

Feb, 2019
A-1

OFFICE OF THE APPELLATE AUTHORITY,
(Under the Right to Information Act, 2005)
Office of the Commissioner of Customs (Import – II)
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI – 400 001.

F.No. RTI/IMP-II-82/2018-19
RTI/IMP-II-Appeal- 17/2018-19

Date of order: 01.02.2019

Date of issue: 01.02.2019

ORDER PASSED BY: **Shri Rajesh Kothari**
Joint Commissioner of Customs (Import-II)
1st Floor, Old Building, New Custom House,
Ballard Estate, Mumbai- 400 001.

ORDER NO. 17/2018-19

As per Section 19(3) of the RTI Act, 2005, the appeal against this order shall lie within ninety days from the date on which the decision should have been made or actually received, with the Central Information Commission, R.No. 308, 2nd floor, August Kranti Bhavan, Bhikaji Cama Place, New Delhi- 110 066.

BRIEF FACTS OF THE CASE

1. **Shri Dhruva Seroo**, PBEL, 1603 Aurum, Telangana. (hereinafter referred to as appellant) has filed an application dated 05.01.2019 under Right To Information Act, 2005, received in this office on 07.01.2019. Following information was sought by the appellant under RTI Act, 2005.

This is in regard to my parcel with the following details

Carrier: Singapore Post Tracking Number: RF578875898SG Date of arrival at Mumbai Port: Oct 25 2018.

The package has already cleared Chennai Customs and is now being held at the Mumbai Customs without any information being shared with me. Can you please tell me why the package is being held?

2. The CPIO vide its Order No. 68/2018-19 dated 21.12.2018 disposed the above said application in the following manner:

"In this regard, it is informed that the Goods imported are E-cigarette bearing MP. Np. 57717/Tracking No. RF578875898 SG in the name of Shri Dhruva Seroo. The said goods are prohibited under the Drugs and Cosmetics Act, 1940. A Show Cause Notice dated 31.10.2018 was sent to the importer, invoking provisions of Section 111(d) of the Customs Act, 1962 and proposing imposition of penalty under Section 112(a) of the Customs Act, 1962. No reply to Show Cause notice dated 31.10.2018 has been received from the importer with respect to Packet MP-No.57717/2018."

Aggrieved by the order of CPIO the applicant has filed an Appeal dated 05.01.2019 received in this section on 07.01.2019 on the following grounds is as under:-

I acknowledge the Call cum Show Cause Notice File No. 8046/2018 dt 31.10.18 M.P. No. 57717/2018.

My apologise for the delay in responding to this notice. I have been busy due to personal work and not monitoring the email id frequently. I promise to be prompt going forward.

For the benefit of proper documentation of events.

3. I would like to add that no attempt to deliver the notice was made during my presence at the registered address. Additionally, I also have a concierge desk and a mail room where the letter can be delivered in the event a person is not available to receive at residence. Therefore, upon waiting a period of 45 days, I filed an RTI CCUM1/R/2018/50165 to help gain information on my package.

2. The imported goods does not include/contain tobacco or its products. It is only a ENDS device only. Can be categorised as electronic only.

Response to Show Cause.

The principle claim of Call cum Show Cause Notice File No. 8046/2018 dt 31.10.18 M.P. No. 57717/2018, states that ENDS device is prohibited under Drugs and Cosmetics Act 1940.

(Please Find Attached: Circular 46 2018 Customs (1))
According to F.No P 16012/19/2017 TC from the Ministry of Health & Family Welfare, dated 28th August 2018. Also, According the the Circular No 46/2018 Customs,

1. There is no blanket ban/prohibition on importing ENDS under Drugs and Cosmetics Act, 1940. Each imported consignment of ENDS needs specific compliance report from Asst./Deputy Drugs Controller.
2. Upon the advisory by Ministry of Health & Family Welfare, certain States have prohibited ENDS in their jurisdiction, such as Punjab (Vide Circular 5.9.13), Karnataka (Vide Circular 15.6.2016), Mizoram (Vide Circular 8.6.2016), so on. But, Telengana has not yet prohibited ENDS which is my importing State.
3. The consignment has already clear Chennai Customs port. Again, if there was a prohibition based on Drugs and Cosmetics Act 1940, why did Customs officials not stop the consignment at Chennai port.

