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SPEED POST

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. 373/403 /B/14 - RA / 57

Date of Issue 10.04.2018

ORDER NO.154/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.02.2018 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. Mohammed Ali

Respondent : Commissioner of Customs (Airport), Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 22 & 23/2014 - Try (CUS) dated 13.08.2014 passed by the Commissioner of Customs and Central Excise (Appeals) Trichy.



ORDER

This revision application has been filed by Shri. Mohammed Ali ( herein after referred to as the "Applicant") against the order in Appeal No. 22 & 23/2014 - Try (CUS) dated 13.08.2014 passed by the Commissioner of Customs and Central Excise (Appeals) Trichy.

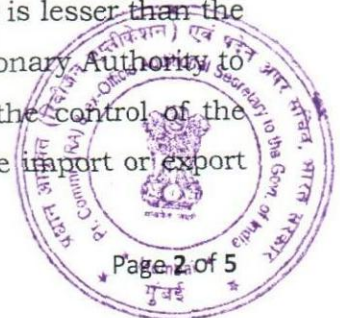
2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 10.12.2013. Examination of his baggage resulted in recovery of Assorted goods in commercial quantity totally valued at Rs.4,22,925/- as detailed below;

Sl. No.	Description of Goods	Quantity	Amount (in Rs.)
1	Silver Watches ( Platinum coated)	77	2,31,000/-
2	Silver Bangles	173	1,27,925/-
3	30 dozens of Baby Garments	30 dozen	9,000/-
4	Sony Bravia LED TV 46" W70	one	55,000
		<b>Total</b>	<b>4,22,925/-</b>

The Original Adjudicating Authority, absolutely confiscated all the above mentioned goods referred to above under Section 111 (i), (l), and (m) of the Customs Act,1962. A penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs and Central Excise (Appeals) Trichy. Commissioner of Customs and Central Excise (Appeals) Trichy. vide his Order-in-Appeal No. 22 & 23/2014 - Try (CUS) dated 13.08.2014 rejected the Appeal of the Applicant.

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

3.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; The only allegation is non declaration and the department has not exercised the option available under section 125 of the Customs Act,1962; The value of the goods is lesser than the value assessed and hence the Applicants requests the Revisionary Authority to re-export the goods; The Applicants were all along under the control of the officers at the red channel ; Goods must be prohibited before import or export



simple non-declaration goods cannot become prohibited; even assuming without admitting that the Applicant did not declare the goods it is only a technical fault; he is owner of the said goods and is claiming the same;

3.2 The Applicant further pleaded that as the value of the goods will be reduced day by day and will become outdated, it is requested that the goods be released; there is no provision in the Customs Act which made it mandatory to confiscate absolutely. Section 125 it is open for the Authority to give an option for redemption against payment of fine; There are numerous cases where goods have been allowed for re-export on nominal fine and penalty; The penalty imposed is high inspite of there being no previous offence against the Applicant;

3.3 The Revision Applicant cited various assorted judgments and boards policies in support of re-export of the goods and in support of his case and prayed for permission to re-export the goods on payment of nominal redemption fine and reduced personal penalty and thus render justice.

4. 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 the goods was allowed. Nobody from the department attended the personal hearing.

5. The Government has gone through the facts of the case. The goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. The goods were also brought in excess quantity and under the circumstances confiscation of the goods is justified.

6. However, the Applicant was not intercepted while trying to exit the Green Channel. There was no ingenious concealment of the goods, and neither was there a concerted attempt at smuggling the goods into India. The Applicant is a frequent traveller, but does not have any previous offence registered against him. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature." Thus, mere non-submission of the declaration cannot be held against the Applicant. Further, 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 observes that absolute confiscation is harsh and unjustified and a lenient view can be taken in the matter. The Applicant has pleaded for re-export and for reduction of Redemption fine and penalty and Government is inclined to accept the plea. The order of absolute confiscation of the goods in the impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated goods for re-export in lieu of fine. The goods totally valued at Rs.4,22,925/- ( Rupees Four lacs Twenty two thousand Nine hundred and twenty five) is ordered to be redeemed for re-export on payment of redemption fine of Rs.2,00,000/-(Rupees Two lacs ) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs 40,000/- ( Rupees Forty thousand ) 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.

*(Handwritten signature)*  
28/01/18

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

ORDER No. 154/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28-03-2018

To,

Shri Mohammed Ali  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

**True Copy Attested**

*(Handwritten signature)*  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Trivandrum Airport, Trichy.
2. The Commissioner of Customs and Central Excise (Appeals) Trichy.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

