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SPEED-POST

सत्यमेव जयते

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

F.No. 373/140/B/13-RA

1165

Date of Issue 01/08/2018

ORDER NO. 534/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 20.07.2018 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 Naina Mohammed
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. 1616/2013 dated 25.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Naina Mohammed (herein referred to as Applicant) against the order no 1616/2013 dated 25.11.2013 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 09.03.2013. He was intercepted and found in possession of assorted electronic goods in commercial quantities valued at Rs. 2,45,608/- (Rupees Two lakhs Forty five thousand Six hundred and eight). After due process of the law vide Order-In-Original No. 253/Batch C dated 09.03.2013 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. But allowed redemption of the goods on payment of Rs. 1,50,000/- and also imposed penalty of Rs. 20,000/- under Section 112 (a) of the Customs Act,1962. The rest of the goods not in commercial quantity were released on allowing free allowance and applicable customs duty.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1616/2013 dated 25.11.2013 directed the Lower adjudicating authority to recheck and collect differential duty and 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 the duty paid is appropriate; There is no record that the applicant had not declared the goods; There is no specific allegation that the applicant tried to go through the green channel; The applicant had orally declared the goods and showed it to the officers having seen the same the question of declaration does not arise; the goods were for personal consumption and not for trade; section 111 d, l, m and o are not attracted in the case; the value adopted by the authorities is on the higher side; The goods are old and used and of much lesser value, this was informed to the officers; The total of redemption fine penalty and the duty element will result in payment, more than the value of the goods; The assessed value is exorbitantly high and needs to be revalued.

4.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and penalty.



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re-export of the goods, reduce the redemption fine, penalty and thereby render justice.

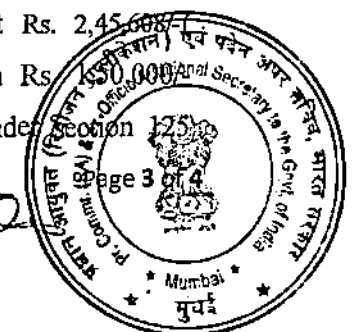
5. A personal hearing in the case was held on 05.07.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of the goods was allowed. Nobody from the department attended the personal hearing.

6. 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. The goods were also brought in excess quantity and 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, in fact there is no allegation that the Applicant had tried to pass through the green channel. The goods were not indigenously concealed and were orally declared. The impugned goods are old and used. 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. The Applicant has pleaded that the goods are old and used and have been valued much higher than the actual price. Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. In view of the above facts, the impugned Order in Appeal needs to be modified and the confiscated goods are liable to be allowed for re-export on reduced redemption fine and penalty.

9. In view of the above, the confiscated goods are ordered to be redeemed for re-export. The redemption fine imposed on the confiscated goods valued at Rs. 2,45,688/- (Rupees Two lakhs Forty five thousand Six hundred and eight) is reduced from Rs. 1,50,000/- (Rupees One lakh Fifty thousand) to Rs. 1,00,000/- (Rupees One lakh) under Section 125(1) of the Customs Act, 1962.



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. 20,000/- (Rupees Twenty thousand) to Rs 15,000/- (Rupees Fifteen 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.

Ashok Kumar Mehta
20/7/18

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

ORDER No. ⁵³⁴/2018-CUS (SZ)/ASRA/Mumbai DATED 20.07.2018

To,

Shri Naina Mohammed
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

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
18/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