In case my package has been flagged as non compliant by the Assistant/Deputy Drugs Controllers.

1. Please share Assistant/Deputy Drugs Controllers report and I will follow up with the concerned authority.

In case such a report is not available.

1. I would urge the Customs authority to acquire said report.

Or

2. Release my package, as it has not been flagged non compliant by the Assistant/Deputy Drugs Controllers.

4. In this regard, Point wise Comments on the grounds of appeal were called from DC/PAS section which are as follows:-

In this regard, it is informed that the imported goods are E-cigarette bearing MP.No. 57717/Tracking No.RF578875898 SG in the name of Shri Dhruva Seroo. The said goods are prohibited under the Drugs and Cosmetics Act, 1940. A show Cause Notice dated 31.10.2018 was sent to the importer, invoking provisions of Section 111(d) of the Customs Act, 1962 and proposing imposition of penalty under Section 112(a) of the Customs Act, 1962. No reply to show cause notice dt. 31.10.2018 has been received from the importer, instead reply to the show cause notice has been received vide aforesaid RTI.

As stated above, imported consignment are ENDS (Electronic Nicotine Delivery Systems) and the same are not yet approved as NRTs (Nicotine Replacement Therapy) under the Drugs and Cosmetics Act and also as per the Advisory on Electronic Nicotine Delivery Systems (ENDS) including e-cigarettes vide F.No. P-16012/19/2017-TC dt. 28.08.2018 issued by Ministry of Health & Family Welfare. Circular No.46/2018-Customs issued vide F.No.394/121/2018-Cus (AS) dt. 27.11.2018 by CBIC, New Delhi specifically states as under "*any ENDS including e-cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine flavoured Hookah and the like devices that enable nicotine delivery are not sold, manufactured, distributed, traded, imported and advertised, except for the purpose and in the manner and to the extent, as may be approved under the Drug and Cosmetics, Act 1940 and Rules made thereunder*".

In the instant case, the same was referred to ADC on 08.01.2019 and ADC has refused to give the subject NOC. Hence, the importer may directly take up the matter with ADC

5. Personal Hearing: - Personal Hearing was granted to the applicant on 25.01.2019 at 11.30 AM. However, Shri Dhruva Seroo did not appear for the personal hearing on 25.01.2019.

DISCUSSION AND FINDING

I have carefully gone through the submissions of Appeal & brief facts of the case.

In view of the facts appearing at Para 4 above, I find that the reply submitted by the CPIO was as per the facts existing at the material time in respect of the consignment MP.No. 57717/2018. Now in view of the circular No. 46/2018 issued vide F.No. 394/121/2018-Cus (AS) dt 27.11.2018 by CBIC the approval under drug and cosmetics Act, 1940 is mandatory. As mentioned the instant case was referred to ADC on 08.01.2018 but permission stand refused.

ORDER

6. In view of the above I do not intend to interfere with the CPIO order, hence I reject the appeal filed by the applicant.

राजेश कोठारी
11/2/19

(Rajesh Kothari)

Appellate Authority
Joint Commissioner of Customs (Import-II)
New Custom House, Mumbai.

Copy to:

1. Shri Dhruva Seroo, PBEL, 1603 Aurum, Telangana.Pin-500032.
 (order issued by special post to B. Meir)
 V. Gowda (EM 14916687514)
 01/02/2019
 STA 1K1121019
2. CPIO, The Asstt. Commissioner of Customs, RTI Cell (Import-II), NCH, Mumbai-01.

