



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/254/B/15-RA

390

Date of Issue 09/07/2018

ORDER NO. 390/2018-CUS (SZ)/ASRA/MUMBAI DATED 05.06.2018 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. Rajendra Hirani

Respondent : Commissioner of Customs, Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 416/2015 dated 27.08.2015 passed by the Commissioner of Customs (Appeals), Chennai



ORDER

This revision application has been filed by Shri Rajendra Hirani (herein referred to as Applicant) against the order 416/2015 dated 27.08.2015 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 18.05.2015. Examination of his baggage resulted in the recovery of one Black Berry Classic, one Samsung Galaxy Edge, one Iphone 6, one Iphone 6plus, 4 (four) Weighing scales, 28 perfumes, 1200 nos RMD Gutka, 1920 nos Gudang Cigarettes totally valued at Rs. 2,08,600/- (Rupees Two Lakhs Eight thousand Six hundred).

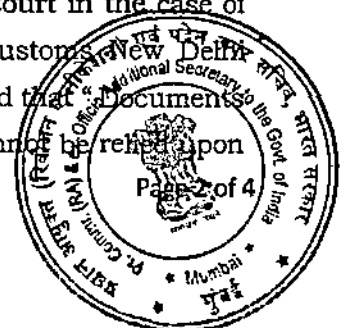
3. The Original Adjudicating Authority, vide order No. 548/2015 Batch D dated 18.05.2015 absolutely confiscated the Gutka and Cigarettes valued at Rs. 15,600/- and confiscated the remaining items valued at Rs. 1,93,000/- (One lac Ninety three thousand) with an option to redeem the goods on payment of a fine of Rs. 95,000/- 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. A Personal penalty of Rs. 19,500/- 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. 416/2015 dated 27.08.2015 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 items brought are in single digits but have been registered as commercial quantity; he has made only a few visits but has been termed as a frequent traveler; the Applicant has brought the goods for self-use and not for commercial gain; There is no specific allegation that he tried to cross the green channel, He was all along under the control of the officers at the red channel; In the absence of allegations there is no necessity to adjudicate and impose redemption fine and penalty; The total of redemption fine penalty and customs duty is more than the value of the goods.

5.2 The Applicant further pleaded that The department had assessed the goods on the higher side, at internet rates, The Hon'ble Supreme Court in the case of M/s Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs 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". 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 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 confiscated goods are not in commercial quantity. 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.

9. The Government also 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". It is also observed that the higher valuation of the goods by the adjudication authority has led to imposition of higher redemption fine and penalty. 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 personal penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods is liable to be allowed for re-export on payment of redemption fine and penalty.



9. In view of the above, Government reduces the redemption fine on the goods valued at Rs. 1,93,000/- (One lac Ninety three thousand) from Rs. 95,000/- (Rupees Ninety Five thousand) to Rs.75,000/- (Seventy Five 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. 19,500/- (Rupees Nineteen thousand Five hundred) 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
5.6.18
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.390/2018-CUS (SZ) /ASRA/MUMBAI

DATED 05.06.2018

To,

Shri Rajendra Hirani

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

Attested

Sankarsan Munda
9/7/18

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.

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

