



सीमा शुल्क आयुक्त का कार्यालय
1व सीमा शुल्क गृह : पणबूर : मंगलूर - १०

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

सी.सं./C.No.VIII/10/3/2010अधिर्णिया/ Adjn

Passed on: 21.4.2010

क्रम सं./Sl.No.2/2010 (ADC)

Issued on : 21.4.2010

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, बेंगलूर को अपील कर सकते हैं। इस आदेश के पावती के दो महीनों के अंदर अपील दायर करा चाहिए। इस अपील में यायालय शुल्क स्टॉप रु. 1.62/- (रुपये एक और पैसे बासठ मात्र) लगाया चाहिए। उसके साथ मूल आदेश की दो प्रतियाँ, जिसमें से एक प्रमाणित प्रति होना चाहिए और जिसपर यायालय शुल्क नियम, 1870 के खंड मुद्दे सं. 6 में विविर्दिष्ट के अनुसार 2 रुपये (दो रुपये मात्र) की यायालय शुल्क स्टॉप होना 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 करा चाहते हैं तो वे अपील करो के पहले लगाये गये दंड तथा माँगे गये शुल्क को भुगता करें और अपील के साथ ऐसे भुगता के साक्ष्य प्रस्तुत करें, नहीं 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.

BRIEF FACTS OF THE CASE

On receipt of specific intelligence that a certain passenger by name Shri. Abdul Nazar Bekal Mavval arriving from Dubai to Bajpe International Airport, Mangalore by Air India Express Flight No. IX0812 is carrying huge quantity of Saffron by concealing in his accompanied baggage, officers of Directorate of Revenue Intelligence (DRI) 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 brown coloured cardboard carton bearing tag No. XH493344 and one blue and black carry bag bearing tag No. XH 493345. He also had one black coloured hand bag without any tag number. He had not declared the contents of the baggage carried by him.

2. The hand baggage was checked and found to contain used clothes and dress material and no contraband goods. The cardboard carton bearing tag No. XH493344 was opened. On top of the box assorted used clothes and undergarments were found. Underneath it a plastic gunny bag containing 18 packets (of 500 gm each) of saffron were found in transparent pouches with brand names PERSIAN and ZARNAMA and 'Made in Iran ' inscription. The said goods (total 9 kg Saffron) were seized on the reasonable belief that the goods were 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 plastic gunny bag and cardboard carton used for concealment of the said Saffron were also seized on the reasonable belief that the same were also liable to confiscation under the said Act.

3. Shri. Abdul Nazar Bekal Mavval in his statement dated 15.9.09 before the DRI officer stated that a carton box containing 9kg of saffron concealed in plastic bag was handed over to him by one Shri. Ubaid in Dubai for delivery to one Shri. Ahmed in Mangalore. 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. He stated that it was the first time that he carried saffron to India.

4. The passenger also appeared liable to penalty under Sections 112 and 114AA of the said Act for improper importation of saffron and non-declaration of the same in the disembarkation slip, as provided for in Section 77 of the said Act.

5. Therefore, a show cause notice was issued to Shri. Abdul Nazar Beka Mavval (the noticee) asking him to show cause to the Additional Commissioner of Customs, Mangalore as to why;

- (i) the said seized goods(viz. 9 kgs of saffron) should not be confiscated in terms of Sections 111(i), 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 cardboard carton used for packing and concealment of the said saffron should not be confiscated under Sec 118(a) and Sec 119 of the said Act.
- (iii) The value of 9kgs of saffron should not be assessed at Rs.18 lakhs for the purpose of the said Act.
- (iv) Duty of Rs. 18 lakhs (at the rate of 100%)should not be demanded under CTH 98030000 of Customs Tariff, read with proviso to Sec.28(1) of the said Act.
- (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

6. The noticee in his reply dated 9.2.2010 to the Show cause notice submitted as under:

(i) that the allegations in the SCN that he had not declared the 9kgs of saffron are not correct ; that he frankly admitted before the DRI officers that apart from his personal effects he was carrying 9 kgs of saffron of Iranian origin; 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.

(ii) 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.

(iii) that being a passenger he need to make declaration only before the proper officers of Customs and not DRI officers. He denied the allegation of the DRI officers that he was intercepted when came out of the Customs barrier through Green channel.

(iv) With regard to the computer printed statement signed by Shri Abdul Nazar Bekal Mavval he submitted that no explanation is forthcoming as why the said statement was made in computer print without requiring him to write the same in his own handwriting; that he had retracted the said statements through his bail application before the Hon'ble Chief Judicial Magistrate, Mangalore.