FIRST APPEAL DETAILS(प्रथम अपील विवरण)

Registration Number (पंजीकरण संख्या):	CCUM1/A/2019/60002 05/01/2019	Date of Receipt (प्राप्ति की तारीख):	05/01/2019
Type of Receipt (रसीद का प्रकार):	Online Receipt Mumbai	Language of Request (अनुरोध की भाषा):	English
Name (नाम):	Dhruva Scroo	Gender (लिंग):	Male
Address (पता):	PBEL 1603 Aurum		
State (राज्य):	Telangana	Country (देश):	India
Phone Number (फोन नंबर):	Details not provided	Mobile Number (मोबाईल नंबर):	+91-7032225000
Email-ID (ईमेल-आईडी):	dhruvaseroo@gmail.com		
Status (स्थिति):	Urban	Educational Status (शैक्षणिक स्थिति):	Above Graduate
Is Requester Below Poverty Line ? (क्या आवेदक गरीबी रेखा से नीचे का है?):	No	Does It Concern Life or Liberty of a person :	Details not provided.
RTI Request Registration No(सूचना का अधिकार अनुरोध पंजीकरण सं.):	CCUM1/R/2018/50165	RTI Request Registration Date(सूचना का अधिकार अनुरोध पत्र दिनांक):	05/01/2019
CPIO's	Details not provided		Details not

s://online.gov.in/RTIMIS/CPIO/appealDetails.php?reg=fhICLzllw6xa8URRDEYKxjY30j9w%2Bzn2UwiReTvcGE%3D

Order/Decision
No.(सीपीआईओ
का आदेश /
निर्णय संख्या)
:Date of Receipt of CPIO's provided
Order/Decision(सीपीआईओ
के आदेश / निर्णय के रसीद
की तारीख) :Ground for
Appeal(अपील
का आधार) :Provided
Incomplete, Misleading
or False InformationReason for delay(if any) in N/A
filing this appeal(इस अपील
को दायर करने में विलंब,
यदि कोई हो, का कारण) :

Respected Sir/Madam,

I acknowledge the Call cum Show Cause Notice File No. 8046/2018 dt
31.10.18 M.P. No. 57717/2018.My apologise for the delay in responding to this notice. I have been busy
due to personal work and not monitoring the email id frequently. I
promise to be prompt going forward.

For the benefit of proper documentation of events.

1. I would like to add that no attempt to deliver the notice was made during my presence at the registered address. Additionally, I also have a concierge desk and a mail room where the letter can be delivered in the event a person is not available to receive at residence. Therefore, upon waiting a period of 45 days, I filed an RTI CCUM1/R/2018/50165 to help gain information on my package.
2. The imported goods does not include/contain tobacco or its products. It is only a ENDS device only. Can be categorised as electronic only.

Response to Show Cause.

The principle claim of Call cum Show Cause Notice File No.
8046/2018 dt 31.10.18 M.P. No. 57717/2018, states that ENDS
device is prohibited under Drugs and Cosmetics Act 1940.

(Please Find Attached: Circular 46 2018 Customs(1))

According to F.No P 16012/19/2017 TC from the Ministry of Health &
Family Welfare, dated 28th August 2018. Also, According the the
Circular No 46/2018 Customs,Prayer or
Relief
Sought(प्रार्थना
या अनुरोध की
गई राहत) :

1. There is no blanket ban/prohibition on importing ENDS under Drugs and Cosmetics Act,1940. Each imported consignment of ENDS needs specific compliance report from Asst./Deputy Drugs Controller.
2. Upon the advisory by Ministry of Health & Family Welfare, certain States have prohibited ENDS in their jurisdiction, such as Punjab(Vide Circular 5.9.13), Kamataka(Vide Circular 15.6.2016), Mizoram(Vide Circular 8.6.2016), so on. But, Telengana has not yet prohibited ENDS which is my importing State.

