



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/117/B/13-RA/1013 Date of Issue 01.02.2018

ORDER NO. ⁰⁸2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.01.2018 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. Hayathkhan Birdous Ali.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No. 1284/2013 dated 19.09.2013 passed by the
Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Hayathkhan Birdous Ali against the order no 1284/2013 dated 19.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. The facts of the case in brief are as under;

The Applicant, Shri Hayathkhan Birdous Ali, arrived at Anna International Airport, Chennai from Colombo on 20.12.2012. Examination of his baggage resulted in the recovery of the following items;

Camera Accessories valued at Rs. 1000/-
 One used Yamaha Amplifier, valued at Rs. 2000/-
 One used Hitachi projector, Rs. 2000/-
 One Samsung 40" LED TV valued at Rs. 35,000/-
 Two used Canon Cameras valued at Rs. 39,000/-
 One Panasonic Camera with lens valued at Rs. 30,000/-
 Four used Samsung mobile phones valued at Rs. 8,000/-
 The goods were totally valued at Rs. 1,17,000/-

3. It was observed that as the Applicant was a frequent traveler and the goods were in commercial quantity. After allowing free allowance of Rs.10,000/- as per baggage rules, goods worth Rs.70,000/- were charged to duty under Foreign Trade (D & R) Act, 1992 and the Customs Act. 1962. The Adjudicating authority confiscated the rest of the impugned items valued at Rs.36,000/- (excepting camera accessories valued at Rs.1000/-) under Section 111(d), (1), (m) and (o) of the Customs Act. 1962 read with Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992 but allowed redemption under section 125 of the Customs Act, 1962 on payment of fine of Rs.17,000/-. The camera accessories valued at Rs.1,000/- were absolutely confiscated by the LAA under Section 111(d), (1),(m) and (o) of the Customs Act, 1962 read with Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992. Personal penalty of Rs. 5,000/- was also

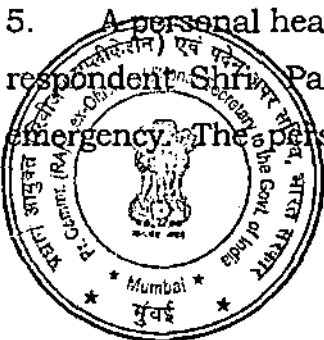


imposed on the appellant under Section 112(a) of Customs Act, 1962. Aggrieved by the order of the LAA the appellant filed an Appeal with the Commissioner of Customs (Appeals) Chennai.

4. The Commissioner of Customs (Appeals) Chennai in his order held that as the appellant was a frequent traveller and had brought impugned goods in commercial quantities and that the impugned goods do not constitute bonafide baggage in terms of section 79 of the Customs Act, 1962 read with para 2.20 of the Foreign Trade Policy in force, therefore the order of the lower authority was just fair, well reasoned and appropriate, and rejected the Appeal. Aggrieved with the above order the Applicant has filed this revision application on the following grounds.

- The order is against the law, weight of evidence and circumstances of the case.
- No reason has been given for absolute confiscation accessories valued at Rs. 1000/-, the applicant requests the Revision authority for re-export of the accessories.
- In a similar case of Haja Zainul Mohd. Rabik Sharief and Naina Mohd Abdul Rahim the Honble Commissioner of Customs (Appeals) has permitted re-export. In another case of Order passed by the Joint Secretary (RA) New Delhi, in F. No. 373/68/B/11-RA-Cus dated 09.03.2012 re-export of goods has been permitted on payment of redemption fine.
- The adjudicating authority has imposed personal penalty more than the value of the goods.
- The Applicant finally prays that the impugned Order in Appeal dated 19.09.2013 be set aside, permit re-export of the accessories valued at Rs.1000/-, reduce the redemption fine of Rs. 17, 000/- and also reduce the penalty of Rs. 5000/- .

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was

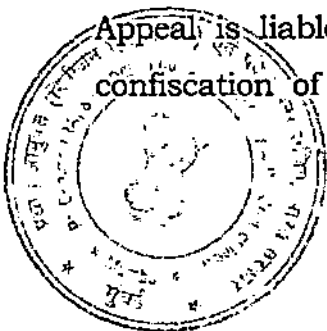


attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the reply to the Show Cause Notice and cited the decisions of GOI/Tribunals where option was given for re-export. Nobody from the department attended the personal hearing.

6. Government has gone through the facts of the case. The Applicant is a frequent traveler and fully aware of the rules for import. No declaration was filed by the Applicant as required under section 77 of the Customs Act, 1962. It also appears that the goods were brought for commercial sale. Further, the value of the goods was not declared by the Applicant at the time of arrival and he did not opt for re-export at the time of seizure and also opted for abandoning the goods at the time of personal hearing before the Commissioner (Appeals). The Government, therefore holds that there was a contravention of the Customs Act, 1962 warranting confiscation of the goods.

7. However, though it does appear that the goods have been brought for commercial sale, the quantity is too less to be termed as commercial quantity. As the applicant has requested for allowing export of the confiscated goods for re-export on payment of redemption fine, Government is inclined to accept the request. The quantity of the goods is too few to be termed as commercial quantity, There was also no charge of concealment and most of the goods are old and used. The reason for frequent visits has also not been explored. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned goods is not justified and while imposing redemption fine and penalty the applicant can be treated with a lenient view.

8. Taking into consideration the foregoing discussion, the impugned Order in Appeal is liable to be modified. Accordingly, Government sets aside absolute confiscation of the camera accessories valued at Rs. 1000/-. The confiscated



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goods alongwith the camera accessories are allowed for re-export on payment of redemption fine and penalty. The redemption fine in lieu of confiscation under section 125 of the Customs Act, 1962 imposed on the confiscated goods and the camera accessories (valued at Rs. 1000/-) for re-export is reduced from Rs.17,000/- (Rupees Seventeen thousand) to Rs.10,000/- (Rupees Ten thousand). Government keeping in view the overall circumstances of the case, holds that the penalty imposed by the original Adjudicating Authority to be reasonable and is accordingly upheld.

8. Revision application is partly allowed on above terms.

9. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 08/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31-01-2018

To,

Shri. Hayathkhan Birdous Ali.
136/89/A, 3rd Street,
Netaji Nagar, Tondiarpet,
Chennai 600 081.

True Copy Attested

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

Copy to:

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

