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सीमा शुल्क आयुक्त का कार्यालय
16 सीमा शुल्क गृह : पणंबूर : मंगलूर - १०

**OFFICE OF THE COMMISSIONER OF CUSTOMS
NEW CUSTOM HOUSE: PANAMBUR: MANGALORE-10**

सी.सं./C.No.VIII/10/18/2009अधिगर्णिया/Adjn
क्रम सं./Sl.No.01/2010 (ADC)

Passed on: 04.01.2010
Issued on : 04.01.2010

मूल आदेश

ORDER-IN-ORIGINAL

Passed by Shri.Ajazuddin, Additional Commissioner of Customs, Mangalore
Customs, Mangalore.

उद्देशिका

P R E A M B L E

१. यह प्रति उस व्यक्ति के व्यक्तिगत उपयोग के लिए बेशुल्क दी जाती है, जिसके लिए जारी की जाती है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. कोई भी व्यक्ति जो इस आदेश से व्यथित है, वे इस आदेश के विरुद्ध, सीमा शुल्क और केंद्रीय उत्पाद शुल्क (अपील्स) नियम 1982 के साथ संलग्न प्रपत्र फार्म सी.ए.-1/सी.ए.-2 (द्विप्रति में) में आयुक्त (अपील्स), सीमा शुल्क, बंगलूर को अपील कर सकते हैं। इस आदेश के पावती के दो महीनों के अंदर अपील दायर कराा चाहिए। इस अपील में यायालय शुल्क स्टॉप रु. 1.62/- (रुपये एक और पैसे बासठ मात्र) लगाा चाहिए। उसके साथ मूल आदेश की दो प्रतियाँ, जिसमें से एक प्रमाणित प्रति होा चाहिए और जिसपर यायालय शुल्क नियम, 1870 के खंड मुद्दे सं. 6 में विरिदिष्ट के अनुसार 2 रुपये (दो रुपये मात्र) की यायालय शुल्क स्टॉप होाा चाहिए।

2. Any person deeming himself aggrieved by this order may appeal against the order in Form C.A-1/C.A-2 (in duplicate) appended to the Customs and Central Excise (Appeals) Rules,1982 to the Commissioner of Customs (Appeals), 16/1, S.P.Complex, 5th Floor, Bangalore.560027. The appeal must be filed within 60 days from the date of communication of this order. An appeal should bear a Court Fee Stamp of Rs.1.62 (Rupee One and sixty two paise only). It should be accompanied by two copies of order in original, one copy of which shall be a certified copy and must bear a court fee stamp of Rs.2/- (Rupees two only) as prescribed under Schedule I, Item 6 of the Court Fees Act 1870.

3. इस आदेश के विरुद्ध अगर कोई व्यक्ति अपील कराा चाहते हैं तो वे अपील करो के पहले लगाये गये दंड तथा माँगे गये शुल्क को भुगताा करें और अपील के साथ ऐसे भुगताा के साक्ष्य प्रस्तुत करें, वहीं तो सीमा शुल्क अधिनियम, 1962 की धारा 129 ई के उल्लंघा के कारण अपील अस्वीकृत किया जा सकता है।

3. Any person desirous of appealing against this order shall pending the appeal, deposit the duty demanded or penalty levied thereon and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance of the provisions of Sec 129 E of the Customs Act 1962.

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BRIEF FACTS OF THE CASE

On receipt of specific intelligence that a certain passenger by name Shri.A.K.Muhammad arriving from Dubai to Bajpe International Airport,Mangalore by Air India Express Flight No.IX0812 carrying huge quantity of Saffron by concealing in his accompanied baggage, Officers of Directorate of Revenue Intelligence intercepted him while passing through green channel. On examination, it was found that the said passenger had got two checked in baggages i.e. one cardboard carton bearing tag No.XH462082 and a plastic bundle wrapped in plastic bearing tag No.XH 462083. He also had two hand baggages i.e. a black coloured carry bag bearing tag No.XH460833 and one polythene carry bag without any tag. He did not declare the contents of the baggage carried by him to the Customs.

