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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. 373/244/B/14-RA

Date of Issue 10/08/2018

ORDER NO. ⁵⁶⁵7/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018 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 Mohamed Ismail Gani

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. 589/2014 dated 03.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Mohamed Ismail Gani (herein referred to as Applicant) against the order no 589/2014 dated 03.04.2014 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 27.09.2013. He was intercepted and examination of his baggage resulted in the recovery of assorted electronic items some old and used totally valued at Rs. 94,000/- (Rupees Ninety Four thousand). After due process of the law vide Order-In-Original No. 1135/2013 Batch B dated 27.09.2013 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. But allowed redemption of the goods on payment of a fine of Rs. 60,000/- and imposed penalty of Rs. 10,000/- under Section 112 (a) of the Customs Act,1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 589/2014 dated 03.04.2014 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 authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The previous offences of the Applicant have no relevance in the case; Section 125 of the Customs Act,1962 specifically states that the fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable; The Applicant has not brought any goods restricted or prohibited warranting confiscation; The goods were not mis declared and the Applicant himself proceeded to the Red Channel with an intention to pay duty; Goods that were not in commercial quantity were eligible for free baggage allowance; The goods were not concealed in any manner; The redemption fine of 64% and personal penalty of 11% is unreasonable; It is a well settled principle that the quantum of penalty should also be proportionate to the role played by the individual; The goods brought by the Applicant were not in trade quantities; Most of the goods were old used and damaged and brought at throwaway price.

4.2 *The Revision Applicant cited case laws in his defense and prayed for considering the eligible goods under free allowance and release the goods on payment of duty and reasonable fine and penalty as deem fit in the interest of justice.*

5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. Some of the items were in commercial quantities and under the circumstances confiscation of the goods is justified. However, the facts of the case state that the Applicant had not cleared the Green Channel. The goods were recovered from his baggage and they were not indigenously concealed. Though the Applicant was involved in offences earlier, in the present case there has been no attempt to conceal the items as the Applicant had taken the red channel route and therefore was it was not a hardcore attempt to smuggle the goods into India. The goods were not concealed ingeniously. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125 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 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.

7. The redemption fine imposed on the assorted electronics valued at Rs. 94,000/- (Rupees Ninety Four thousand) is reduced from Rs. 60,000/- (Rupees Sixty thousand) to Rs. 40,000/- (Rupees Forty 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. 10,000/- (Rupees Ten thousand) to Rs. 8,000/- (Rupees Eight thousand) under section 112(a) of the Customs Act, 1962.

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

9. So, ordered.

Ashok Kumar Mehta
24/7/18

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

ORDER No. ⁵⁶⁵/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-07-2018

To,

Shri Mohamed Ismail Gani
c/o M/s L. K. Associates
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Egmore, Chennai- 600 008.

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.