3. The consignment has already clear Chennai Customs port. Again, if there was a prohibition based on Drugs and Cosmetics Act 1940, why did Customs officials not stop the consignment at Chennai port.

In case my package has been flagged as non compliant by the Assistant/Deputy Drugs Controllers.

1. Please share Assistant/Deputy Drugs Controllers report and I will follow up with the concerned authority.

In case such a report is not available.

1. I would urge the Customs authority to acquire said report.

or

2. Release my package. As it has not been flagged non compliant by the Assistant/Deputy Drugs Controllers.

Regards,
Dhruva Seroo.

ACTION HISTORY OF RTI FIRST APPEAL No. : CCUM1/A/2019/60002

Applicant Name (आवेदक का नाम)	Dhruva Seroo
Text of Appeal (अपील का पाठ)	<p>Respected Sir/Madam,</p> <p>I acknowledge the Call cum Show Cause Notice File No. 8046/2018 dt 31.10.18 M.P. No. 57717/2018.</p> <p>My apologise for the delay in responding to this notice. I have been busy due to personal work and not monitoring the email id frequently. I promise to be prompt going forward.</p> <p>For the benefit of proper documentation of events.</p> <p>1. I would like to add that no attempt to deliver the notice was made during my presence at the registered address. Additionally, I also have a concierge desk and a mail room where the letter can be delivered in the event a person is not available to receive at residence. Therefore, upon waiting a period of 45 days, I filed an RTI CCUM1/R/2018/50165 to help gain information on my package.</p> <p>2. The imported goods does not include/contain tobacco or its products. It is only a ENDS device only. Can be categorised as electronic only.</p> <p>Response to Show Cause.</p>

online.gov.in/RTIMIS/CPIO/appealDetails.php?reg=fhlCLzllw6xa8URRDEYKxjY30j9w%2BZn2UwReTvcGE%3D

The principle claim of Call cum Show Cause Notice File No. 8046/2018 dt 31.10.18 M.P. No. 57717/2018, states that ENDS device is prohibited under Drugs and Cosmetics Act 1940. (Please Find Attached: Circular 46 2018 Customs(1)) According to F.No P 16012/19/2017 TC from the Ministry of Health & Family Welfare, dated 28th August 2018. Also, According the the Circular No 46/2018 Customs,

1. There is no blanket ban/prohibition on importing ENDS under Drugs and Cosmetics Act,1940. Each imported consignment of ENDS needs specific compliance report from Asst./Deputy Drugs Controller.
2. Upon the advisory by Ministry of Health & Family Welfare, certain States have prohibited ENDS in their jurisdiction, such as Punjab(Vide Circular 5.9.13), Karnataka(Vide Circular 15.6.2016), Mizoram(Vide Circular 8.6.2016), so on. But, Telengana has not yet prohibited ENDS, which is my importing State.
3. The consignment has already clear Chennai Customs port. Again, if there was a prohibition based on Drugs and Cosmetics Act 1940, why did Customs officials not stop the consignment at Chennai port.

In case my package has been flagged as non compliant by the Assistant/Deputy Drugs Controllers.

1. Please share Assistant/Deputy Drugs Controllers report and I will follow up with the concerned authority.

In case such a report is not available.

1. I would urge the Customs authority to acquire said report.
- or
2. Release my package, As it has not been flagged non compliant by the Assistant/Deputy Drugs Controllers.

Regards,
Dhruva Seroo.

