

373/43/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. 373/43/B/14-RA/१७

Date of Issue 10.04.2018

ORDER NO. 157/2018-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. Shahul Hameed Khajanajumudheen

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 1781/2013 dated 05.12.2013 passed by the Commissioner of Customs(Appeals) Chennai.



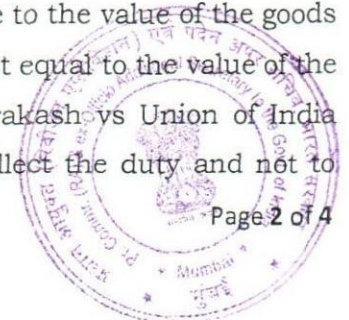
ORDER

This revision application has been filed by Shri. Shahul Hameed Khajanajumudheen (herein after referred to as the Applicant) against the order in Appeal C. Cus No. 1781/2013 dated 05.12.2013 passed by the Commissioner of Customs(Appeals) Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the International Airport Chennai 11.04.2012. The Applicant was intercepted by the officers of Air Intelligence Unit while he was trying to cross the Green channel and examination of his baggage resulted in recovery of assorted electronic goods in commercial quantity totally valued at Rs. 3,36,000/- (Three lacs thirty six thousand). The Applicant was arrested and subsequently released on bail. The Original Adjudicating Authority, vide his order 199/2013 dated 01.03.2013 confiscated the goods under Section 111 (d) and (m) of the Customs Act,1962. But allowed redemption of the goods on payment of a redemption fine of Rs. 1,68,000/-. A Penalty of Rs. 33,600/- 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. The Commissioner of Customs (Appeals) Chennai, vide his C. Cus No. 1781/2013 dated 05.12.2013 rejected the Appeal of the Applicant.

3. Aggrieved with the above order the Applicant has filed this revision application inter alia 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 value of the goods is lesser than the value assessed; he is the owner of the goods; the Adjudicating Authority has allowed the Applicant to redeem the goods on payment of redemption fine; he was arrested inspite of the value of the goods being less than 5 lacs; the CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card, such an exercise was not conducted by the officers; the hon'ble Supreme Court in the case of M/s Aggrawal Distributors (P) Ltd., vs Commr. Of Customs , New Delhi has held that the internet prices are not reliable, however the adjudicating authority has relied on such prices to arrive at the value inspite of the Supreme Court order. The total value of the Redemption fine, Personal penalty is 50% and 10% and is totally disproportionate to the value of the goods and very high and unreasonable; Customs duty totally is almost equal to the value of the goods. the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to



punish the person for infringement of its provisions; the redemption fine of Rs. 5,00,000/- and and penalty of Rs. 5,00,000/- is very high and unreasonable.

3.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of 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 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 been involved in two previous cases. The fact that the some of the goods were in commercial quantity is not disputed. When the officers enquired whether he was carrying any dutiable goods the Applicant stated in the negative. A written declaration of the goods 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. Not all the goods are brought by the Applicant is commercial in quantity, and these goods that are, are old and used. The valuation of the goods appears to be high and the redemption fine and penalty imposed is also on the higher side. The Applicant has pleaded for reduction of penalty and the Government is inclined to accept his plea. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The redemption fine and penalty imposed is required to be reduced and the impugned Order in Appeal therefore needs to be modified.

8. Taking into consideration the foregoing discussion, Government reduces redemption fine imposed on the confiscated goods valued at Rs. 3,36,000/- (Three lacs thirty six thousand) from Rs. 1,68,000/- (One lac Sixty eight thousand) to Rs1,00,000/- (Rupees One lac). 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. 33,600/- (Rupees Thirty three thousand six hundred) to Rs 25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962.



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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,

True Copy Attested

Shri Shahul Hameed Khajanajumudheen
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

Sankarsan Munda
10/3/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.

