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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No. 373/199/B/15-RA | 6^{3X}

Date of Issue 01/06/2018

ORDER NO.318/2018-CUS (SZ) / ASRA / MUMBAI DATED 31.05.2018 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 Murugan Ramar

Respondent: Commissioner of Customs (Airport),
Thiruvananthapuram.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. TVM-EXCUS-000-APP-191-14-15 dated 12.02.2015 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals) Cochin.



ORDER

This revision application has been filed by Shri Murugan Ramar (herein after referred to as the Applicant) against the Order in Appeal No. TVM-EXCUS-000-APP-191-14-15 dated 12.02.2015 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 18.01.2012 and was intercepted by the Customs Officers and examination of his person resulted in the recovery of 10500 numbers of memory cards having the markings " San Disk Micro SD 2GB". The memory cards were valued at Rs. 31,50,000/- (Thirty One lakhs Fifty thousand). The memory cards were covered in paper and wrapped in cellophane tape and strapped between his knee and ankle using sports elastic bands. The Applicant was arrested and subsequently released on bail.

3. After due process of the law vide Order-In-Original No. 02/2013 dated 12.02.2013 the Original Adjudicating Authority confiscated the memory cards under section 111(d),(l) and (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, but allowed redemption of the goods on payment of redemption fine of Rs. 10,00,000/-. A Personal penalty of Rs. 10,00,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal No. . TVM-EXCUS-000-APP-191-14-15 dated 12.02.2015 rejected the Appeal.

5. The applicant has filed this Revision Application interalia on the grounds that;

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The authority was well aware that the value of the goods will reduce with time; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The goods have been





valued on the higher side, similar goods have been valued at 1/3rd of the impugned goods at Chennai, Trichy and Bangalore airports; As these goods are identical the authority being bound by these precedents should accept the same; The adjudication authority has relied upon internet prices for valuation; The higher value assessment is not supported by any cogent materials; Due to incorrect higher valuation the applicant was arrested which would not have taken place as the valuation would have been much lower.

5.2 The Applicant further pleaded that the hon'ble Supreme Court has said in recent judgments that the object of the Customs act is to collect duty and not to punish the person violated the provisions; There is no provision for absolute confiscation of goods; The Redemption fine of Rs 10 lakhs and the penalty of Rs. 10 lakhs and the customs duty @ 36.05% amounting to Rs. 11.35 lakhs is almost equal to the value of the goods; The Adjudicating authority failed to consider the margin of profit when imposing fine and penalty.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the goods and pleaded for setting aside the order and reduce the redemption fine and personal penalty.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is a fact that the goods were not declared by the Applicant as required under Section 77 of the Customs Act, 1962. It is not disputed that the goods are in commercial quantity The goods are in commercial quantity and under the circumstances confiscation of the goods is justified.

8. However, the Government observes that the adjudication authority has relied upon internet prices for arriving at the value of the goods. The Hon'ble



Supreme Court in the case of M/s Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs New Delhi reported in 2000(117) ELT 49 (Tribunal) has categorically stated that " Documents displayed on internet, being unsigned are not reliable and cannot be relied upon to calculate value".

9. It is also observed that the value of the goods have been overvalued. The Applicant has submitted that in the Adjudication order No. 328/2010 dated 14.05.2010 passed by the Assistant Commissioner (Airport), Chennai, identical goods have been valued at the of Rs. 100/- per piece, Adjudication order No. 328/2010 dated 14.05.2010 passed by the Assistant Commissioner (Airport), Chennai, identical goods have been valued at the of Rs. 100/- per piece. Similarly, vide Adjudication order No. 08/11 dated 04.05.2011 passed by the Additional Commissioner (Airport), Trichy, identical goods have been valued at the of Rs. 100/- per piece. In another case vide Adjudication order No. 14/2011 Cus Adj. dated 26.07.2011 passed by the Commissioner of Customs (Airport), Bangalore, identical goods have been valued at the of Rs. 130/- per piece. Government notes that in the impugned seizure, similar goods have been valued three times higher, at the rate of Rs. 300/- per piece. It is also noticed that the above mentioned imports have taken place much before the impugned case. The Government also observes that the higher valuation of the goods by the adjudication authority has led to imposition of higher redemption fine and penalty. The impugned goods have also deteriorated in value over the years. The Applicant has pleaded for re-export of the goods and the Government is inclined to accept the plea. In view of the above the impugned order therefore needs to be modified and the confiscated goods are liable to be allowed for re-export on payment of redemption fine and penalty.

10. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned goods are ordered to be redeemed for re-export on payment of redemption fine. Government, reduces the redemption fine imposed from Rs. 10,00,000/- (Rupees Ten lakhs) to Rs 5,00,000/- (Rupees Five Lakhs). 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. 10,00,000/- (Rupees Ten



Lakhs) to Rs 2,00,000/- (Rupees Two Lakhs) under section 112(a) of the Customs Act,1962.

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

12. So, ordered.

(Signature)
21.5.2018

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

ORDER No.318/2018-CUS (SZ) /ASRA/MUMBAI

DATED 21.05.2018

To,

True Copy Attested

Shri Murugan Ramar

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

(Signature)
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

Copy to:

1. The Commissioner of Customs, Thiruvananthapuram.
2. The Commissioner of C. Ex. Cus. And S.Tax (Appeals), Cochin.
3. Sr. P.S. to AS (RA), Mumbai.
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