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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/38/B/15-RA

1237

Date of Issue 10/08/2018

ORDER NO: <sup>567</sup>/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 Mohammed Ishtiaq

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-I No. 76/2014 dated 21.11.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

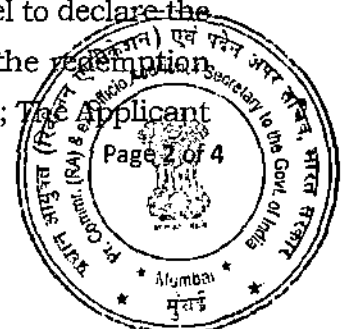
This revision application has been filed by Shri Mohammed Ishtiaq (herein referred to as Applicant) against the Order in Appeal C. Cus No. 76/2014 dated 21.11.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 07.08.2014. He was intercepted and examination of his baggage resulted in the recovery of 6 nos Sony Xperia Z mobile and 4 nos Sony Xperia mobile totally valued at Rs. 1,14,000/- ( Rupees One lakh Fourteen thousand ) and a Sony 32" LED TV totally valued at Rs. 12,000/- ( Rupees Twelve thousand ).

3. After due process of the law vide Order-In-Original No. 959/2014 Batch C dated 07.08.2014 the Original Adjudicating Authority allowed the release of the Sony on applicable customs duty and ordered confiscation of the 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. 15,000/- 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. 76/2014 dated 21.11.2014 reduced the redemption fine from Rs. 60,000/- to Rs. 30,000/- and reduced the personal penalty to Rs. 10,000/- and partially modified the appeal of the applicant.

4. The applicant has filed this Revision Application inter alia 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 Appellate authority has held that the applicant had held that the goods were not concealed and there are no previous offences registered against the applicant, however the reduction is not in line with accepted principle; The Appellate authority failed to consider that the Applicant came to the Red channel to declare the goods and it would have been proper to show leniency on the redemption fine and penalty; The Applicant had not concealed the goods; The Applicant

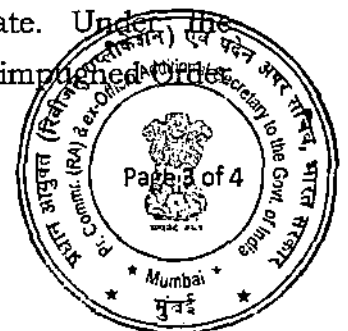


has not brought any restricted or prohibitive goods; No credence was given to baggage rules on the contrary both the Adjudicating authorities chose to treat the goods as non bonafide baggage; The attempt to clear without declaration is not clearly made out by the department; The Commissioner should have considered the quantum of penalty to be as per the role paid by the individual; The applicant is not a repeat offender and therefore redemption fine and penalty is harsh and not proportionate.

4.2 The Revision Applicant cited case laws in his defense and prayed for considering the eligible goods under free allowance and reducing the redemption fine and penalty or any other order 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. A written declaration of goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and the goods are obviously more than needed for personal use and under the circumstances confiscation of the goods is justified. However, the facts of the case state that the Applicant had not concealed the impugned goods indigenously. The applicant had also made no attempt to pass through the green channel and had proceeded towards the red channel. 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 and the original adjudicating authority has rightly extended the option under section 125 of the Customs Act, 1962. The Applicant has pleaded for reducing the redemption fine and penalty. The Government however observes that the redemption fine of Rs. 30,000/- ( Thirty thousand ) on goods valued at Rs. 1,14,000/- ( Rupees One lakh Fourteen thousand ) is appropriate. The penalty of Rs. 10,000/- imposed is also appropriate. Under the circumstances, Government is not inclined to interfere with the impugned Order in Appeal.



7. The Revision Application is therefore dismissed.
8. So, ordered.

*Ashok Kumar Mehta*  
30/7/18

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

ORDER No. <sup>567</sup>/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30.07.2018

To,

Shri Mohammed Ishtiaq  
c/o M/s L. K. Associates  
"Time Tower" Room No. 5, II Floor,  
169/84, Gengu Reddy Road,  
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.

**ATTESTED**

*Sankarsan Munda*  
10/7/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

