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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. 373/263/B/15-RA / 11/4

Date of Issue 30/07/2018

ORDER NO. 513/2018-CUS (SZ)/ASRA/MUMBAI DATED 17.07.2018 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 Bovikan Abdulla Shamsuddeen

Respondent : Commissioner of Customs, Calicut International Airport, Calicut.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CAL-EXCUS-000-APP-117-15-16-CUS dated 18.08.2015 passed by the Commissioner (Appeals-II), Cochin.



ORDER

This revision application has been filed by Shri Bovikan Abdulla Shamsuddeen (herein referred to as Applicant) against the order CAL-EXCUS-000-APP-117-15-16-CUS dated 18.08.2015 passed by the Commissioner (Appeals-II), Cochin.

2. Briefly stated facts of the case are that the Officers of Air Intelligence at Calicut intercepted the applicant at the Chennai International Airport on 30.12.2012. The Applicant had not declared the goods and had opted for the green channel. Examination of his baggage resulted in recovery of 60 (sixty) one cartons of cigarettes totally valued at Rs. 60,000/- (Rupees Sixty thousand).

3. The Original Adjudicating Authority, vide order No. 19/2013/AC dated 13.06.2013 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. 60,000/- was imposed under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 1,00,000/-was also imposed under Section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals-II), Cochin. The Commissioner (Appeals), vide his order No. CAL-EXCUS-000-APP-117-15-16-CUS dated 18.08.2015 rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 The order of the Commissioner (Appeals) in rejecting the appeal filed by the Applicant and imposition of heavy penalty and confiscating the goods is erroneous; The value of the goods is Rs. 60,000/- and the penalty section 112 of Rs. 60,000/- and the penalty under of Rs. 1,00,000/- under section 114AA is excessive and deserves to be set aside; The Ministry has informed that the new section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where exports were shown only on paper and no goods crossed the Indian border. But papers were created for availing the benefits under various export promotion schemes; therefore the penalty under both the sections is not sustainable; The goods have been absolutely confiscated contrary to the section 125 of the Customs Act, 1962; The absolute confiscation has been held by treating the goods as prohibited goods due to non affixing of the statutory warning, however the same can be disposed by affixing the statutory labels before clearance for home consumption.



5.2 Under the above facts and circumstances the Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside the impugned order and thereby render justice.

6. A personal hearing in the case was scheduled to be held on 11.07.2018, the Applicant vide his letter dated 06.07.2018 has informend that he is financially poor and laid up with illnesss and not in a position to appear for the hearing. The Revision Application may be decided without hearing based on the Revision Application and additional written submissions. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. 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 reduce the personal penalty and set aside the penalty under section 114AA of the Customs Act, 1962 and the Government is inclined to accept the plea. The order of absolute confiscation of the goods 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. Government also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

10. In view of the above, Government allows redemption of the confiscated goods in lieu of fine. The impugned goods totally valued at Rs. 60,000/- (Rupees



thousand) is ordered to be redeemed on payment of redemption fine of Rs. 25,000/- (Rupees Twenty Five 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. 60,000/- (Rupees Sixty thousand) to Rs. 15,000/- (Rupees Fifteen thousand) under section 112(a) of the Customs Act,1962. The penalty of Rs. 1,00,000/- (Rupees One lakh) under section 114AA has been incorrectly imposed, the penalty is therefore set aside..

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
17.7.18

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

ORDER No. 513/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 17.07.2018

To,

Shri Bovikan Abdulla Shamsuddeen
S/o Abdulla Bovikan Abdul Rahiman
Bathul Fissuma Thayalngadi,
Railway Station Road,
Kasaragod - Kerala 671121.

Copy to:

1. The Commissioner of Customs, Calicut International Airport, Calicut
2. Commissioner of C. Ex., Customs and Service Tax (Appeals), Cochin
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

Sankarsan Munda
20/7/18

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

