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SPEED POST



सत्यमेव जयते

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. 373/52/B/14-RA

Date of Issue 10/08/2018

ORDER NO. 570/2018-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 Kumar Damodharan

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. 78/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals), Chennai.



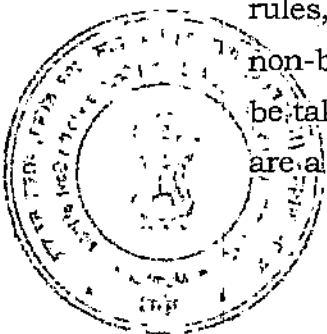
ORDER

This revision application has been filed by Shri Kumar Damodharan (herein referred to as Applicant) against the order no 78/2014 dated 20.11.2014 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 09.08.2014. He was intercepted and examination of his baggage resulted in the recovery of four Panasonic video cameras totally valued at Rs. 1,80,000/- ( Rupees One lakh Eighty thousand ) and one Samsung 48" LED TV.. After due process of the law vide Order-In-Original No. 980/2014 Batch A dated 09.08.2014, 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. 90,000/- and imposed penalty of Rs. 18,000/- under Section 112 (a) of the Customs Act,1962. The Samsung 48" LED TV was released on applicable customs duty. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 78/2014 dated 20.11.2014 reduced the redemption fine 90,000/- to Rs.50,000/- and personal penalty from Rs. 18,000/- to Rs. 12,000/-and modified 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 impugned video cameras were purchased to set up a video recording business in Chennai and earn a livelihood; On return he proceeded to the customs counter to declare the goods and pay duty; however the goods were put up for adjudication; The Applicant has not brought any goods restricted or prohibited warranting confiscation; Frequent travel is not a offence as long as one is carrying bonafide baggage; No credence was given to baggage rules, instead the authorities have chosen to adjudicate the entire goods as non-bonafide baggage; The offence of misdeclaration and smuggling cannot be taken when the Applicant has passed through the Red Channel; There are a catena of case laws where the redemption fine and penalty has been



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reduced; The Applicant is not a repeat offender therefore the fine and penalty is harsh and not proportionate; when no misdeclaration was made by the applicant.

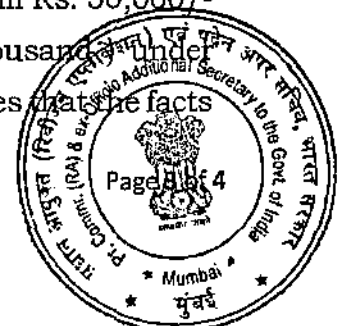
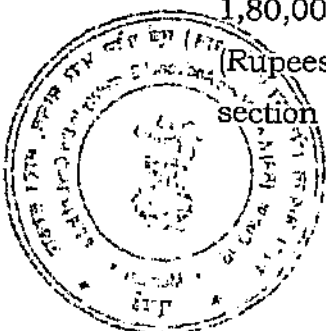
4.2 The Revision Applicant cited case laws in his defense and prayed for considering the eligible goods under free allowance and release the goods on reduced redemption fine and penalty as deem fit in the interest of justice.

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. 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. The Applicant was not 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. 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. 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. 1,80,000/- (Rupees One lakh Eighty thousand) is reduced from Rs. 50,000/- (Rupees Fifty 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. 12,000/- ( Rupees Twelve 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.

*(Handwritten Signature)*  
30/7/18

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

ORDER No.570/2018-CUS (SZ) /ASRA/mumbai

DATED 30-07-2018

To,

Shri Kumar Damodharan  
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**

*(Handwritten Signature)*  
30/7/18

**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

