

373/124/B/13-RA  
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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/124/B/13-RA/930

Date of Issue 25.01.2018

ORDER NO. 02/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.01.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. Sadiq Basha Jamal Mohideen.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal

No. C.Cus No. 1067/2013 dated 31.07.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

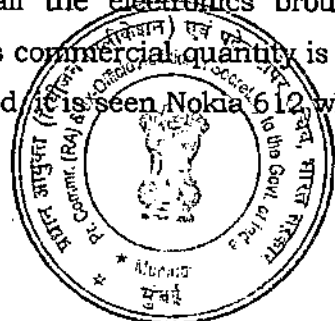
This revision application has been filed by Shri. Sadiq Basha against the order no 1067/2013 dated 31.07.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the appellant, an Indian National had arrived at the Chennai Airport on 27.12.2012. The appellant was intercepted at the Green Channel and examination of his baggage resulted in recovery of assorted electronic goods said to be in commercial quantity valued totally valued at Rs.1,24,000/- as detailed below;

Sl. No.	Description of Goods	Quantity	Amount (in Rs.)
1	Apple I-pad old and used	1	20,000/-
2	Acer Tablet small , used	1	10,000/-
3	I-phone 5 in use	1	4,000/-
4	Nokia N8 with accessories	1	8,000/-
5	Nokia 612 old	2	8,000/-
6	Sony Xperia & Samsung cell phones	2	6,000/-
7	Sony Bravia 40" LED TV	1	35,000/- (released under free allowance)
8		Total	1,24,000/-

As the appellant had not declared the impugned goods and the goods were in commercial quantity the Adjudicating Authority, after allowing one Sony Bravia LED TV valued at Rs. 35,000/- under free allowance, confiscated the items at sr. nos 1 and 2 and allowed redemption on payment of Rs.15,000/-. The remaining goods appearing at Sl. No 3 to 6 of the above list were ordered for absolute confiscation under the provisions of Custom Act,1962 read with Foreign Trade (Development & Regulation) Act, 1992. Penalty of Rs.10,000/- was also imposed under Section 112 (a) of the Customs Act, on the appellant. Aggrieved by this order the appellant filed an appeal with the Commissioner of Customs (Appeals) Chennai.

3. The Commissioner of Customs (Appeals) Chennai, in his order, disagreed with the original Adjudicating Authority observing that, almost all the electronics brought were brought were single in number and therefore to call this as commercial quantity is not at all correct. Regarding the goods that were absolutely confiscated, it is seen Nokia 612 which were



2 nos. and one Sony Xperia & two Samsung cell phones, were reportedly old and used. Secondly, the impugned goods were found kept inside used clothes, and therefore it was misleading to use the term 'conceal'. The goods were not hidden inside any secret cavity. In view of the above the absolute confiscation of the impugned goods was set aside, the redemption fine was reworked in view of allowing redemption and an additional redemption fine of Rs. 10,000/- was imposed vide the Appellate order.

4. Aggrieved with the above order the Applicant has filed this revision application interalia on the following grounds.

- (i) The order of the Commissioner of Customs (Appeals) having found that the applicant had neither concealed the goods nor the goods were in trade quantity ought to have permitted the applicant's release of the goods without personal penalty and redemption fine.
- (ii) that the applicant is not a regular smuggler and imposition of penalty and redemption fine are not warranted.
- (iii) Both the Commissioner of Customs (Appeals) and the Additional Commissioner failed to see that the Supreme court of India has ruled that by imposing heavy Redemption fine and penalty is warranted only in the case of deliberate smuggling cases.
- (iv) that the statement of the applicant was obtained by force and he has retracted statement immediately.
- (v) The Commissioner of Customs (Appeals) having found that the goods were for personal use, and the goods were old and therefore ought not to have applied the theory of profit margin for imposing penalty for redemption fine.
- (vi) The Appellate authority ought to have held that the applicant did not opt for green channel.

Hence it is prayed that this Hon' ble Revision Authority may be pleased to set-aside the order of the Commissioner of Customs (Appeals) and order refund of the amounts paid towards redemption fine and penalty.

5. A personal hearing was held on 22.01.2018 granted to the Applicant on 29.01.2018, which was attended by the Advocate, of the Applicant Shri Abdul Nazeer. The Advocate, reiterated the submissions filed in the grounds of Appeal and pleaded that a lenient view may be taken and penalty may be reduced.




373/124/B/13-RA

6. The Government has gone through the facts of the case and agrees with the observations of the Commissioner (Appeals) in the Appellate order. However, having opted for the green channel it appears that the Applicant had tried to evade paying proper customs duty. However, the confiscated goods were not in commercial quantity and brought for personal use and it also appears that the valuation was on the higher side. It is also observed that there is no allegation that the Applicant was a frequent traveller. There was no concealment of the goods, and neither was there a concerted attempt at smuggling the goods into India. Government therefore holds that while imposing redemption fine and penalty the applicant can be treated with a lenient view.

7. Taking into consideration the foregoing discussion, Government, reduces the additional redemption fine imposed by the Appellate authority on setting aside the absolute confiscation from Rs.10,000/- (Ten thousand) to Rs. 5000/- (Five thousand). This is in addition to the redemption fine imposed by the original Adjudicating Authority. Government also reduces the personal penalty imposed on the Applicant from Rs. 10,000/- (Ten thousand) to Rs. 5,000/- (Five thousand). The impugned order stands modified to that extent.

8. Revision application is partly allowed on above terms.

9. So, ordered.

  
25.1.2018

(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 02/2018-CUS (SZ) /ASRA/

DATED 25.01.2018

To,

Shri Sadiq Basha Jamal Mohideen.  
136/89/A, 3<sup>rd</sup> Street,  
Netaji Nagar Tondiarpet,  
Chennai.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

True Copy Attested

  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.

