

SPEED POST



F. No. 373/307/B/SZ/2018-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..11/05/23.

Order No. 179 /23-Cus dated 11-05-2023 of the Government of India passed by Sh. Sandeep Prakash, 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. TCP-CUS-000-APP-157-18 dated 08.08.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Abuthahir, Chennai

Respondent : The Commissioner of Customs (P), Tiruchirappalli

ORDER

A Revision Application, bearing No. 373/307/B/SZ/2018-RA dated 12.11.2018, has been filed by Sh. Abuthahir, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-157-18 dated 08.08.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original (O.S No. 03/2018-Batch A) dated 18.01.2018, passed by the Assistant Commissioner of Customs (Airport), Madurai. Vide the aforementioned Order-in-Original, 04 nos of DJI Phantom PRO DRONE, in dismantled condition, each valued at Rs. 1,22,000/- and collectively valued at Rs. 4,88,000/-, have been absolutely confiscated under Section 111(d), 111(l), 111(m) & 111(o) of the Customs Act, 1962. Besides, penalty of Rs. 10,000/- 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 who had arrived at Madurai Airport, from Hongkong, on 18.01.2018. 04 nos of DJI Phantom PRO DRONE (in dismantled condition), as mentioned above, were recovered from him. The matter was adjudicated by the original authority who ordered absolute confiscation of the above-mentioned items. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The revision application has been filed, mainly, on the grounds that the drone parts were in dismantled conditions and they are service parts and not a full drone; that the value of the items was taken on a higher side and not assessed properly; and that the impugned order to be set aside and goods be permitted for re-export and penalty be reduced.

4. Personal hearing in the matter was fixed on 10.05.2023, in virtual mode. Sh. Arvind Kumar, Superintendent appeared for the department. Smt. Kamalamalar Palanikumar, Advocate of the Applicant, vide email dated 10.05.2023, requested to pass an order with the available records as she could not join the hearing. Hence, the matter is taken up for disposal based on available records.

5. The Government has carefully examined the matter. It is observed that no material has been placed on record to support the contention that the imported items were only service parts and not drones in dismantled condition. The Applicant had after waiving Show Cause Notice appeared for hearing before the original authority. No claim to this effect was made before the original authority. Hence, present contention is nothing but an afterthought. Similarly, the issue of alleged incorrect valuation of the goods was not raised before the original authority. Hence, this contention is also an afterthought. Further, the import of Drones is 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 the import license issued by the DGFT. Further, he had not declared the import of Drones voluntarily to the Customs officers, as required under Section 77 of the Customs Act, 1962. As such, the Government is in agreement with the Commissioner (Appeals) that the order of the original authority to absolutely confiscate the goods is correct.

6.1 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, which reads as follows:

"Temporary detention of baggage.- Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name."

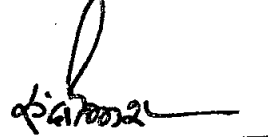
6.2 On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj {2019 (365) ELT 695 (All.)}, held that a declaration under Section 77 is a

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.

6.3 Hence, the question of allowing re-export also does not arise.

7. In the facts and circumstances of the case, the quantum of penalty imposed is just and fair.

8. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

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16/21, 4th Street, New Colony,
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Order No. 179/23-Cus dated 11-05-2023

Copy to:

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2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Smt. P. Kamalamalar, Advocate, No. 10, Sunkrama Street, 2nd Floor, Chennai-600001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board



ATTESTED

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