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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 373/170/B/14-RA

Date of Issue 26/07/2018

ORDER NO. 489/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.06.2018 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 Jitender Kumar

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. 442/2014 dated 12.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Jitender Kumar (herein referred to as Applicant) against the order no 442/2014 dated 12.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

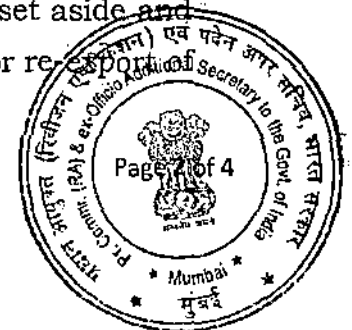
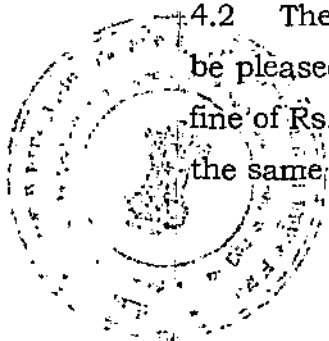
2. Briefly stated the facts of the case are that the applicant arrived at the Chennai Airport on 24.09.2013. He was intercepted at the exit and found in possession of a 4 Apple I-phone 5S valued at Rs. 2,20,000/- (Rupees Two lakhs Twenty thousand). After due process of the law vide Order-In-Original No. 1127/2013 Batch B dated 24.09.2013 the Original Adjudicating Authority ordered confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. The Original Adjudicating Authority allowed redemption of the I-phones on payment of a fine of Rs. 1,20,000/- and also imposed penalty of Rs. 10,000/- under Section 112 (a).

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 442/2014 dated 12.03.2014 rejected the appeal of the applicant.

The applicant has filed this Revision Application interalia on the 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 goods 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 judicature 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 and fine of Rs. 1,20,000/- and penalty of Rs. 10,000/- 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. The Applicant was carrying I-phones in commercial quantity he had not declared the goods and therefore confiscation is justified.

7. However, Government also observes that there were no allegations of ingenious concealment of the goods. There are no previous offences registered against the Applicant. Further, the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. Under the circumstances Government holds that the applicant can be treated with a lenient view. 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.

8. Taking into consideration the foregoing discussion, Government reduces the redemption fine imposed on 4 Apple 5S I-phones valued at Rs. 2,20,000/- (Rupees Two lakhs Twenty thousand) is reduced from Rs. 1,20,000/- (One lakh Twenty thousand) to Rs. 80,000/- (Rupees Eighty thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 10,000/- (Rupees Ten thousand) to Rs.8,000/-(Rupees Eight thousand) under section 112(a) of the Customs Act,1962.



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

10. So, ordered.

Ashok Kumar Mehta
29.6.18

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

ORDER No. ⁴⁸⁹/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.06.2018

To,

Shri Jitender Kumar
s/o Tulsaram
O. No. 2, N/N Sundram St.,
5th Lane, 2nd Floor, Sowcarpet
Chennai- 600 079

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.

ATTESTED

Sankarsan Munda
27/7/18

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

