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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. 380/106-A/B/16-RA

23/12

Date of Issue

13/12/2018

ORDER NO. <sup>1054</sup> /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 30.11.2018 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 : Commissioner of Customs (Airport), CSI Airport, Mumbai.

Respondent : Shri Mohammed Tahir Daud

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-699-15-16 Dt. 07.03.2016 passed by the Commissioner (Appeals), Customs -Zone - III.



ORDER

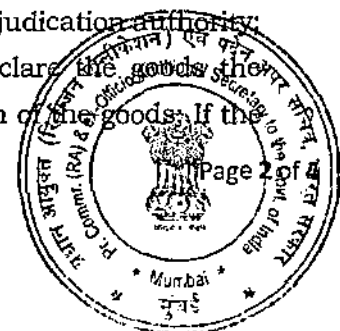
This revision application has been filed by Commissioner of Customs Trichy , (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-699-15-16 Dt. 07.03.2016 passed by the Commissioner (Appeals), Customs -Zone - III.

2. On 06.06.2015 the respondent was intercepted at the CSI Airport after he cleared from the green channel, Mumbai and 27 used old I-phones valued at Rs. 2,82,000/- ( Rupees Two lakhs Eighty two thousand ) were recovered from him. After due process of the law vide Order-In-Original No. Air Cus /49/T-2/199/2015 Batch A dated 06.06.2015 the Original Adjudicating Authority ordered absolute confiscation of the I-phones under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 40,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

3. Aggrieved by the said order, the respondent filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTM-PAX-699-15-16 Dt. 07.03.2016 passed by the Commissioner (Appeals), Customs -Zone - III allowed redemption of the I-phones on payment of Rs. 70,000/- as redemption fine and applicable duty. The penalty imposed was not interfered with.

4. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

4.1 The Order in Appeal is not legal and proper on the following grounds; As per 2.17 of the foreign trade policy all second hand goods, except capital goods shall be restricted for imports and may be imported only in accordance with the provisions of FTP, ITC (HS) HBPv1, Public Notice or an authorization issued in this regard; As per the Bureau of Indian standards, New Delhi" No person shall manufacture, Import, sell or distribute goods which do not conform to Indian Standard; As per notification No. 35 (RE-2012)/2009-2014 dated 28.02.2013, Second hand goods other than Capital goods are "Restricted" which can be imported only against authorization; The Commissioner (Appeals) has erred in allowing release of the goods, the option of release of the goods is the discretionary power of the Adjudication Authority; Considering the facts that the Respondent failed to declare the goods, the Appellate authority ought not to have allowed redemption of the goods. If the



conditions prescribed for import or export of the goods are not complied with it would be considered to be prohibited goods; As the Commissioner (Appeals) has not considered the above facts and as the goods have been imported in contraventions of various laws, they cannot be allowed redemption.

4.2 The Applicant department cited case laws in defence of their case and that the Order in Appeal be set aside and the order in original be upheld or any other order as deemed fit in the facts and circumstances of the case.

5. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled on 01.10.2018, 30.10.2018 and 16.11.2018. However, neither the Respondent nor his advocate attended the said hearing. The Superintendent (Review) attended the personal hearing on 01.10.2018 and reiterated the submissions made in the Revision Application and pleaded that the Order in Appeal be set aside and the Revision Application allowed.

6. The Government has gone through the case records. The respondent was intercepted after being cleared from the green channel. There is no allegation that the goods were indigenously concealed. Import of second hand mobile phones are restricted and not prohibited. The ownership of the goods is not disputed. There are no allegations that the Respondent is involved in such misdemeanors earlier.

7. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that absolute confiscation of the goods is harsh and unjustified and therefore a lenient view can be taken in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the goods on redemption fine and penalty. The Government also notes that the I-phones under import are old and used and therefore it prompts the Government to take a lenient view in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the goods valued at Rs. 2,82,000/- ( Rupees Two lakhs Eighty two thousand ) on redemption fine and penalty on payment of applicable duty. Government also observes that the redemption fine of Rs. 70,000/- ( Rupees Seventy thousand ) imposed under section 125 of the Customs Act, 1962 and the penalty of Rs. 40,000/- ( Rupees Forty thousand ) imposed on the Respondent under Section 112(a) of the



Customs Act, 1962 to be appropriate. The Revision Application is therefore liable to be dismissed.

9. Revision application is accordingly dismissed.
10. So, ordered.

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

ORDER No. <sup>1054</sup>/2018-CUS (WZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

1. Commissioner of Customs,  
CSI Airport, Mumbai,
2. Shri Mohammed Tahir Daud  
B-21, Patel Welfare Society,  
Ambaji Bhagol Jambusar,  
Bharuch,  
Gujarat 392 150.

Copy to:

3. The Commissioner (Appeals) Customs Zone III, Mumbai
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

