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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 373/120/B/16-RA / 727

Date of Issue 20.01.2021

ORDER NO. 02/2021-CUS (SZ)/ASRA/MUMBAI DATED 08.11.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Jalal Mohamed Akbar

Respondent: Commissioner of Customs, Kempegowda International Airport Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 365/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

ORDER

This revision application has been filed by Shri Jalal Mohamed Akbar (herein referred to as Applicant) against the Order in Appeal No. 365/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The Applicant arrived at the Kempegowda International Airport from Bangkok on 03.04.2015. He was intercepted as he was walking towards the green channel. Examination of his baggage resulted in the recovery of five Canon EOS 700D camera with zoom lenses totally valued at Rs. 4,25,000/- (Rupees Four lakhs Twenty Five thousand). The cameras were carried in a carton box and the value of the cameras were not declared in the customs declaration form.

3. After due process of the law vide Order-In-Original No. 94/2015 dated 04.04.2015 the Original Adjudicating Authority ordered confiscation of the goods under Section 111 (1) and (m) of the Customs Act, 1962, but allowed redemption of the same on payment of Rs. 85,000/- (Rupees Eighty five thousand) and imposed penalty of Rs. 85,000/- on the Applicant under Section 112 (a) of the Customs Act, 1962 on the Applicant. A penalty of Rs. 42,000 / - Rupees Forty two thousand) was also imposed under Section 114AA of the Customs Act, 1962

4. Aggrieved by the said order, the Applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 365/2016 dated 21.04.2016 set aside the penalty imposed under Section 114AA of the Customs Act, 1962 and rejected the rest of appeal of the Applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that;

5.1 The learned lower appellate authority has failed to take into account the fact that department had no case of misdeclaration/non declaration as well as any concealment. The applicant has imported only goods which are freely importable under exim policy and followed the provisions of Baggage Rules. All goods brought by the applicant were kept open for examination by the officers and no concealment was detected by the officers. The applicant

purchased the goods on a throw away price with an intention to cover his travel expenses.

5.2 The action of the lower adjudicating authority is against the principles of natural justice as he has given Personal Hearing without any waiver of show cause notice. The adjudicating authority ought to have considered that the applicant did not conceal the goods and they were kept open for examination and the officers had examined the baggage on open condition. As the goods were not prohibited or restricted and are freely importable the adjudicating authority ought to have released the goods on payment of duty, reasonable fine and penalty.

5.3 Learned lower appellate authority ought to have considered the wrong averments made by the adjudicating authority. The applicant totally denied the allegation of non declaration as he has rightly declared the contents of the baggage and he relies the decision of the Hon'ble Tribunal reported in 2006 (203) E L T 580 (Tel Mum) i.e Baggage -Declaration by owner - Packaging list disclosing content of baggage - This is sufficient declaration - Passenger is not required to disclose value of such baggage also - For non-declaration of value neither confiscation nor penalty is imposable - Sections 77, 111 and 112 of Customs Act, 1962. paras 9, 14 This decision was maintained by the Apex Cout (2010 (256) ELT A 19 (SC.)

5.4 The applicant submits that the value adopted by the Department is without any basis and no valuation rules have been followed. The applicant relies the import price and Indian market price which are enclosed for the appellate authority's consideration, which ought to have considered when deciding the quantum of redemption fine while invoking section 125 of the Customs Act 1962. There are catena of cases in which the Appellate Authorities/Tribunals/Courts have held that Duty and redemption fine not to exceed the market value.

5.5 It is submitted that the adjudicating authority has imposed a higher penalty of Rs. 85,000/- under section 112 (a) of the Customs Act 1962 which is harsh when the applicant did not make any attempt to concealed the items or clear without payment of duty.

5.6 The Lower Adjudicating Authority has not relied on any market enquiry to impose redemption fine of Rs.85,000/-. Further the adjudicating authority has failed to appreciate that the applicant did not concealed the goods or mis declared the same.

5.7 The Applicant submitted case laws in favor of his case and prayed for valuing the goods as per valuation data available with the department, reduction of redemption fine and penalty and/or any other order as deemed fit in the interest of the case.

6. A personal hearings in the case were scheduled on 17 / 18.12.2018, 28.11.2019, 05.12.2019, and online on 08.12.2020, 15.12.2020 and 22.12.2020. Shri B. Kumar the Advocate of the Applicant in his letter dated 15.12.2020 requested for dispensing of the personal hearing as he did not have the technical facility to attend the online personal hearing. In his written submissions he submitted that " A packing list disclosing the contents of the baggage is sufficient", For non-declaration of value neither confiscation nor penalty is imposable per decision in the case of Naresh Lokumal Serai Vs Commissioner of Customs reported in 2006 (203) ELT 580 (Tri-Mumbai). The decision was maintained by the Apex court. The letter also cited a judgement of the Hon'ble Madras High court for a lenient view in imposing fine and penalty and reduction of redemption fine and penalty.

7. The Government has gone through the facts of the case. The Applicant had carried the impugned cameras in a box containing cheese balls. The Applicant was walking towards the green channel, when he was supposed to go through the red channel and declare the goods. The goods were discovered when his baggage was taken up for examination. The impugned goods were therefore not declared as required under section 77 of the Customs , Act, 1962 and therefore confiscation of the goods is justified.

8. There is no dispute that five imported cameras cannot be considered as personal baggage, these are in commercial quantity, which have been brought for sale and therefore are not bonafide baggage goods. Applicant has disputed the valuation of the impugned goods, but has not declared the true value and has not provided any evidence to substantiate the same. Government also notes that the

Appellate authority in its order has brought out reduced valuations and observes that the redemption fine imposed on the reduced valuation is appropriate. The Applicant has pleaded for reduction of penalty. Government also notes that the penalty imposed is on the higher side and a reasonable view can therefore be taken in the matter. Government is therefore inclined to accept the plea only in respect of the penalty imposed. The impugned Order in Appeal is therefore partially modified as below.

9. The penalty imposed under section 112 (a) of Rs. 85,000/- (Rupees Eighty Five thousand) is reduced to Rs.40,000/- (Rupees Forty thousand).
10. Revision application is allowed on above terms.

Shrawan
8/11/2021
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.02/2021-CUS (SZ) /ASRA/

DATED 08.11.2021

To,

1. Shri Jalal Mohamed Akbar, No. 1, Chinna Thambi Street, Triplicane, Chennai 600 005, Tamilnadu.
2. The Commissioner of Customs, Kempegowda International Airport, Bangalore..

Copy to:

3. Shri B. K. Associates, # 117/55 Egmore High Road, Egmore, Chennai 600 008.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.