

373/38/B/14-RA
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 373/38/B/14-RA/60

Date of Issue 10.04.2018

ORDER NO. 15/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.03.2018 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. Sultan Abdul Azees

Respondent :Commissioner of Customs(Airport), Mumbai.

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-594/13-14 dated 19.02.2014 passed by the Commissioner of Customs (Appeals-III) Mumbai.



ORDER

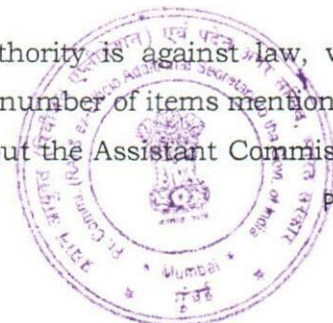
This revision application has been filed by Shri. Sultan Abdul Azees (herein after referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-594/13-14 dated 19.02.2014 passed by the Commissioner of Customs (Appeals-III) Mumbai.

2. Briefly stated facts of the case are that the applicant, had arrived at the CSI Airport and was intercepted on suspicion by the officers while he was trying to clear himself through the green channel. Examination of his baggage resulted in recovery of Video Cameras, Handycams, Camera lenses, etc totally valued at Rs. 19,67,170/- (Rupees Nineteen lacs sixty seven thousand one hundred and seventy). The Applicant was arrested and subsequently released on bail. The Original Adjudicating Authority, vide his order dated 28.09.2011 confiscated the goods under Section 111 (d), (l) and (m) of the Customs Act, 1962. But allowed redemption of the goods on payment of a redemption fine of Rs. 4,00,000/-. A Penalty of Rs. 4,00,000/- was also imposed under Section 112 (a) of the Customs Act, 1962 on the Applicant. Aggrieved by this order the Applicant filed an appeal against the order in original. Commissioner of Customs (Appeals-III) Mumbai vide his Order in Appeal No. MUM-CUSTM-PAX-APP-594/13-14 dated 19.02.2014 rejected the Appeal of the Applicant as timebarred.

3. Referring to the above Order in Appeal dismissing the Appeal as being timebarred, the Applicant states that though the Order in Original was issued on 28.09.2011, he received the order on 26.12.2011, after requesting the same through RTI, and therefore the Appeal has been filed well within time. The Applicant has accordingly deposited the Redemption Fine, Penalty, warehousing charges and customs duty totaling Rs. 15,13,543/- immediately on receipt of the order on 17.01.2012 and redeemed the goods. The department however avers that the Order in Original was received by the advocate of the Applicant on 03.10.2011. Be that as it may, the Government holds that if the delay is not condoned the Revision Applicant will be put to an irreparable loss. In view of the above the Government condones the delay and proceeds to decide the Revision Application on Merits.

4. Aggrieved with the above Orders the Applicant has filed this revision application inter alia on the grounds that;

4.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; a number of items mentioned in the impugned import have been assessed at much lower rate but the Assistant Commissioner of



Customs Airport, Chennai, if the goods are identical the valuation has to be the same and thus it is clear that the department has not assessed the value properly; If the goods are again revalued the value of all the impugned goods would not be more than 6 lacs; The Hon'ble Supreme Court in the case of M/s Aggarwal Distributors P. Ltd., vs The Commissioner of Customs New Delhi has categorically stated that documents displayed on the internet are reliable being unsigned and are not reliable to ascertain the value.

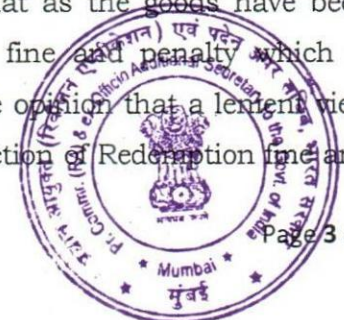
4.2 The Applicant further pleaded that; the Adjudication authority has noted that there is no previous offence against the Applicant; though the Applicant was willing to make a proper declaration and pay appropriate duty it was not accepted by the officers; The total amount of redemption fine penalty and customs duty is more than the actual value of goods; There are numerous cases where goods have been allowed on reduction of redemption fine and penalty;

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of reduction of Redemption fine and penalty, and prayed that the Hon'ble Revisionary Authority reduce substantially the show leniency and mercy and reduce the redemption fine and penalty or he will be put to an irreparable loss.

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

5. The Government has gone through the facts of the case. The Applicant has attempted to import dutiable goods in commercial quantity as personal baggage. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the goods is justified.

6. However, Government observes that there is no allegation that the goods were ingeniously concealed. The only reason for confiscation of the goods is that the goods were brought in commercial quantity. Government is in agreement the similar goods have been assessed at a much lower rate at other airports and accordingly the same benefit needs to be extended to the Applicant. The Government also observes that as the goods have been valued on the higher side, it has led to higher redemption fine and penalty which is unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for reduction of Redemption fine and



penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

7. Taking into consideration the foregoing discussion, Government reduces the redemption fine imposed on the confiscated goods from Rs. 4,00,000/- (Rupees Four Lacs) to Rs. 3,00,000/- (Rupees Three lacs). Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 4,00,000/- (Rupees Four lacs) to Rs. 3,00,000/- (Rupees Three lacs) under section 112(a) of the Customs Act,1962.

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

10. So, ordered.

Ashok Kumar Mehta
28/3/18

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

ORDER No. 157/2018-CUS (SZ)/ASRA/MUMBAI

DATED 28-03-2018

To,

Shri Sultan Abdul Azees
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankar San Munda
5/4/18

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

Copy to:

1. The Commissioner of Customs, CSI Airport, Mumbai.
2. Commissioner of, Customs, (Appeals-III) Mumbai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.

