

373/404/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. 373/404/B/14-RA/10

Date of Issue 17.04.2018

ORDER NO. 173/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 11.04.2018 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. Ibrahim Haneefa

Respondent : Commissioner of Customs(Airport), Coimbatore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal CMB- CEX-000-App-No. 148-149/2014 dated 19.08.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals) Coimbatore.



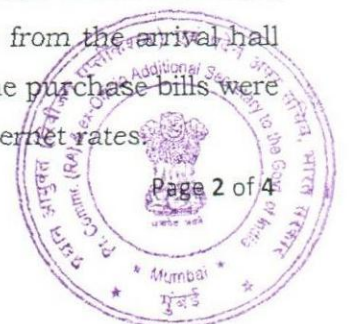
ORDER

This revision application has been filed by Shri Ibrahim Haneefa (herein after referred to as the Applicant) against the order no CMB- CEX-000-App- 148-149/2014 dated 19.08.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals) Coimbatore.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the International Airport Coimbatore on 15.04.2013. The Applicant was intercepted in the Arrival hall by the officers of the Directorate of Revenue Intelligence and examination of his baggage resulted in recovery of 7 nos Sony Brand video Camera (Model-HXR-NX5), 7 nos. Nikon Brand SLR Lens (Model AFS-Nikkor 18-105mm), 7 nos Nikon Brand digital cameras (Model D-90), 18 nos Sony brand digital video camera (Model HVR-Z5) and recorder DX Zoom SLR lenses (model AFS – Nikkor 18-105 mm), 17 nos. (Model DCR – SR21E) and one no. Sony brand digital video camera (Model HVR-Z5) and 35 nos of Sony brand Xperia mobiles totally valued at Rs.31,47,344/-. The Applicant was arrested and remanded to judicial custody and subsequently released on bail. As the Applicant had not declared the impugned goods and the goods were in commercial quantity the Original Adjudicating Authority, vide her order 01/2014 ADC dated 27.03.2014 confiscated the all the above mentioned items under Section 111 (d) and (m) of the Customs Act,1962 and allowed redemption on the request of the Applicant on payment of Redemption fine of Rs. Rs.8,00,000/-. A Penalty of Rs. 8,00,000/- 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. The Commissioner of Customs, Central Excise and Service Tax (Appeals) Coimbatore, vide his order CMB- CEX-000-App- No. 148-149/2014 dated 19.08.2014 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; he has retracted his statements made before the DRI and through his counsel stated that he is the owner of the goods before the Learned CJM, Coimbatore; the total value of the goods were much less than assessed by the officers; he was under the control of the officers from the arrival hall itself and no proper opportunity was given to declare the goods; the purchase bills were shown to the officers. But the officers fixed the price as per the internet rates.



3.2 It has also been pleaded that the Applicant did not admittedly pass through the green channel; 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; though the Applicant was willing to make a proper declaration and pay appropriate duty, he was arrested by the officers; the redemption fine of Rs. 8,00,000/- and and penalty of Rs. 8,00,000/- is very high and unreasonable.

3.3 The Revision Applicant also cited various assorted judgments in support of re-export of the goods and prayed that the Hon'ble Revision Authority may please reduce the redemption fine and penalty imposed on the Applicants.

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

5. The Government has gone through the facts of the case. The Applicant, did not declare the goods passenger as required under Section 77 of the Customs Act, 1962. It also appears that he had tried to evade paying proper customs duty. If the Applicant was not intercepted he would have walked away without paying customs duty. The goods were in commercial quantity and the same is not disputed. Thus as there was an attempt to evade the payment of Customs duty, confiscation of the goods is justified.

6. However, the Applicant was arrested and released on bail. The goods were carried in their baggage and there was no ingenious concealment of the goods. The facts of the case also state that the Applicant was intercepted in the arrival hall, he had not cleared the Green Channel and was intercepted before the exit. 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. Government therefore holds that while imposing redemption fine and penalty the applicant can be treated with a lenient view. The Applicant has pleaded for reduction of redemption fine and penalty and the Government is inclined to accept the plea.



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7. Taking into consideration the foregoing discussion, Government, reduces the redemption fine imposed by the Appellate authority from Rs. 8,00,000/- (Rupees Eight Lacs) to Rs. 6,00,000/- (Rupees Six lacs) 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. 8,00,000/- (Rupees Eight lacs) to Rs.6,00,000/- (Rupees Six lacs) under section 112(a) of the Customs Act,1962.

8. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

9. So, ordered.

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.173/2018-CUS (SZ)/ASRA/MUMBAI,

DATED 11.04.2018

To,

Shri Ibrahim Hanifa.
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

True Copy Attested

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

Copy to:

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