2. Two hand baggages were examined and found to contain used clothes and stationer items and no contraband goods. On examination of the cardboard carton bearing tag No.XH462082 a plastic gunny bag containing packets of Saffron were found in transparent pouches with brand name BADIEI and Made in Iran. A total of 58 packets of saffron totally weighing 10kgs was found. The said good were seized on the reasonable belief that the goods wee liable to confiscation inasmuch as the goods were imported into India and attempted to be cleared without payment of Customs duty in contravention of the provisions of Customs Act, 1962 (Hereinafter

referred to as the said Act). The goods used for packaging and concealment of the impugned Saffron were also seized under the provisions of the said Act.

3. Shri.A.K.Muhammad in his statement dated 16.7.09 before the DRI officer stated that a carton box containing 10kg of saffron concealed in plastic bag was handed over to him by one Shri.Ubaid in Dubai for delivery to a certain person in Kasargod, Kerala. He stated that he was aware that carrying such huge quantity of saffron by concealment is illegal and also aware of the implications of smuggling the said goods.

Shri.A.K.Muhammad in his further statement dated 7.8.09 has stated that he is willing to pay the applicable rate of duty, fine and penalty and requested for early conclusion of the case and requested to release his passport.

4. Consequently, a Show Cause Notice was issued to Shri.A.K.Muhammed asking him to show cause to the Additional Commissioner of Customs, Mangalore as to why;
- (i) the said seized goods i.e. 10kgs of saffron smuggled into India should not be confiscated in terms of Section 111(i), Section 111(l) and 111(m) of the said Act and applicable duty on the said goods should not be demanded.

- (ii) the plastic gunny bag and card board carton box used for packing and concealment of the said goods should not be confiscated under Sec118(a) and Sec119 of the said Act;
- (iii) The value of 10kgs of saffron should not be assessed at Rs.20 lakhs for the purpose of Customs Act;
- (iv) Duty of RS.20 lakhs being the 100% on the AV of Rs.20 lakh should not be demanded under CTH 98030000 of Cus.Tariff read with proviso to Sec.28(1) of CA,1962.
- (v) Penalty under Sec.112(a)(v) and /or 112(b)(v) of the said Act should not be imposed on him for his act of omission and commission by which the goods referred at Sl.No.(i)and (ii) above are rendered liable to confiscation under Sec.111 of the said Act;
- (vi) Penalty under Sec114AA of the said Act should not be imposed on him.

DEFENCE

5. Shri.A.K.Muhammad (herein after referred to as AKM)in his reply dated 4.12.09 denied the allegation raised in the SCN that he had not declared the 10kgs of saffron. He stated that he frankly admitted before the DRI officers that apart from his personal effects he was carrying 10kgs of saffron of Iranian origin. He stated that he was not aware that the said goods are not permissible for import into India and requested for permission to re-export the same. He further

stated that DRI proceeded to seize the goods and booked the case against him and that the unfilled disembarkation slip in his possession was also taken by the DRI after he wrote his name, number of flight and number of baggage carried by him. He further stated that he was harassed by the DRI officers and compelled to sign on certain computer printed paper and on a blank paper as the officers of DRI threatened him with arrest and sending him behind the bars.

6. Mr.AKM submitted that the allegation of concealment of saffron would not and cannot sustain as the mahazar itself reveals that the seized saffron was found in transparent plastic pouches with brand name labels on the same. He further stated that if he had the intention to conceal he would have at least removed the brand name label from the packets and therefore it reveals his intention to declare the quantity and quality of the saffron before the proper officer of Customs.
7. He submitted that the allegation of non declaration u/s 111(l) of CA against him is only a concocted allegation in order to cover up the lapses committed by the DRI officers in not permitting his request for re-export of the saffron.
8. He further submitted that being a passenger he needs to make declaration only before the proper officers of Customs and not DRI

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officers. He denied the allegation of the DRI officers that he was intercepted when came out of the Customs barrier through Green channel. He also stated that had he come out of the arrival hall through the Green channel then the disembarkation slip would have been collected by the Customs officer at the exit point and the same would not have been in his possession. In the absence of any seal in the copy of the disembarkation slip provided along with the SCN and in the absence of the gate pass from the concerned Customs officer either during the recording of any statement from him u/s 108 of CA or under a mahazar prepared for the seizure of the gate pass it could only be concluded that he never made any attempt to come out through the Green channel and hence the allegation is false. He said the he did not get an opportunity to declare the contents of his baggage before the proper officer.