(v) 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 7300 Dirhams per kg. He has also produced invoice bearing No.2460 dt 12.9.09 issued by Nasser Ali Nasser General Trading, Murshid Bazar, Deira ,Dubai. As per this invoice the value of seized saffron was 7300 Dirhams per kg and requested to adopt the said value for assessment.

(vi) 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.

7. Personal hearing in the case was held on 2.03.2010. Shri.Mohammed Zahir, Advocate, appeared on behalf of the noticee. He reiterated the submission made in the reply to the SCN. He further submitted that for proving the assessable value of the seized saffron, the DRI did not produce any documents except an internet details showing the Indian market price of the saffron. That alone is not sufficient to prove the assessable value. He submitted that in the duty calculation chart mentioned in the Show cause notice, 3350 US Dollars is seen mentioned as the international market price. However no documents is seen relied on to substantiate the said value. In the absence of cogent proof regarding the assessable value of the seized saffron, the transaction value as evidenced from the invoice produced to be accepted.

The Counsel further submitted that penalty under Section 114 AA is not attracted to the facts of the present case. When penalty under Section 112 is being proposed, the proposal to penalize the party under Sec.114AA would amount to double jeopardy. The Counsel further requested time to produce some baggage receipts to prove the assessable value of the seized saffron and to show the rate of duty applicable to the present case.

FINDINGS

8. I have gone through the records of the case. The argument of the accused that he was caught by DRI 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 15.9.09 has admitted the fact of improper importation and the said statements have not been retracted as such. Thus,

the seized 9kg saffron are liable to confiscation under Section 111(i), 111(l) and 111(m) of the said Act. The cardboard cartons and plastic gunny bag used for packing and concealment of the seized saffron are also liable to confiscation under Sections 118(a) and 119 of the said Act.

9. The show cause notice proposes assessable value of Rs,18 lakhs for the seized 9 Kg saffron, calculated on the basis of international market price of US \$3350 per kg. However, no justification has been given for applying this value to the present case. It is common knowledge that different varieties of saffron viz., Spanish, Iranian, Kashmiri fetch different prices in the international market. In Para 10 of another similar show cause notice F.No.S/IV/12/09 dt 03.11.2009, issued by DRI, it has been stated that the value of Iranian saffron is nearly half of the Kashmiri saffron and much less than the value of Spanish saffron. The noticee has submitted an Invoice No.2460 dt.12.09.2009 showing transaction value of UAE 65700 Dirhams (i.e., Rs.7,88,400/- @ Rs.12/- per Dirham) for 9 kg of Iranian saffron. However, the authenticity of the said invoice has not been verified as the same was not submitted to DRI in the course of investigation. No convincing reason has been given by the noticee for non-submission of the said invoice to the investigating agency (DRI) to show transaction value of the said seized saffron. However, in a case pertaining to similar seizure of saffron (10 Kg) by DRI in July 2009, Commissioner (Appeals) vide Order-in-Appeal No.38/2010 dt.04.03.2010, has held as under (Paras 10, 11, and 12) :

“ 10. In arriving at the valuation which was accepted by the adjudicating authority, the investigating officer has relied on the statement of the President of the Iran Trade Promotion Organisation (ITPO) in the Arabian Business.com that the saffron rates have increased from 2000-2200 to 3000 USD compared to 2008. It is a general statement without the mention of the origin of saffron. The spice market Weekly of M/s A.A.Sayin & Co Inc., Hoboken NJ states that the cost of Spanish saffron is USD 2600.

11. In Para 10 of the show cause notice, the discussion of origin and value is at length based on enquiries by the investigating agency and it is stated that saffron of Kashmir origin is the superior one and the Iranian saffron is nearly half of the value of Kashmiri saffron and much less than the value of saffron of the Spanish origin. The show cause notice acknowledges that the rate of Iranian saffron is less than that of Spanish origin and as per the above spice market Weekly, the rate of Spanish saffron is USD 2600 and hence the saffron of Iranian origin should necessarily be lesser than USD 2600. Thus, the following emerges :

