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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. 373/10/B/14-RA | १७

Date of Issue 17/07/2018

ORDER NO. 133/2018-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 Hariharan

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-I No. 1388/2013 dated 30.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Hariharan (herein referred to as Applicant) against the order 1388/201 dated 30.09.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant at the Chennai International Airport on 18.02.2013. The Applicant had not declared the goods and had opted for the green channel. Examination of his baggage resulted in recovery of two old and used laptops and one carton of cigarettes totally valued at Rs. 10,750/- ( Rupees Ten thousand Seven hundred and Fifty).

3. The Original Adjudicating Authority, vide order No. 201 / Batch A dated 18.02.2013 absolutely confiscated the goods 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. A Personal penalty of Rs. 5,000/- 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) Chennai, vide his order No. 1388/201 dated 30.09.2013 rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application along with an application for condoning the delay of 28 days and 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; Both the respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or mis-declared; The Applicant does not have any bad antecedents in the past and the goods have not been brought for trading but as gifts for his relatives and friends; that both the Respondents failed to see that the Applicant had opted for the Red Channel proving his bonafides that she has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant;



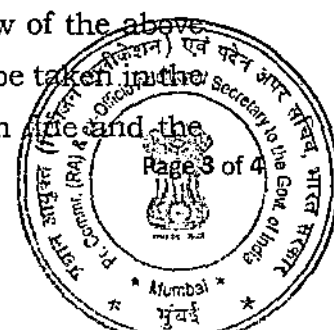
5.2 Under the above facts and circumstances the Revision Applicant prays that the Hon'ble Revision Authority may be pleased to release the used laptops and cigarettes on payment of redemption fine and set aside the penalty of Rs. 5,000/- and thereby render justice.

6. 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.

7. The Government has gone through the facts of the case. In the interest of justice, delay of 28 days is condoned and revision application is decided on merits. The goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. 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 does not have any previous offences registered against him. Government, also observes that there is no allegation of ingenious concealment. Further, 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. The absolute confiscation is therefore unjustified.

9. 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 Applicant has pleaded for release of the goods on fine and the



Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed on payment of redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated goods in lieu of fine. The impugned goods totally valued at Rs. 10,750/- (Rupees Ten thousand Seven hundred and Fifty) is ordered to be redeemed on payment of redemption fine of Rs. 8,000/- (Rupees Eight 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. 5,000/- (Rupees Five thousand) to Rs.4,000/- (Rupees Four thousand) 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.

*Ashok Kumar Mehta*  
19.06.18

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

ORDER No.433/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 19.06.2018

To,

Shri Hariharan  
C/o K. Mohamed Ismail  
Advocate  
New No. 102 (old No. 271)  
Linghi Chetty Street,  
Chennai - 1.

**Attested**

*Sankarsan Munda*  
17/7/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

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.