Reply of Appeal (अपील का उत्तर)

SNo. (क्रमांक)	Action Taken (कार्रवाई की गई)	Date of Action (कार्रवाई की तारीख)	Action Taken By(कार्रवाई के द्वारा लिया)	Remarks(टिप्पणि)
1	FIRST	05/01/2019		

Circular No. 46/2018 – Customs

F.No. 394/121/2018-Cus(AS)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
(Anti-Smuggling Unit)

New Delhi, dated 27th November, 2018

To
All Principal Chief Commissioners/Chief Commissioners of Customs / Customs (Preventive),
All Principal Chief Commissioners/Chief Commissioners of Customs & CGST,
All Principal Commissioners/Commissioners of Customs / Customs (Preventive),
All Principal Commissioners/Commissioners of Customs & CGST,
The Director General, Directorate of Revenue Intelligence

Madam / Sir,

Subject: Advisory on Electronic Nicotine Delivery Systems (ENDS) including e-Cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah, and the like products – reg.

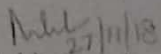
Kind attention is invited to the subject advisory dated 28.08.2018 issued by the Ministry of Health & Family Welfare vide F.No. P-16012/19/2017-TC. A copy of the said advisory is enclosed as **Annexure - I**.

2. Considering the adverse health impact of ENDS/E-Cigarettes and in order to prevent the initiation of nicotine through ENDS by non-smokers and youth, with special attention to vulnerable groups, the Ministry of Health & Family Welfare has issued the aforesaid advisory to ensure that any ENDS including e-Cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah, and the like devices that enable nicotine delivery are not sold, manufactured, distributed, traded, imported and advertised, except for the purpose and in the manner and to the extent, as may be approved under the Drugs and Cosmetics Act, 1940 and Rules made thereunder.
3. In view of the above, it is requested that all the officers under your jurisdiction may be directed to ensure implementation of the aforesaid advisory by referring import consignments of ENDS including e-Cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah, and the like devices / products to the Assistant / Deputy Drugs Controller in their jurisdiction. The Assistant / Deputy Drugs Controllers may thereafter check the compliance of such goods in terms of the Drugs and Cosmetics Act, 1940 and Rules made thereunder. Based on the report of the Assistant / Deputy Drugs Controller, non-compliant consignments should not be allowed clearance and appropriate action should be initiated for violation of provisions of the Allied Act (Drugs and Cosmetics Act, 1940 and Rules made thereunder).

Difficulties faced, if any, may be brought to the notice of the Board.

Yours faithfully,

Encl: As above


(Rohit Anand)

Under Secretary to the Government of India

Dated, the 28th August, 2018

Advisory on Electronic Nicotine Delivery Systems (ENDS) including e-
Cigarettes, Heat-Not-burn devices, Vape, e-Sheesha, e-Nicotine
Flavoured Hookah, and the like products

Whereas, Electronic Nicotine Delivery Systems (ENDS) are devices that heat a solution to create an aerosol, which frequently also contains flavours, usually dissolved into Propylene Glycol or/and Glycerin. Electronic cigarettes, the most common prototype, are devices that do not burn or use tobacco leaves but instead vaporise a solution, which the user then inhales. The main constituents of the solution, in addition to nicotine when nicotine is present, are propylene glycol, with or without glycerol and flavouring agents. ENDS solutions and emissions contain other chemicals, some of them considered to be toxicants. Although ENDS is generally considered a single product class, these products constitute a diverse group with potentially significant differences in the production of toxicants and mechanisms for delivery of nicotine;

And whereas, Electronic Nicotine Delivery System (ENDS) aerosol contains nicotine, the addictive component of tobacco products. In addition to creating dependence, nicotine can have adverse effects on the development of the foetus during pregnancy. It may contribute to cardiovascular disease to the people who use ENDS. Also, nicotine may function as a "tumour promoter" and seems to be involved in the biology of malignant diseases. Foetal and adolescent nicotine exposure may have long-term consequences for brain development, potentially leading to learning and anxiety disorders. A number of metals including lead, chromium, and nickel, and chemicals like formaldehyde have been found in aerosols of some ENDS, with concentrations equal to or greater than traditional cigarettes, under normal experimental conditions of use. As such, the evidence is sufficient to warn children and adolescents, pregnant women, and women of reproductive age against ENDS use and nicotine;

