



सत्यमेव जयते

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

F.No. 373/218/B/14-RA / 1075

Date of Issue
06.02.2018

ORDER NO. 15/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.01.2018 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. Mohamed Shafiq.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus No. 841/2014 dated 12.05.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Mohamed Shafiq (hereinafter referred to as the Applicant) against the order no 841/2014 dated 12.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived from Bangkok at the Chennai Airport on 16.01.2014. An examination of his baggage resulted in recovery of 8 nos Iphones 5S (fake version) and 6 nos Samsung Galaxy Note 3 (fake version) together valued at Rs. 84,000/-. As the impugned goods were fake and in commercial quantity the Adjudicating Authority, ordered absolute confiscation under the provisions of Custom Act,1962 read with Foreign Trade (Development & Regulation) Act, 1992. Penalty of Rs.8,500/- was also imposed under Section 112 (a) of the Customs Act, 1962 on the applicant. Aggrieved by this order the appellant filed an appeal with the Commissioner of Customs (Appeals) Chennai.

3. The Commissioner of Customs (Appeals) Chennai, rejected the appeal of the Applicant stating that the Applicant was intercepted while he was exiting the green channel without declaring it to the Customs and the impugned phones are in commercial quantity for sale, and do not constitute bonafide baggage in terms of section 79 of the Customs Act, 1962.

4. Aggrieved with the above order the Applicant has filed this revision application interalia on the following grounds.

(i) The order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

(ii) The authority is well aware value of the electronic goods will be reduced day by day and the model will be outdated and goods will become scrap, instead of keeping the goods in the godown it would be better to release or re-export the goods by imposing redemption fine and penalty to avoid revenue loss to Government.

(iii) The decision of the authority that the seized goods are fake version is not based on any material analysis. In the absence of any report or concrete evidence the seized goods cannot be certified as fake.

(iv) The applicant further submits that at the time of arrival the appellant showed the purchase bill to the authorities but they refused to accept the same. Further, he had



Shafiq

purchased the goods at a lesser rate but the authority has arbitrarily rated them on the higher side.

(v) The applicant further respectfully submits that at the time of arrival he declared the correct value of the goods and also informed that seized goods are used ones and he brought the same for own use not for third party or trade. Therefore the appellant pleaded before the adjudicating authority to permit him to export the goods. But the adjudication authority failed to even consider the same and the passed an order for confiscation.

(vi) The authority imposed higher personally penalty without any valid reason and it is unreasonable and it is prayed that the same is to be reduced substantially.

Hence it is prayed that the Hon'ble Revision Authority may be pleased to set-aside the impugned order of the Commissioner of Customs (Appeals) and allow re-export of the goods with a reduction in personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the Revision Application and cited the decisions of GOI/Tribunals in their favour and pleaded for re-export and reduction in personal penalty.

6. The Government has carefully gone through the facts of the case. The Applicant having opted for the green channel indicates that he had tried to evade paying proper customs duty. Fourteen phones just cannot be brought in for personal use and it is clear the phones were in commercial quantity brought for commercial sale. Therefore confiscation of the goods is justified. However, the Applicant avers that the phones were used ones and it also appears that the valuation was on the higher side. It is also observed that there is no allegation that the Applicant was a frequent traveler. There was no concealment of the goods, and neither was there a concerted attempt at smuggling the goods into India. It is also observed that the value of electronic goods lessens with time and electronic goods also deteriorate with time. Government is of the opinion that when such used electronics are brought into the country and when the appellants expresses desire and intention to re-export the same, the department without



hesitation should allow the same on suitable redemption fine and penalty without hesitation. The Applicant has pleaded for re-export and Government is inclined to accept the plea. In view of the aforesaid discussions Government also holds that while imposing redemption fine and penalty the applicant can be treated with a lenient view.

7. The Government sets aside absolute confiscation and allows the confiscated goods, valued at Rs.84,000/- . (Rupees eighty four thousand) to be redeemed for re-export on redemption fine of Rs. 25,000/- (Rupees Twenty five thousand). Government also reduces the personal penalty imposed on the Applicant from Rs.8,500/- (Rupees Eight thousand five hundred) to Rs. 5,000/- (Rupees Five Thousand) under section 112(a) of the Customs Act,1962. The impugned order stands modified to that extent.

8. Revision application is partly allowed on above terms.

9. So, ordered.

Ashok Kumar Mehta
31.1.18

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

ORDER No. 1572018-CUS (SZ) /ASRA/MUMBAI

DATED 31-01-2018

To,

Shri Mohamed Shafiq.
S/o Kaleel Rehman,
No 39 Linghi Chetty Street,
Mannady Chennai-600 006.

True Copy Attested

Sankar San Munda
31/1/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & 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.

