



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

F.No. 373/07/B/14-RA

Date of Issue 12/02/2020

ORDER NO. 15/2020-CUS (SZ)/ASRA/MUMBAI DATED 03.02.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Jinendran

Respondent : Commissioner of Central Excise & Customs, Trivandrum

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CAL-EXCUS-000-APP-009-13-14 dated 11.11.2013 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

ORDER

This revision application has been filed by Shri Jinendran (herein after referred to as the Applicant) against the Order in appeal No. CAL-EXCUS-000-APP-009-13-14 dated 11.11.2013 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

2. Briefly stated the facts of the case is that the applicant arrived on 31.12.2012. He forwarded 5 packages of unaccompanied baggage consisting, among other items 50 nos. of Door handles, 4 nos of spot lights, 20 nos. of 400 watt Phillip bulbs, 15 nos 1000 watts Phillip bulbs, 20 nos of choke, 30 nos of Capacitors totally valued at Rs. 1,05,000/- (Rupees One Lac Five thousand).

3. The Original Adjudicating Authority vide Order-In-Original No. 1518-12/13 dated 17.01.2013 ordered confiscation of the impugned goods under Section 111 (d) (l) and (m) of the Customs Act,1962, but allowed redemption of the same on payment of Rs. 1,05,000/- (Rupees One Lac Five thousand) and imposed penalty of Rs. 35,000/- (Rupees Thirty five thousand) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. CAL-EXCUS-000-APP-009-13-14 dated 11.11.2013 rejected the appeal of the applicant.

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

5.1 The order of the appellate authority is illegal, improper and without ~~appreciating the facts and circumstances and the provisions of law in its correct~~ perspective; The impugned order is liable to be set aside for noncompliance of mandatory provisions of the Customs Act and violation of natural justice; The Applicant was not well versed in the language on which the signatures of the Applicant was taken; In no circumstances one would gather either from the inventory portion of the Seizure Report or from the impugned order in original as to what all goods, which were seized and what was the quantity and value of each of those goods. The purported seizure is bad in law for non-compliance of the procedures mandated under law and for total non-application of mind; the applicant had explained before the Commissioner (Appeals) and before the Adjudicating Authority in specific terms that the door handles with lock were meant for his personal use and for gifting to his brother; The finding of non-declaration made by the Commissioner (Appeals) and the Adjudicating Authority

cannot have legal backing in the light of the procedure of open examination of unaccompanied baggage, which is being followed in all air cargo centres; The finding of the Adjudicating Authority that the goods are for resale is not only without any iota of evidence on record but the same is also against the evidences on record; the finding of the Commissioner (Appeals) that the passenger was given a hearing and he informed that the goods brought for sale and he was aware that he was violating the Customs Act is nothing but a lie. In fact the lower authority deliberately omitted to mention the claim of this applicant that the door locks and handles were meant for replacing the door locks at his house and brothers house and also for gifting to his brother whose house was under the finishing stage of construction; At any rate the aggregate value taken for the entire goods under seizure, without specifying the value of each of the goods would not survive in law; Without prejudice to the contentions made above, the quantum of redemption fine imposed is something unheard off, exaggerated and disproportionate to the gravity of the violations alleged, it is also on the higher side without Hence the quantum of redemption fine and penalty may be reduced in consonance with the settled judicial pronouncements.

5.2 The Applicant prayed for setting aside the confiscation of the goods or in the alternative reduce the assessable value of the goods as well as the quantum of redemption fine and penalty imposed.

6. A personal hearing in the case was scheduled in the case on 09.07.2018, 29.08.2019 and 01.10.2019. However neither the Applicants nor the Respondents appeared for the hearing. The Applicant in his written submissions sent by post has reiterated his submissions as per the revision application and waived his right of personal hearing as he is not in a position to come to Mumbai due to financial constraints. The case is therefore being decided on merits.

FINDINGS AND ORDER


7. The Government has gone through the facts of the case. The goods are definitely in commercial quantities and cannot be termed as bonafide baggage goods, thus warranting confiscation. However, Government observes that due diligence is not shown by the department in as much as goods have not been properly enumerated and valued in the seizure report. The valuation of the impugned goods, therefore cannot be properly ascertained. There is no past history of such misdemeanors. The goods are not hazardous or prohibited and therefore allowing redemption is justified. Government also observes that the object of imposing redemption and fine is to reduce the margin of profit. The

redemption fine of Rs. 1,05,000/- (Rupees One lac Five thousand) on the goods valued at Rs. 1,05,000/- (Rupees One lac Five thousand) is high and unjustified. The Applicant has pleaded for reduction of redemption fine and penalty and the Government is inclined to accept the plea partly.

9. The impugned Order is therefore modified as below. The Government allows redemption of the goods on redemption fine and penalty. The redemption fine of Rs. 1,05,000/- (Rupees One lac Five thousand) imposed under section 125 of the Customs Act,1962 is reduced to Rs. 25,000/- (Rupees Twenty Five thousand). There are no grounds for reduction of penalty, the penalty imposed is upheld.

10. Revision application is allowed on above terms.

11. So, ordered.


 (SEEMA ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 15/2020-CUS (SZ) /ASRA/

DATED 03.2.2020

To,

Shri Jinendran, S/o Karunakaran, Mundachali (H), Thekkubagam, Azhikode South (PO), Kannur - 670 009.

Copy to:

1. The Commissioner of Customs, International Airport, Trivandrum.
2. Shri Mohammed Zahir, Advocate, 3/57-A, Nedungadi Gardens, West Nadakkavu, Calicut-673 011, Kerala.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File. ,
5. Spare Copy.