

373/149/B/14-RA
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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. 373/149/B/14-RA/1206

Date of Issue 22.02.2018

ORDER NO. 54/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.02.2018 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. Ghouse Basha.

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 283/2014 dated 20.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Ghouse Basha (herein after referred to as the Applicant) against the order no C.Cus No. 283/2014 dated 20.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 14.08.2011. The Applicant was intercepted in the Arrival hall as he was attempting to pass through the Green Channel. Examination of his baggage resulted in recovery of electronic goods and three Rolex watches in commercial quantity as detailed below;

Sl. No.	Description of Goods	Quantity	Amount (in Rs.)
1	Imitation jewelry	300	15,000/-
2	Baby Garments	200	20,000/-
3	Samsung 40" TV	1	30,000/-

The Original Adjudicating Authority, confiscated the goods referred to at Sl. Nos 1 and 2 valued at Rs. 35,000/- under Section 111 (d), (l), and (m) of the Customs Act,1962 and allowed redemption on payment of redemption fine of Rs. 20,000/-. The Samsung TV was allowed clearance on applicable rate of duty. A penalty of Rs. 6,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. 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 C.Cus No. 283/2014 dated 20.02.2014 rejected the Appeal of the Applicant.

3. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that.

3.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case.

3.2 The items featuring at Sl. No 1, 2 and 3 are for his personal use and cannot be termed as commercial quantity. The goods were brought for family members and not for sale.

3.3 The Respondent has failed to consider that goods of upto Rs. 35,000/- can be brought duty free under section 79 of the Customs Act, 1962 as free baggage allowance.



3.4 The value of the goods was very less,

3.5 Only one Samsung TV was brought and it cannot be termed as commercial quantity. Even assuming without admitting some of the goods are commercial in nature the entire baggage cannot be treated as non bonafide baggage, as per the Central Board circular No. 64/96-Cus dated 17.12.1996. Therefore that portion of baggage which is not commercial quantity would be eligible to free baggage allowance.

3.3 The personal penalty is more than 10% of the value of the goods, the Redemption fine is more than 50% of the value of the goods and Customs duty of Rs. 23,433/- has also been collected on the goods. the same is also required to be reduced reasonably.

3.4 The Hon'ble Supreme Court in the case of Om Prakash vs Union of India has categorically stated that the main object for enactment of the said Act was recovery of excise duties and not really to punish for infringement of its provisions, hence in the interest of justice the impugned order needs to be set aside and Redemption fine and Personal reduced.

The Revision Applicant also cited various assorted judgments in support of his case, and prayed that the Hon'ble Revision Authority may please reduce the redemption fine and penalty imposed on the Applicant.

4. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed Revision Application and cited the decisions of GOI/Tribunals etc in support of his case. Nobody from the department attended the personal hearing.

5. 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 the Applicant is a frequent traveler. Under the circumstances confiscation of the goods is justified.

6. However, the Applicant was not intercepted while trying to exit the Green Channel. There was no concealment of the goods, and neither was there a concerted attempt at smuggling the goods into India. The Applicant is a frequent traveller, but does not have any previous offence registered against him. The CBEC Circular 09/2001 gives specific

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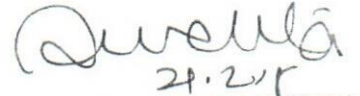
directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature." Thus, mere non-submission of the declaration cannot be held against the Applicant. Government, therefore holds that while imposing redemption fine and penalty the applicant can still be treated with a more lenient view.

7. Taking into consideration the foregoing discussion, Government, reduces the redemption fine imposed by the Appellate authority on the goods valued at 35,000/- from Rs.20,000/- (Twenty thousand) to Rs. 10,000/- (Rupees Ten thousand). Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 6,000/- (Rupees Six thousand) to Rs 3,000/- (Rupees Three thousand) under section 112(a) of the Customs Act,1962.

8. The impugned Order in Appeal stands modified to that extent.

9. Revision application is partly allowed on above terms.

10. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 54/2018-CUS (SZ) /ASRA/MUMBAI

DATED: 21-02-2018

To,

Shri Ghouse Basha.
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attached



एस. आर. हिरुलकर
S. R. HIRULKAR

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

