of Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA 2003), Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008. In addition, the Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011 apply to packaged commodity had not complied with. Also, it was noticed that the Applicant had a

previous offence in the month of August, 2018 attempting to smuggle gold by concealing it in his rectum.

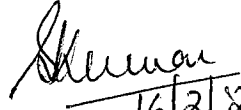
7. On the issue of foreign origin cigarettes recovered from the Applicant, it is on record that the Applicant had not made any declaration in respect of the offending goods carried by him, as required under Section 77 of the Customs Act, 1962. As per the cigarettes and other tobacco products (Packaging & Labelling) Rules, 2008, cigarettes without pictorial warnings are prohibited for import into India. However, the Commissioner (Appeals-I) has given order for release of two cigarette cartons only to the Applicant as free allowance. Therefore, the Government finds that the order for absolute confiscation of the impugned goods by the original authority as upheld by the appellate authority is in order.

8.1 As regards the prayer for permitting re-export of the offending goods, the Government observes that a specific provision regarding re-export of articles imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of *Deepak Bajaj vs Commissioner of Customs (P), Lucknow*{2019(365) ELT 695(All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, the Applicant had not made a true declaration under Section 77.

8.2 Further, the Hon'ble Delhi High Court has, in the case of *Jasvir Kaur vs. UOI* {2009 (241) ELT 621 (Del.)}, held that re-export is not permissible when article is recovered from the passenger while attempting to smuggle it. Hence, the question of allowing re-export does not arise.

9. In the facts and circumstances of the case, the Government finds that the order for absolute confiscation of the impugned goods upheld by Commissioner (Appeals) does not require any interference. Also, the quantum of penalty imposed on the Applicant is neither harsh nor excessive.

10. The revision application is rejected for the reasons aforesaid.

  
16/2/24

(Shubhagata Kumar)  
Additional Secretary to the Government of India


Shri Basheer Ali Kulam Mohamed Ibrahim,  
S/o Shri Kulam Mohamed Ibrahim,  
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Order No. 49 /24-Cus dated 16.02.2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3<sup>rd</sup> floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

  
16/2/24

सरबजीत सिंह / SARABJEET SINGH  
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