

SPEED POST



F.No. 373/373/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...18/3/24

Order No. 68/24-Cus dated 18-03-2024 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. 184 & 185/2019 dated 30.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Liyakathali Mohideen, Pudukottai

Respondent : The Principal Commissioner of Customs, Chennai-I

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ORDER

A Revision Application, bearing No. 373/373/B/SZ/2019-RA dated 17.09.2019, has been filed by Shri Liyakathali Mohideen, Pudukottai (hereinafter referred to as the Applicant), against the Order-in-Appeal C. Cus. I. No. 184 & 185/2019 dated 30.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai, vide which the Commissioner (Appeals) has rejected the appeal filed by the Applicant and also modified the Order-in-Original (O.S No. 70/2019-Batch A) dated 29.01.2019, passed by the Assistant Commissioner of Customs (Airport), International Airport, Chennai by ordering absolute confiscation of impugned seized goods. Vide the aforementioned Order-in-Original dated 29.01.2019, the adjudicating authority ordered for confiscation of three nos. of DJI MAVIC PRO DRONE, totally valued at Rs. 3,30,000/-, under Section 111(d), 111(l), 111(m) & 111(o) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (D&R) Act, 1992, but allowed the Applicant an option to redeem the goods on a fine of Rs. 66,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962. Besides, Personal Penalty of Rs. 16,500/- was also imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant (an Indian Passport holder) who had arrived at Anna International Terminal of Chennai Airport, Meenambakkam, Chennai, from Singapore, on 29.01.2019 and was found to be in possession of three "DJI MAVIC PRO DRONE" make, totally valued at Rs. 3,30,000/-. The Applicant was a frequent traveler. It was observed that the drones weighed around 750 grams and as per the then applicable import policy, were found to be covered under 'Micro' category for which license from DGFT was required in terms of DGCA's letter F.No. 05-13/2014-AED Vol-IV dated 27.08.2018 effective from 01.12.2018. Also, the said drones were not in compliance of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011. As such, the impugned goods were seized under Section 110 of the Customs Act, 1962. The stated purpose of importing the said drones in baggage was to make profit by sale, without declaration and by evading Customs duty. But for the alertness and vigilance of the customs officers and scanning and screening of the baggage, the Applicant would have passed through green channel and the smuggling

would have gone undetected. The requirement of Show Cause Notice was waived by the Applicant and the matter was subsequently adjudicated by the original authority who ordered confiscation of the three drones. Besides, a penalty of Rs. 16,500/- was also imposed on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, which was rejected. The department also filed an appeal with the appellate authority against the Order-in-Original dated 29.01.2019. The appellate authority allowed the appeal of the department and ordered for absolute confiscation of the impugned goods.

3. The instant revision application has been filed mainly on the grounds that order of adjudicating authority is against law, weight of evidence and circumstances and probabilities of the case; he was all along under the control of the officers of customs at the red channel; goods are restricted items not prohibited goods. It is prayed to set aside the impugned order and to permit the Applicant to re-export the impugned goods and to set aside the penalty imposed.

4. Personal hearing in the matter was fixed on 19.01.2024. Smt. Kamalamalar Palanikumar on behalf of the Applicant vide her email 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 regarding adjournment, hence it is presumed that the department has nothing to add in the matter.

5. The Government has examined the matter. It is observed that at the time of this case, the import of Drones was permissible only with the prior permission of the DGCA and against an import license issued, in terms of DGFT Notification No. 16 dated 27.07.2016. The Applicant has not furnished the requisite permission of DGCA and import license issued by DGFT. Further, he did not declare the Drones voluntarily to the Customs officers, as required under Section 77 of the Customs Act, 1962 and these goods were found only when he was intercepted by the Customs officers.

6.1 The Applicant has contended that the import of drone is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* {1971 AIR 293}, the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Drone is not allowed to be imported freely in baggage and it is permitted to be imported only upon the fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil the conditions specified in this behalf. In the case of *M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi* {2003(155) ELT423(SC)}, the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods". Further, in the case of *UOI & Ors vs. M/s Raj Grow Impex LLP & Ors* (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in *Sheikh Mohd. Omer* (supra) and *Om Prakash Bhatia* (supra) to hold that "any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."

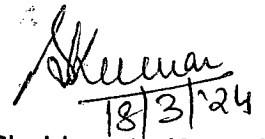
6.2 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of *Kiran Juneja Vs. Union of India & Ors.* has held that "A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods". Hence, there is no doubt that the goods seized in the present case are "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, *ibid.*

6.3 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted. The Government concurs with the Commissioner (Appeals)' finding that the adjudicating authority had incorrectly released

the goods on redemption and holds that the impugned goods are liable for absolute confiscation.

7. Further, as far as re-export of offending goods is concerned, the Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962. 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 {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 the requisite declaration. Hence, the question of allowing re-export also does not arise.

8. In the facts and circumstances of the case, the Government finds that the order for absolute confiscation of the impugned goods by the appellate authority is in order and the quantum of penalty imposed is just and fair. The Order-in-Appeal is therefore upheld and the revision application is rejected.


18/3/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Liyakathali Mohideen, Pudukottai,
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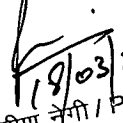
Order No. 68/24-Cus dated 18-03-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd 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, 2nd Floor, Chennai-600001.

4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED


19/03/2024
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