

REGISTERED  
SPEED POST

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. 373/173/B/14-RA / 956

Date of Issue 17/07/2018

ORDER NO. 430/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 19.06.2018 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 Sarbuteen Ali

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 363/2014 dated 05.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

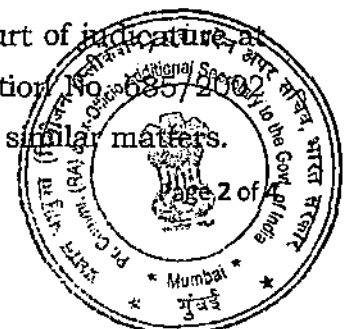
This revision application has been filed by Shri Sarbuteen Ali (herein referred to as Applicant) against the order no. 363 /2014 dated 05.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 29.03.2013. The Examination of his baggage and person resulted in the recovery of 2 Sony Xperia phones, 4 Samsung Galaxy S2 phones, One LG E612 phone, one Panasonic video camera, one Panasonic handy camera, Dell laptop and one Lenovo laptop all the above items were used and old. After due process of the law vide Order-In-Original No. 1119/2013 dated 23.09.2013 the Original Adjudicating Authority confiscated the impugned goods valued at Rs. 83,000/- under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, but allowed redemption of the gold on payment of Rs. 42,000/- as redemption fine and also imposed penalty of Rs. 9,000/- under Section 112 (a). The Dell Laptop and the Lenovo laptop was released on applicable duty.

3. Aggrieved by the said order, the applicant filed appeal before. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 363/2014 dated 05.03.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that

4.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that both the Respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or misdeclared; that the request for re-export of the gold was not considered; the value adopted by the authorities is on the higher side; that both the Respondents failed to see that the Applicant had opted for the Red Channel proving his bonafides that he has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant; that both the Respondents have ignored orders of the Govt. of India order reported in ELY 1995 pages 287 to 308 and High Court of India order at Bombay order dated 29.05.2002 in Criminal Writ Petition No. 685/2002 wherein re-export was allowed has granted re-export in similar matters.



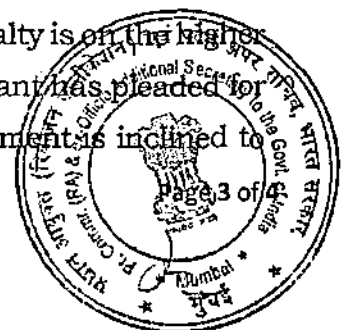
4.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and set aside the impugned orders and set aside the redemption fine of Rs. 4,00,000/- and penalty of Rs. 9,000/- and order for re-export of the same and thereby render justice.

5. A personal hearing in the case was scheduled to be held on 22.03.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 21.03.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The goods were recovered from his baggage and it was not indigenously concealed. All the items under import are used goods and most of the items are in single digits and do not appear to be commercial in nature. 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.

8. 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 the redemption fine and penalty is on the higher side and a lenient view can be taken in the matter. The Applicant has pleaded for reduction of the redemption fine and 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 on payment of reduced redemption fine and penalty.

9. The redemption fine imposed on the goods totally valued at Rs. 83,000/- ( Rupees Eighty three thousand) is reduced from Rs. 42,000/- ( Rupees Forty two thousand ) to Rs.30,000/ -( Rupees Thirty 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. 9,000/- (Rupees Nine thousand) to Rs. 6,000/- ( Rupees Six thousand ) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

11. So, ordered.

*(Signature)*  
19/6/18

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

ORDER No.430/2018-CUS (SZ) /ASRA/MUMBAI

DATED 19.06.2018

To,

Shri Sarbuteen Ali  
s/o Kanifa  
New No. 9, Old No. 5,  
Ibrahim Sahib 1<sup>st</sup> Street,  
Chennai – Tamilnadu

**Attested**

*(Signature)*  
17/7/18

**SANKARSAN MUNDA**  
Asstt. Commissioner of Customs & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

