

373/288/B/14-RA  
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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/288/B/14-RA/25

Date of Issue 08/05/2018

ORDER NO. 263/2018-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 : Shri. Syed Ibrahim

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. 1173/2014 dated 07.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Syed Ibrahim (herein after referred to as the "Applicant") against the order in Appeal No. 1173/2014 dated 07.07.2014 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 26.01.2014. Examination of his baggage resulted in recovery of mobiles, which were held to be in commercial quantity as detailed below;

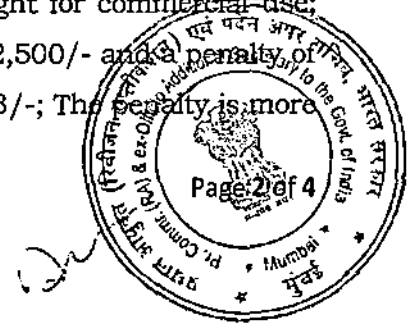
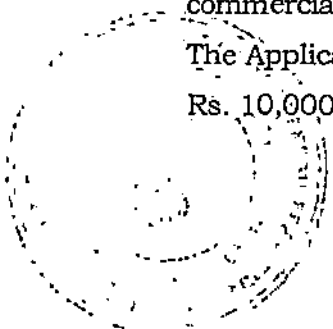
| Sl. No. | Description of Goods              | Quantity     | Amount (in Rs.)  |
|---------|-----------------------------------|--------------|------------------|
| 1       | Sony Xperia Z Mobiles             | 5            | 75,000/-         |
| 2       | Samsung Galaxy S III Mini Mobiles | 5            | 30,000/-         |
|         |                                   | <b>Total</b> | <b>1,05,00/-</b> |

3. The Original Adjudicating Authority, vide its Order in Original No. 226/2014 Batch A dated 02.03.2014 confiscated the goods referred above valued at Rs. 1,05,000/-, as being in commercial quantity and non-bonafide 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. 52,500/-. A penalty of Rs. 10,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

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 1173/2014 dated 07.07.2014 rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia 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 not been brought for commercial use; The Applicant was allowed the goods to be redeemed for Rs. 52,500/- and a penalty of Rs. 10,000/- however the duty paid on the goods is Rs. 37,853/-; The penalty is more



than 5%, and 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 actual 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;

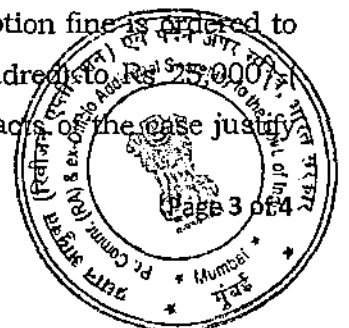
5.3 The Revision Applicant cited various judgments in support of his case and prayed for setting aside the Order and reduce the redemption fine and personal penalty and thus render justice.

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. The 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. 52,500/- (Rupees Fifty Two thousand Five hundred to Rs. 25,000/- (Rupees Twenty Five thousand ). Government also observes that the facts of the case justify



2

373/288/B/14-RA

reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 10,000/- ( Rupees Ten thousand ) to Rs 5,000/- ( Rupees Five 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.

*(Handwritten signature)*  
27/4/18

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

ORDER No 263/2018-CUS (SZ) /ASRA/

DATED 27.04.2018

To,

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

**True Copy Attested**

*(Handwritten signature)*  
8.5.18

**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.

