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F.No.373/99-A/B/13-RA-CUS

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....21/3/16.....

ORDER NO. 17/2016-CUS DATED 25.02.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act, against the Order-in-Appeal No.C.Cus No.1362/ 2013 dated 30.09.2012 passed by Commissioner of Customs (Appeal), Chennai.

Applicant : Mr. Baisul Rahuman.

Respondent : Commissioner of Customs, (Airport) Chennai.

ORDER

This Revision Application is filed by Sh. Baisul Rahuman (hereinafter referred to as the Applicant) against the Order-in-Appeal No. C.Cus No.1362/2013 dated 30.09.2012 passed by Commissioner of Customs, (Appeals) Chennai, with respect to Order-in-Original No. O.S. No. 792/2012-AIR- dated 14.11.2013 passed by Assistant Commissioner of Customs,(Airport) Chennai.

2. The gist of the case is that the applicant had arrived at Chennai Airport from Colombo on 14.11.2012 and attempted to walk through green channel without declaring the goods as required under Section 77 of the Customs Act, 1962. On examination of passenger baggage, it was seen that the applicant had brought electronic goods valued At Rs 2,98,500/-. It was also seen from the records that the applicant was a frequent traveler and had brought the goods in commercial quantity. Hence, the adjudicating authority had confiscated the goods under Section 111 (d), (l), (m) & (o) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (D & R) Act, 1992. However, the passenger was given an option to redeem the goods on payment of fine of Rs 1,50,000/- under Section 125 of the Customs Act 1962 and also penalty of Rs 30,000/- was imposed under Section 112(a) of the Customs Act, 1962 upon him.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal dated 30.09.2013 rejected the appeal of the applicant Shri Baisul Rahuman being devoid of merit.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 That the Order of the respondent are bad in law, weight of evidence and probabilities of the case.

4.2 That both the respondents failed to see that the true declaration made by the applicant before the concerned officers at Airport and nothing concealed nor misdeclared by the applicant.

4.3. That the respondent ought to have seen that the applicant had no any bad antecedent in the past and further he brought the goods not for trading but for his relatives and friends in India as gifts for them.

4.4 That both the respondents have failed to see that the applicant had opted red channel to prove his bona fideness that he has got dutiable goods. However the officers have totally ignored this and registered a case against the applicant.

4.5 That the first appellate authority in an appeal before it had not considered other relevant points and records but to modify and reduce redemption fine and penalty.

4.6 That the applicant therefore prays that the Hon'ble Revisionary Authority may be pleased to set aside both the lower authorities orders and grant relief by fully set aside personal penalty of Rs. 30,000/- & redemption fine of Rs. 1,50,000/- and render justice.

5. Personal hearing was scheduled in this case on 07.09.2015 & 13.10.2015 Neither the applicant nor respondent attended the hearing. Applicant through his authorized counsel Shri K. Mohammad Ismail has requested Government vide letter dated 06.10.2015 for waiver of personal hearing and to treat his grounds of revision as his written submission for the Revision.

6. Government has carefully gone through the relevant case records available in case files, written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records Government observes that the applicant had opted for Customs Green Channel clearance and did not declare the goods as required under Section 77 of the Customs Act, 1962. On examination, applicant was found carrying miscellaneous electronic goods along with cartoons of many branded cigarettes in commercial quantity as per details of the inventory of impugned goods mentioned in Order-in-Original No. OS No.792/2012 dated 14.11.2012. The said goods did not constitute bonafide baggage in terms of Section 77, 79 & 11 of the Act *ibid* and were imported in violation of the provision of Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992. Hence the original adjudicating authority confiscated the electronic goods giving an option to redeem them on payment of fine of Rs. 1,50,000/- under Section 125 of the Customs Act, 1962 and imposed penalty of Rs.30,000/- under Section 112(a) of the Act. The cigarettes were absolutely confiscated. Aggrieved by the Order-in-Original the applicant filed appeal before Commissioner (Appeals) against imposition of fine and penalty which was rejected. Now the applicant has filed revision application on the grounds in para 4 above for setting aside personal penalty and redemption fine.

8. Government notes that in grounds of revision the applicant has disputed the non declaration of goods by walking through green channel and asserted that he had opted for red channel to prove his bonafideness that he brought dutiable goods. Government notes that in the impugned Order-in-Original the records of personal hearing read as under:

" The Pax was heard. He has accepted that he brought these hard discs and the cell phones in commercial quantity. He has tried to cross the green channel without any declaration to the Customs Authorities."

9. There is nothing on record to show that the said submission has been made under any pressure or duress. In fact it is undeniably a voluntary statement made by the applicant during the course of personal hearing granted in the interest of natural justice.

10. Government opines that any oral submission made before the adjudicating authority will be a material piece of evidence. In view of the specific admission made by the applicant before the adjudicating authority, Government is inclined to hold that the applicant attempted to walk through green channel without declaring the impugned goods that too in commercial quantity. Thus, applicant contravened the provisions of Section 77, 79 & 11 of the Act ibid read with para 2.20 of Exim policy and provisions of Section 3(3) of Foreign Trade (B&R) Act, 1992. The impugned electronic goods had been rightly confiscated by the adjudicating authority under Section 111(d), (l), (m) of the Customs Act, 1962 and allowing them on payment of redemption fine which also renders the applicant liable for imposition of penalty under Section 112(a) of the Act, ibid.

11. Government further notes that not only has the applicant attempted to smuggle the impugned goods in substantial quantity without declaring but it is an uncontested fact on record he is also a habitual offender. Government therefore, finds no merit in the plea of the applicant to set aside the redemption fine and personal penalty.

12. In view of the above discussion, Government finds no infirmity in the impugned Order-in-Appeal and upholds the same.

13. The Revision Applications is rejected as devoid of merits.

14. So, ordered.




(RIMJHIM PRASAD)

Joint Secretary to the Government of India

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Shri Baisul Rahuman,
No. 12/34, Middle Street,
Thondi Post,
Ramanathapuram-623-409,
Chennai-600001.

ATTESTED


Under Secretary (A)

ORDER NO. 17/2016-CUS DATED 15.02.2016

Copy to:

1. The Commissioner of Customs (Airport & Aircargo), Integrated Air Export Complex, Meenambakkam, Chennai-600027.
2. The Commissioner of Customs (Appeal), Customs House, Chennai-600001.
3. The Assistant Commissioner of Customs, Airport Chennai-600027.
4. Shri K. Mohamed Ismail , Advocate & Notary Public New No. 102, Linghi Chetty Street, Chennai-600001.
5. Guard File.
6. PA to JS (RA).
7. Spare Copy.

ATTESTED

(Shaukat Ali)
Under Secretary (RA)