

373/192/B/14-RA
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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Mumbai-400 005

F.No. 373/192/B/14-RA | 937

Date of Issue 08/05/2018

ORDER NO. 262/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 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 :Smt. Usha Devi

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. 460/2014 dated 14.03.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. Usha Devi (herein after referred to as the "Applicant") against the order in Appeal No. 460/2014 dated 14.03.2014 passed by the Commissioner of Customs and Central Excise (Appeals) Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 20.04.2013. Examination of his baggage resulted in recovery of assorted goods, part of which were held to be in commercial quantity as detailed below;

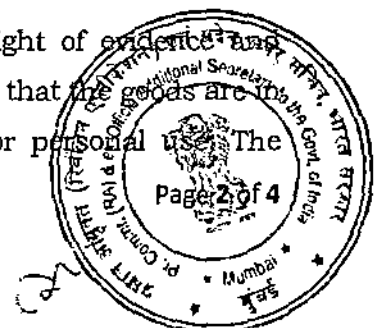
Sl. No.	Description of Goods	Quantity	Amount (in Rs.)
1	Otard Whisky	2 ltr	4,000/-
2	Red Label Whisky	2 ltr	1,500/-
3	T-Shirts	100	7,000/-
4	Samsung 55" LED TV	1	75,000/-
5	Samsung DVD players	4	40,000/-
		Total	1,27,500/-

3. The Original Adjudicating Authority, vide its Order in Original No. 436 Batch B dated 20.04.2013 confiscated the goods referred above valued at Rs. 47,000/- , as being in commercial quantity under Section 111 (d), (l), (o) and (m) of the Customs Act,1962. But allowed the Applicant to redeem the goods on payment of Rs. 23,000/-. Absolutely confiscated goods worth 5,500/- and a penalty of Rs. 5,500/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. The rest of the goods were released after payment of appropriate duty.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs and Central Excise (Appeals) Chennai. Commissioner of Customs and Central Excise (Appeals) Chennai, vide his Order-in-Appeal No 460/2014 dated 14.03.2014 rejected the Appeal of the Applicant.

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

5.1. The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; The only allegation is that the goods are in commercial quantity, however the goods have been brought for personal use. The



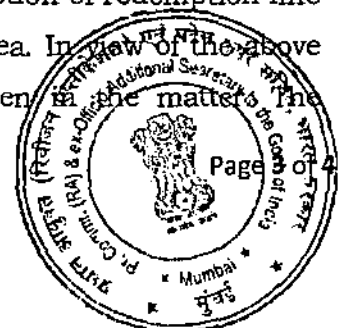
contention that these goods are commercial quantity amounts to extraneous consideration; The Applicant was allowed the goods valued at Rs. 47,000/- to be redeemed for Rs. 23,000/- a penalty of Rs. 5,500/- and duty amount of Rs. 31,364/-; The Adjudicating Authority has not kept in mind that the margin of profit as the R.F, P.P. and Duty is more than the value of the goods, There is no allegation that the Applicant had tried to evade duty, There is also no allegation that the Applicant had not declared the goods and therefore there was no offence against the Applicant and therefore no necessity to impose redemption fine and penalty; The personal penalty is more than 10% 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;

5.3 The Revision Applicant cited various judgments in support of his case and prayed for setting aside the Order and reduce the redemption fine and personal penalty and thus render justice.

6. 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.

7. 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.

8. 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 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. The Applicant has pleaded for reduction of redemption fine and personal penalty and Government is inclined to accept the plea. In view of the above facts, the Government observes that a lenient view can be taken in the matter.



impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed on reduced redemption fine and penalty.

9. Taking into consideration the foregoing discussion, The Redemption fine is ordered to be reduced from Rs. 23,000/- (Rupees Twenty three thousand) to Rs 10,000/- (Rupees Ten thousand). 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. 5,500/- (Rupees Five thousand Five hundred) to Rs 2,000/- (Rupees Two thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered.

(Signature)
27.4.18

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

ORDER No. 262/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27-04.2018

To,

Smt. Usha Devi
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

True Copy Attested

(Signature)
27.4.18

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

Copy to:

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

