

REGISTERED  
SPEED POST

सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/226/B/15-RA / 2018

Date of Issue 28/06/2018

ORDER NO 353/2018-CUS (SZ)/ASRA/MUMBAI DATED 21.05.2018 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. Hasan Mohamed Basha

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 238/2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Hasan Mohamed Basha (herein referred to as Applicant) against the order 238/2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian national had arrived at the Chennai Airport on 26.04.2015. Examination of his baggage resulted in the recovery of 5 nos of GPS Navigator Furuno GP-32 and 10 nos ICOM Transceivers IC-2300 totally valued at Rs. 2,00,000/- ( Rupees Two Lakhs ).

3. The Original Adjudicating Authority, vide order No. 467/2015 Batch B dated 26.04.2015 confiscated the items mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and allowed redemption of the goods on payment of redemption fine of Rs. 1,00,000/-. A Personal penalty of Rs. 20,000/- 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) Chennai., vide his order No. 238/2015 dated 29.05.2015 rejected the Appeal of the Applicant.

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 Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; The redemption fine and penalty is on the higher side and the same is required to be reduced; In addition to redemption fine and penalty the Applicant has to pay Customs duty of 35% and the total amount to be paid will be more than the value of the goods; There is no specific allegation that the Applicant tried to cross the green channel or attempted to evade duty and in the absence of the same there is no reason for imposing redemption fine and penalty;

5.2 The Applicant further pleaded that CBEC circular No. 09/2001 gives specific directions to the officers that the declaration should not be left blank. If not filled in by the passenger the officer will help in filling up the



declaration card; 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"; Even assuming without admitting that he had not declared the gold it is only a technical fault.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of redemption fine and reduced 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 cited the decisions of GOI/Tribunals where redemption for re-export of gold was allowed. 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, and under the circumstances confiscation of the goods is justified.

8. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The goods were not ingeniously concealed. There are no previous offences registered against the Applicant. 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. Further, the redemption fine, penalty and the Customs duty of 35% to be paid is more than the value of the goods and as such it is unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for reduction of redemption fine and penalty and the Government is inclined to accept the plea. The Order in Appeal therefore needs to be modified.

*[Handwritten signature]*



9. In view of the above, the redemption fine imposed on the goods valued at Rs. 2,00,000/- (Rupees Two lakhs ) is ordered to be reduced from Rs. 1,00,000/- to Rs. 80,000/- ( Rupees Eighty thousand) under section 125 of the Customs Act, 1962. 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. 20,000/- (Rupees Twenty thousand ) to Rs. 15,000/- ( Rupees Fifteen 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*  
21.5.2018

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 353/2018-CUS (SZ) /ASRA/MUMBAI

DATED 21.05.2018

**True Copy Attested**

To,

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

*S. R. Hirulkar*  
21/6/18

एस. आर. हिरुलकर  
S. R. HIRULKAR  
(AC)

Copy to:

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