And whereas, nicotine is prohibited for use as an ingredient in any food item under the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011 of the Food Safety and Standards Act, 2006;

And whereas, both Nicotine and Nicotine Sulphate are listed as hazardous chemicals in the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 made under the Environment (Protection) Act, 1986;

And whereas, nicotine is also listed as an insecticide in the Schedule of Insecticides under the Insecticide Act 1968, and subsequently its use as a pesticide is also highly restricted by Government of India;

And whereas, there are possibilities that children, adolescents & youth (and generally non-smokers) will initiate nicotine use through ENDS at a rate greater than expected if ENDS did not exist; and that, once addicted to nicotine through ENDS, such children, adolescents & youth are likely to switch to cigarette smoking;

And whereas, the scientific evidence regarding the effectiveness of ENDS as a smoking cessation aid is scant and of low certainty, making it difficult to draw credible inferences. The Drugs and Cosmetics Act, 1940 & Rules, 1945 permit the use of Nicotine up to 2 mg and 4 mg in gums, lozenges and strips, which may be used as aids for Nicotine Replacement Therapy (NRT). However, such a product should adhere to the provisions of Chapter IV of the Drugs and Cosmetics Act & Rules made thereunder, which require them to be manufactured under a valid drug manufacturing license and also a valid sales license for products containing more than 2mg of nicotine. ENDS are not yet approved as NRT's under the Drugs and Cosmetics Act;

And whereas, the Ministry of Health & Family Welfare, Government of India conducted a Roundtable discussion on Electronic Nicotine Delivery Systems (ENDS) in 2014, wherein eminent doctors, specialists, scientists and officers of Health and Drug departments concluded that available scientific evidences indicate that the ENDS and similar technologies that encourage tobacco use, are hazardous for an active as well as passive users and have an adverse impact on public health;

And whereas, the State Governments of Punjab [Vide Circular dated 5.9.13]; Karnataka [Vide Circular dated 15th June, 2016]; Mizoram [Vide Circular dated 8th

June, 2016]; Kerala [Vide Order dated 1st August, 2016]; Jammu & Kashmir [Vide Circular dated 24th July, 2017]; Uttar Pradesh [Vide Order dated 14th November, 2017]; Bihar [Vide Order dated 28th November, 2017] have prohibited the manufacture, distribution, import and sale of Electronic Nicotine Delivery Systems (ENDS);

And whereas, as per the World Health Organization Report on the Global Tobacco Epidemic 2017, the Governments of thirty (30) countries including Mauritius, Australia, Singapore, Korea (Democratic People's Republic), Sri Lanka, Thailand, Brazil, Mexico, Uruguay, Bahrain, Iran, Saudi Arabia, United Arab Emirates etc, have already banned Electronic Nicotine Delivery System (ENDS) in their countries;

Now therefore, it is evident that Electronic Nicotine Delivery Systems (ENDS) including e-Cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah, and the like devices or products available by whatsoever name, that enable nicotine delivery or its use, are a great health risk to public at large, especially to children, adolescents, pregnant women and women of reproductive age. It is also evident that ENDS are not approved as NRTs under the Drugs and Cosmetics Act and Rules made thereunder.

As such, the States/Union Territories are advised, in larger public health interest and in order to prevent the initiation of ENDS by non-smokers and youth with special attention to vulnerable groups, to ensure that any Electronic Nicotine Delivery Systems (ENDS) including e-Cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah, and the like devices that enable nicotine delivery are not sold (including online sale), manufactured, distributed, traded, imported and advertised in their jurisdictions except for the purpose & in the manner and to the extent, as may be approved under the Drugs and Cosmetics Act, 1940 and Rules made thereunder.

This issues with the approval of Competent Authority.

T. Chinsum Naulak

(T. Chinsum Naulak)

Under Secretary

Ministry of Health & Family Welfare
Government of India

Copy for information and necessary action to:

Principal Secretary (Health) of All States / UTs