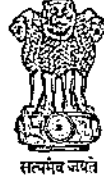


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F.No. 373/19/^{8/}15-RA | 60

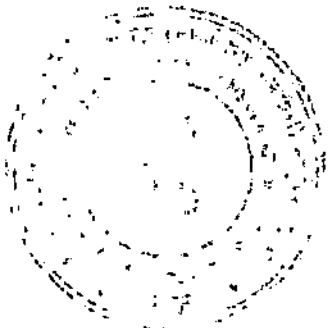
Date of Issue 05/06/2018

ORDER NO. 327/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.05.2018 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. Saidu Mohamed Rafeeq

Respondent : Commissioner of Customs, Calicut.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. C. Cus No.
97/2014- Cus dated 27.10.2014 passed by the Commissioner of
Customs (Appeals), Cochin.



ORDER

This revision application has been filed by Shri Saidu Mohamed Rafeeq (herein referred to as Applicant) against the order no 97/2014- Cus dated 27.10.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the Officers of DRI on specific intelligence intercepted one Shri Saidu Mohamed Rafeeq, at the Calicut Airport on 10.04.2008. Examination of his baggage resulted in recovery of 3427 Assorted Computer Random Access Memory chips. The total CIF value of the goods was Rs. 31,51,800/- (Rupees Thirty one Lakhs Fifty one thousand Eight hundred). The Applicant was arrested and subsequently released on bail.

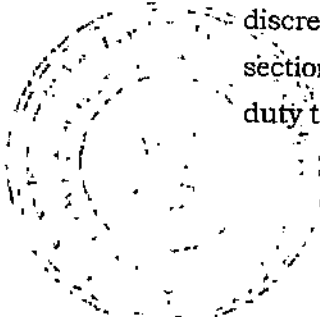
3. The Original Adjudicating Authority, vide order No. 8/2009 dated 11.11.2009 confiscated the items mentioned above under section 111(l) & (m) of the Customs Act, 1962. As the goods were already disposed of by sale The sale proceeds of Rs. 10,65,913/- (Rupees Ten Lakhs Sixty Five thousand Nine hundred and thirteen) were appropriated towards the Government. A Personal penalty of Rs. 1,00,000/- was 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) Cochin, vide his order no. 97/2014- Cus dated 27.10.2014 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 Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Though the seized goods are of lesser value and available at lesser value in the local market, the goods have been assessed excessively; These assessments have not been supported by any cogent material and is contrary to customs valuation; In previous cases goods have been valued on internet basis and a deduction of 45% is adopted, If in this case such deduction was allowed there would not have been any need for arrest;

5.2 The Applicant further pleaded that the The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; Under section 125 even when confiscation is authorized by the Act, it is mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation.



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5.3 The Revision Applicant cited various assorted judgments in support of allowing redemption under section 125 of the Customs Act, 1962, and prayed for setting aside the order and return the sale proceeds on payment of necessary dues, reduce personal penalty and thus render justice.

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. The goods were not properly declared by the passenger as required under Section 77 of the Customs Act, 1962. The goods were brought in commercial quantity and the same are not bonafide goods. 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 concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveller and does not have any previous offences registered against him. Government, also observes that there is no allegation ingenious concealment and the Applicant claims to have been intercepted at the immigration even before he attempted to cross the green channel. The only reason for absolute confiscation of the goods is that the goods were brought in commercial quantity. Further, The sale proceeds of the said goods is far below the assessed value of the goods, thereby questioning the valuation methods used to value the goods. CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up. Thus, mere non-submission of the declaration cannot be held against the Applicant. The absolute confiscation is therefore unjustified.

8. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the goods in the impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed for redemption on payment of redemption fine and penalty.

9. In view of the above, Government allows redemption of the confiscated goods in lieu of fine. The impugned goods valued at CIF value of the goods was Rs.



31,51,800/- (Rupees Thirty one Lakhs Fifty one thousand Eight hundred) is ordered to be redeemed on payment of redemption fine of Rs. 10,65,913/- (Rupees Ten Lakhs Sixty Five thousand Nine hundred and thirteen) under section 125 of the Customs Act, 1962. As the goods have been sold the appropriated sales value of Rs. 10,65,913/- (Rupees Ten Lakhs Sixty Five thousand Nine hundred and thirteen) is to be adjusted against the said fine. 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. 1,00,000/- (Rupees One lakh) to Rs. 80,000/- (Rupees Eighty thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent.

11. Revision application is partly allowed on above terms.

12. So, ordered.

Ashok Kumar Mehta
20.5.2018

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

ORDER No. ³²⁷ /2018-CUS (SZ) /ASRA/ Mumbai

DATED 30.05.2018

True Copy Attested

To,

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

Copy to:

1. The Commissioner of Customs, Calicut
2. The Commissioner of Customs (Appeals), Cochin
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Sankarsan Munda
20/5/18
SANKARSAN MUNDA
Joint Commissioner of Customs & Excise