12. As per the President of ITPO the value rose to USD 3000 per kg and applying the rate of Rs.48/- per USD the value is Rs.1,44,000/-. The Spanish rate being USD 2600 per kg converts to Rs.1,24,800/- per kg. The Iranian saffron should definitely cost less as per the show cause notice itself. The rationale behind adopting USD 3350 per kg is

not elaborated in the show cause notice nor in the impugned Order-in-Original. As it is on record in the show cause notice itself that the rate of Iranian saffron is lesser than that of Spanish Origin and the appellant has produced proof of contemporaneous imports, as per the value declared by the appellant vide Invoice NO.2324 dt.13.07.2009, per kg saffron costs 9200 Dirhams which is Rs.1,10,400/- (at Rs.12/- per Dirham). In view of the above discussions, I am of the opinion that the Spanish value of USD 2600 per kg of Spanish origin saffron can be safely accepted and the value fixed at Rs.1,24,800/- or rounded to Rs.1,20,000/- which is higher than the declared value of the appellant's saffron of Iranian origin."

10. From the above, I find that the assessable value of Rs.1,20,000/- per kg adopted by the Commissioner (Appeals) can be adopted in the present case as well, as the gap between the two imports is that of only two months. Also, this value is higher than the declared value of 7300 UAE Dirhams per kg (i.e., Rs.87600 per kg @ Rs.12/- per Dirham) vide Invoice No. 2460 dated 12.9.2009.

11. Regarding rate of duty applicable to the said saffron, the noticee has claimed exemption under Notification No.136/90-Cus dt.20.03.1990 whereunder effective rate of duty is 35%. In support of the claim, the counsel 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 dt.20.03.1990, it is clear that for all articles classifiable under Chapter Heading 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 put forth 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 Heading 98.03 and the same are not specified in Para 2 of the Notification No.136/90-Cus dt.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 redemption fine and adjudication order as well. Smuggled nature of goods invites confiscation and penalty but it does not affect the rate of duty applicable. Commissioner of Customs (Appeals), Bangalore vide his Order-in-Appeal No.38/2010 dt.04.03.2010 has upheld levy of 35% duty in a similar case of seizure of 10 Kg saffron by DRI.

12. In view of the above, duty demandable is as under:

Total AV= 1.20 X 9 = 10.80 Lakh

Duty @ 35% = 3.78 Lakh

Cess @ 3% = 11340

Total duty= 378000+ 11340= Rs 389340/

13. 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 a similar case of seizure of 10 kg saffron, Commissioner of Customs (Appeals), Bangalore, vide O-I-A No. 38/ 2010 dated 4.3.2010, has upheld redemption fine amounting to 25% of assessable value. In the same case, Commissioner (Appeals) has reduced penalty under Section 112 of the Act, to Rupees One Lakh. Accordingly, I find that the redemption fine of Rs 2.70 Lakh (Rupees Two lakhs and seventy thousand) and penalty of Rs One Lakh under Section 112, is appropriate in the present case.

14. The noticee did not declare the contents of the baggage on his arrival. Therefore, the case here is that of non-declaration and not mis-declaration. Thus, the question of using false or incorrect material in declaring the imported goods does not arise as envisaged under Section 114AA and hence invoking this section is not proper. In a similar case of seizure of 10 kg saffron, Commissioner of Customs (Appeals), Bangalore, vide O-I-A No. 38/ 2010 dated 4.3.2010, has also held the same. Hence, I find that Section 114AA is not invocable in the present case..

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

ORDER

- (i) The seized saffron (9 kgs) is hereby confiscated under Section 111(i), 111(l) and 111(m) of the said Act. However, the same can be redeemed by Shri.Abdul Nazar Bekal Mavval on payment of redemption fine of Rs 2.70 Lakh (Rupees Two lakhs and seventy thousand) and duty as confirmed hereunder;
- (ii) The cardboard carton box and plastic gunny bag used for packaging and concealment of the impugned saffron are hereby confiscated under Sections 118(a) and 119 of the said Act.
- (iii) Demand of Duty and Cess (Duty Rs 378000/ and Cess Rs 11340), as calculated in Para 12 above, 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 One lakh is imposed on Shri.Abdul Nazar Bekal Mavval under Section 112(a) of the said Act.
- (v) Proposal to impose penalty under Section 114AA of the said Act is hereby dropped.

(AJAZUDDIN)
ADDITIONAL COMMISSIONER

To;
Shri.Abdul Nazar Bekal Mavval,
S/o Late Mahamood.P.P,
11/217, Meethal Mavval (H),
Mavval Post, Kasargod District.

Copy to:

1. The Commissioner of Customs, Mangalore.
2. The Additional Director, DRI, Bangalore / The Deputy Director, DRI, Mangalore.
3. The Assistant Commissioner of Customs(Recovery),NCH,Mangalore