

373/184/B/14-RA

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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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F.No. 373/184/B/14-RA

F. No. 373/185/B/14-RA

Date of Issue 04.04.2018

ORDER NO. <sup>127-128</sup> /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.03.2018 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 Sakul Ameen Tamim Ansari

Shri Chinthamathal Ahad Jaffar Khan

Respondent :Commissioner of Customs, Chennai.

Subject :Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal  
No. 17/2014 - Cus dated 26.02.2014 passed  
by the Commissioner of Central Excise, Customs & Service Tax  
(Appeals), Cochin



ORDER

This revision application has been filed by Shri Sakul Ameer Tamim Ansari and Shri Chinthamathal Ahad Jaffar Khan ( herein referred to as Applicants) against the order no 17/2014 dated 26.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicants, both Indian citizens, had arrived at the Calicut International Airport on 06.01.2010. The Applicants were both intercepted by the Officers of the DRI regional unit, Calicut. Examination of their baggage revealed electronic goods in commercial quantities ( Video Cameras, Cameras, GPS, Ipods and accessories etc. ) totally valued at Rs. 29,73,250/-. The Applicants were arrested and subsequently released on bail. The Original Adjudicating Authority vide Order-In-Original No. 2/2010/JC-Cus dated 26.10.2010 ordered for absolute confiscation of the impugned goods under Section 111 (l) and (m) of the Customs Act read with Section 3 (2) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,00,000/- each under Section 112 (a) and Rs. 1,00,000/- each on both the Applicants under Section 114 AA of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 17/2014 dated 26.02.2014 rejected the appeal of the applicant.

4. The applicant has filed this revision application on the grounds that ;

4.1. That the the Authority was well aware that the value of the goods will get reduced day by day as the models will get out dated. In the interest of justice they have pleaded for the goods to be released for re-export on redemption fine and penalty; the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; The value of the goods have been assessed very highly; If calculated the total amount of redemption fine, penalty and duty on the goods will be more than 100% the value of the goods; the Applicants requested that the goods not be sold and if sold, the respondents are bound to return the sale proceeds with interest; The value of the seized goods has been assessed at Rs 29,73,250/-, however the goods have been sold at very less value, clearly indicating that the assessable value of the goods was much less than the assessed value; In a similar case of Nina Mohamed dated 05.07.2006, the officers have given 45% price reduction from the internet prices

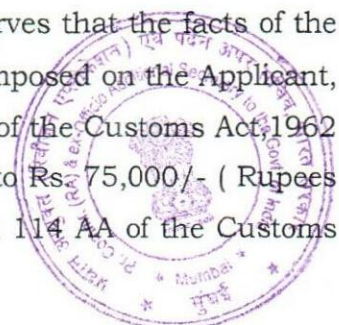
however the Applicants have been given a reduction of 30% from the internet prices; as the valuation is a jurisdictional aspect, it cannot be a matter of assumption and therefore failure to address this aspect has vitiated the detention.

4.2 The Revision Applicant cited various assorted judgments in support of his case and prayed for permission to re-export the goods and reduce the personal penalties of Rs. 1,00,000/- and 1,00,000/- imposed under section 112(a) and 114 AA on the Applicants.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of goods was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The electronic goods were brought in commercial quantity and do not constitute bonafide baggage. It is also a fact that the same were not declared by the Applicant as required under Section 77 of the Customs Act, 1962. Under the circumstances confiscation of the goods is justified.

7. However, the Applicants were intercepted before their exit through the Green Channel. The goods were carried as their baggage and though the goods were in commercial quantity there was no ingenious concealment of the goods. The Applicant contends that the goods were assessed at a much higher price than the actual value and as the disposal of the goods was done at a lower price, the valuation method adopted by the officers therefore appear inappropriate and therefore the contention of the Applicants gains weight and cannot be wished away. The Applicants have pleaded for re-export on imposition of redemption fine and penalty. However as the goods are already disposed off by the department, the Government, is not inclined to interfere with the Order in Appeal on this aspect at this late juncture. The Applicants have also pleaded for reduction of penalty. The Government observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant, Shri Sakul Ameen Tamim Ansari is under section 112 (a) of the Customs Act, 1962 is therefore reduced from Rs. 1,00,000/- (Rupees One lac ) to Rs 75,000/- ( Rupees Seventy Five thousand ) The penalty imposed under section 114 AA of the Customs



Act,1962 is also reduced from Rs. 1,00,000/- (Rupees One lac ) to Rs. 75,000/- ( Rupees Seventy Five thousand ).

8. Similarly, The penalty imposed on the Applicant, Shri Chinthamathal Ahad Jaffar Khan under section 112 (a) of the Customs Act,1962 is therefore reduced from Rs. 1,00,000/- (Rupees One lac ) to Rs. 75,000/- ( Rupees Seventy Five thousand ) The penalty imposed under section 114 AA of the Customs Act,1962 is also reduced from Rs. 1,00,000/- (Rupees One lac ) to Rs. 75,000/- ( Rupees Seventy Five thousand ).

8. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

9. So, ordered.

*Ashok Kumar Mehta*  
21.03.2018

(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>127-128</sup> /2018-CUS (SZ) /ASRA/ MUMBAI

DATED 21.03.2018

To,

**True Copy Attested**

Shri Sakul Ameen Tamim Ansari  
Shri Chinthamathal Ahad Jaffar Khan  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

*Sankar San Munda*  
31/3/18  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.

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2. The Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.
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