9. With regard to the computer printed statement signed by Shri.AKM it was submitted that no explanation is forthcoming as to why the said statement was made in computer print without requiring him to write the same in his own handwriting. This infirmity itself is a strong circumstance, which create a cloud of suspicion over the alleged statement and goes to prove that the statement was not voluntarily given by him and that he was only compelled, harassed and further induced to sign on certain computer printed papers and also on blank papers. He did not get an opportunity even to read or go through the contents of the computer printed papers in which my

signatures were obtained. He stated that he had retracted the said statements through his bail application before the Hon'ble Chief Judicial Magistrate, Mangalore. He further stated that the alleged statement dated 16.7.09 and 7.8.09 were not voluntarily given.

- 10. He stated that the seized saffron does not belong to him and the same was handed over to him by one Mr. Ubaid through Mr. Amir who is his colleague.
- 11. He submitted that the value adopted by the DRI is exaggerated value based on legally inadmissible documents, which reveals the malafides of the DRI. He stated that the value of saffron in Dubai was only 9200 Dirhams per kg and that he is prepared to get the invoice from Dubai evidencing purchase of seized saffron. He has also produced invoice bearing No.2324 dt 13.7.09 issued by Nasser Ali Naseer General Trading Murshid Bazar, Deira, Dubai. As per this invoice the value of seized saffron was 9200 Dirhams per kg and requested to take the said value as the AV.
- 12. He submitted that under notfn.136/90 exemption is granted to all the items brought as baggage and rate of duty is only 35% and if the seized saffron is not treated as baggage, then he is eligible to clear the same by filing a bill of entry and on payment of 30% duty. The proposal for demand of 100% duty is legally unsustainable and impressible. He requested that he be permitted to clear the seized

saffron on payment of baggage rate of duty basing on the transaction value of the goods or in the alternative be permitted to re-export the same.

- 13. Personal hearing in the matter was held on 16.12.09. Shri.Mohammed Zahir ,Advocate appeared on behalf of Mr.AKM. He, inter alia, stated that SCN itself reveals that the value of Iranian saffron is half the value of Kashmir origin and much less than the value of the Spanish origin. The document furnished alongwith the SCN (Page no.28 of the annexed documents) shows that the value of Spanish origin saffron was \$2600. Hence under no stretch of imagination the value of Iranian saffron will be Rs.2 lakh per Kg. He has produced copies of Baggage receipts (four in number), which would falsify the contention of DRI that value of saffron was \$2000-2200 and sky rocketed to \$3000 per kg in 2008.
- 14. The Advocate prayed for rejecting the proposal for confiscation of the seized saffron and requested for the release of the seized saffron on payment of baggage rate of duty.

FINDINGS

- 15. I have gone through the records of the case. The argument of the accused that he was caught by D.R.I. before he could declare the content of the baggage to the Customs is specious. While the accused

passenger declared his name and number of baggage in the disembarkation card, he did not declare the contents of his baggage and value thereof. The accused vide his statements dated 16-07-2009 and dated 07-08-2009 has admitted the fact of improper importation and the said statements have not been retracted as such. Thus, the seized goods are liable to confiscation as proposed in Para 14(i) and (ii) of the Show Cause Notice.

16. Regarding value of the seized Saffron, the accused has submitted an invoice No.2324 dated 13-07-2009 apparently issued by Nasser Ali Naseer General Trading, P.O. Box 5979, Dubai, U.A.E. with a request that the value mentioned therein (i.e. 9200 Dirham/Kg) should be taken as transaction value in respect of the seized Saffron. However, it is found that the said invoice is not reliable on the following grounds -
- (a) The invoice should have been produced before the investigating agency (i.e. D.R.I.) in the course of investigation. Submission of the same at the stage of adjudication makes it look like an afterthought.
 - (b) The invoice is not in the name of the accused passenger or for that matter, neither in the name of Sri.Ubaid who admittedly handed over the said Saffron to the accused. At the place of buyer's name, only 'CASH' is mentioned.

