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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. 373/387/B/14-RA

Date of Issue 10/08/2018

ORDER NO.569/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 02.07.2018
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 Riyas 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. 1700/2014 dated 12.09.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



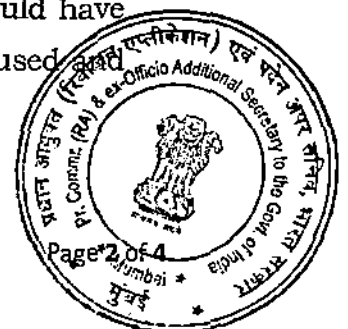
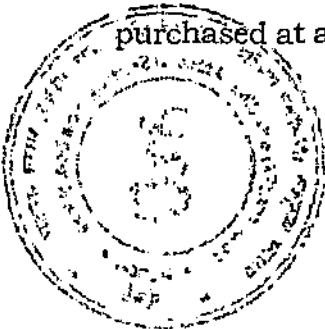
ORDER

This revision application has been filed by Shri Riyas Mohammed (herein referred to as Applicant) against the order no 1700/2014 dated 12.09.2014 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 06.05.2014. He was intercepted and examination of his baggage resulted in the recovery of ten Sony Xperia C Mobile phones totally valued at Rs. 1,00,000/-. After due process of the law vide Order-In-Original No. 602/2014 Batch B dated 06.05.2014 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. 50,000/- 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. 1700/2014 dated 12.09.2014 rejected 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 Applicant had the intention to use three of the mobile phones and sell the remaining to meet his travel expenses; The Appellate authority should have noticed that the Applicant has not brought any goods restricted or prohibited warranting confiscation; The goods were not mis declared and the Applicant did not try to pass through the Green Channel with an intention to evade duty; No concealment was detected by the officers; The Applicant does not have previous offences registered against him; only a part of the goods were brought for trading whereas the rest of the goods were to be used personally; The personal phones which were not in commercial quantity should have been eligible for free baggage allowance; The goods were old and used purchased at a throwaway price;



4.2 The Revision Applicant cited case laws in his defense and prayed for reduction of redemption 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. The mobile phones 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 not involved in any such 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. Out of the ten mobiles under import three mobiles were brought for his personal use, these mobiles were also made part of the seized consignment. 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. 1,00,000/- (Rupees One lakh) is reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs. 35,000/- (Rupees Thirty five) 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. 5,000/- (Rupees Five thousand).



Rs.7,000/- (Rupees Seven 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.

(Handwritten Signature)
2.7.18

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

ORDER No.569/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 02-07-2018

To,

Shri Riyas Mohammed
c/o M/s L. K. Associates
"Time Tower" Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

ATTESTED

(Handwritten Signature)
10/8/18

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

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.

