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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/195/B/14-RA/948

Date of Issue 17/07/2018

ORDER NO. 438 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 20.06.2018 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 Shahjahan

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. 755/2014 dated 02.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Shahjahan (herein referred to as Applicant) against the order no 755/2014 dated 02.05.2014 passed by the Commissioner of Customs (Appeals), Chennai.

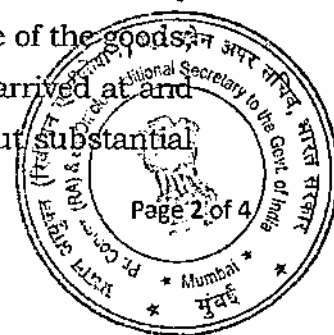
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 11.09.2013. The Examination of his baggage and person resulted in the recovery of 28 kgs of Horlicks powder valued at Rs. 7,000/- (Rupees Seven thousand) and one Sony LED 40' TV.

3. After due process of the law vide Order-In-Original No. 1060/2013 Batch A dated 11.09.2013 the Original Adjudicating Authority confiscated the impugned goods valued at Rs. 7,000/- 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 on payment of Rs. 10,000/- as redemption fine and also imposed penalty of Rs. 5,000/- under Section 112 (a). The Sony LED TV was released on applicable duty.

4. 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. 755/2014 dated 02.05.2014 rejected the appeal of the applicant.

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

5.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; the lower authority failed to see that the Applicant had gone to the Red channel; the Applicant had declared the goods under section 77 of the Customs Act, 1962; As the Applicant had not crossed the customs barrier the import itself is not completed; the lower authority has failed to see that section 79 Customs Act, 1962 personal effects includes any article contained in the baggage even though it may be in commercial quantities; the lower authority should not have imposed high penalty of 90% of the value of the goods. There is no previous bad antecedents; There is no MOP arrived at and therefore the high redemption fine is arbitrary and without substantial



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reasoning; The goods are not prohibited and are free to import; The redemption fine is too high and harsh.

5.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders or reduce the redemption fine and penalty as deemed fit and thus render justice.

6. A personal hearing in the case was scheduled to be held on 30.05.2018, the Advocate for the respondent Shri A. Ganesh reiterated the submissions in the Revision Application and requested for reduction in fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The goods have been brought in commercial quantities and under the circumstances ~~Confiscation of the goods is justified.~~

8. However, the facts of the case state that the Applicant had not cleared the Green Channel. The goods were declared by the Applicant. The goods were recovered from his baggage and it was not indigenously concealed. 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. 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. 7,000/- (Rupees Seven thousand) is reduced from Rs. 10,000/- (Rupees Ten thousand) to Rs.4,000/- (Rupees Four 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. 2,000/- (Rupees Two thousand) under section 112(a) of the Customs Act, 1962.



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

11. So, ordered.



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

ORDER No. ⁴³⁸ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 20.06.2018

To,

Shri Shahjahan
C/o A. Ganesh, Advocate,
F. Block, 179, (New No. 8)
Annanagar,
Chennai 600 102,
Tamilnadu

Attested



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.