In view of the above, I am inclined to adopt the assessable value proposed in the show cause notice in Para 12 i.e. Rs.20,06,100/-.

- 17. Regarding rate of duty applicable to the said Saffron, the accused has claimed exemption under Notification No.136/90-Cus dated 20-03-1990 whereunder effective rate of duty is 35%. In support of his claim, he has produced four Baggage Receipts the details of which are as under.

Sl.No	Date of Issue	Issued by	Commodity	Quantum	Rate of duty
1	06.05.2008	Calicut Airport	Saffron	9 Kgs	35% + Cess
2	05.03.2008	Chatrapati Shivaji International Airport, Sahar, Mumbai	Saffron	6.5 Kgs	35% + Cess
3	01.04.2008	-- do --	Saffron	12 Kgs	35% + Cess
4	08.05.2008	-- do --	Saffron	8 Kgs	35% + Cess

Also from the wordings of the Notification No.136/90-Cus dated 20-03-1990, it is clear that for all articles classifiable under Chapter Head 98.03, effective rate of duty is 35% except those articles specified in Para 2 thereof.

Moreover, in the Duty calculation Chart contained in Para 12 of show cause notice, rate of duty applied is 35%. The argument

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putforth in the show cause notice, that the smuggled nature and commercial quantity will affect the rate of duty, is not tenable.

As long as the goods are classified under Chapter Head 98.03 and the same are not specified in Para 2 of the Notification No.136/90-Cus dated 20-03-1990, rate of duty will be 35%. This is borne out by the baggage receipt mentioned above which appear to have been issued in similar circumstances as some of them bear endorsement regarding R.F. and adjudication order as well. Smuggled nature of goods invites confiscation and penalty but it does not affect the rate of duty applicable. In view of the above, I find that the duty as calculated in the duty calculation chart in Para 12 of the show cause notice is demandable under Section 28 of the said Act.

18. As the confiscated goods are not prohibited, the same can be released on payment of redemption fine as provided for in Section 125 of the said Act. In the circumstances of the case, I find that the redemption fine amount of Rupees Five Lakh is appropriate.
19. I also find that the accused is liable to penalty both under Section 112 and Section 114AA of the said Act.

In view of the above, I pass the following order:

ORDER

- (i) The seized saffron (10Kgs) is hereby confiscated under Section 111(i), (l) and (m) of the said Act. However, the same can be redeemed by Shri Anwar K M on payment of redemption fine of Rupees Five Lakh, and duty as confirmed hereunder;
- (ii) The plastic gunny bag and the cardboard carton box used for packaging and concealment of the impugned saffron are hereby confiscated under Section 118(a) and 119 of the said Act.
- (iii) Demand of duty and Cess (i.e., Duty Rs.7,02,135/- and Cess Rs.21,064/-) as calculated in the duty calculation chart in Para 12 of show cause notice, is hereby confirmed under Section 28 of the said Act. The said duty is payable before release of the said goods.
- (iv) Penalty of Rupees Three Lakh is imposed on Shri Anwar K M under Section 112(a) of the said Act.
- (v) Penalty of Rupees One Lakh is imposed on Shri Anwar K M under Section 114AA of the said Act.

(Signature)
(AJAZUDDIN)

(Signature) ADDITIONAL COMMISSIONER

To
Shri.Anwar Kepuram Mohammed (holder of Indian Passport No.F1058488)
S/o Late Mohammed, Amina Villa, Post Muttathodi,
Via Vidya Nagar, Kasargod - 671.123 { By Regd.Post }

*Received original copy of
order of AJAZUDDIN
04-01-10
Anwar Kepuram
Mohammed
Kasargod*

Copy to:

- 1. The Commissioner of Customs, Mangalore;
- 2. The Additional Director, DRI, Bangalore / The Deputy Director, DRI, Mangalore.

RECEIVED ON

05 JAN 2010

No. 1042 Sign: *(Signature)*