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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. 373/157/B/15-RA

Date of Issue 10/08/2018

ORDER NO. 571/2018-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 Gulam Rasul Khan

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. 168/2015 dated 31.03.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

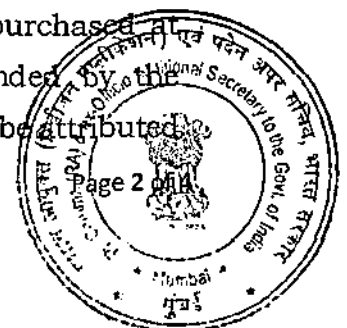
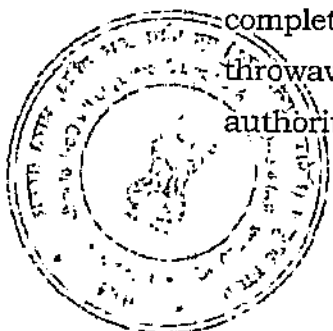
This revision application has been filed by Shri Gulam Rasul Khan (herein referred to as Applicant) against the Order in Appeal C. Cus No. 168/2015 dated 31.03.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 20.01.2015. He was intercepted and examination of his baggage resulted in the recovery of 3 nos Panasonic Video Cameras and one sigma lenses totally valued at Rs. 2,40,000/- ( Rupees Two lakhs Forty thousand ).

3. After due process of the law vide Order-In-Original No. 37/2015 Batch A dated 20.01.2015 the Original Adjudicating Authority 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. 1,20,000/- and imposed penalty of Rs. 24,000/- 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. 168/2015 dated 31.03.2015 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 Appellate authority has held that the applicant has three previous offences and did not give any relief: The Appellate authority has rejected the appeal on frivolous grounds as the previous offences are not very alarming when the import policy is liberal; The Appellate authority failed to consider that the Applicant came to the red channel to declare the goods and therefore the redemption fine of 50% and penalty of 10% is excessive; Frequent travel is not an offence; The Applicant has not brought any restricted or prohibitive goods; There are no instances of arrest or prosecution in any of the previous cases; No allegation of misdeclaration or concealment is made out against the Applicant; No credence was given to baggage rules; The cameras were no complete without the accessories and so the goods were purchased at throwaway prices, such due consideration was not extended by the authorities; The offence of smuggling or misdeclaration cannot be attributed



when the Applicant is at the Red channel; 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 redemption fine and penalty therefore is harsh and not proportionate.

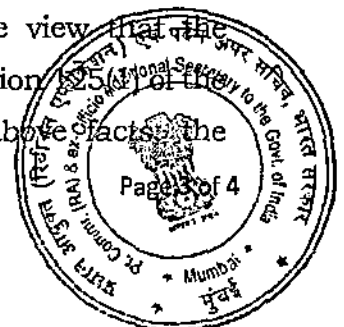
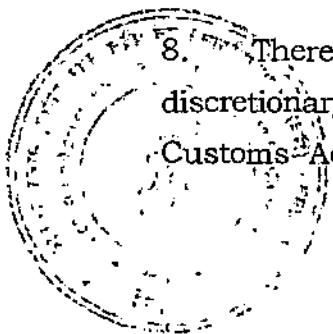
4.2 The Revision Applicant cited case laws in his defense and prayed for considering the eligible goods under free allowance and reducing the redemption fine and penalty or any other order as deem fit in the interest of justice.

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 where option for re-export of gold was allowed 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 under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The number of items are few and it cannot be considered as commercial quantity. The goods were recovered from his baggage and they were not indigenously concealed. The Applicant had taken the red channel route and therefore, it was not a hardcore attempt to smuggle the goods. The CBEC Circular 09/2001 gives specific 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.

8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 25 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 redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The redemption fine imposed on the assorted goods totally valued at Rs. 2,40,000/- ( Rupees Two lakhs Forty thousand is reduced from Rs. 1,20,000/- (Rupees One lakh Twenty thousand ) to Rs.75,000/- ( Rupees Seventy Five 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. 24,000/- ( Rupees Twenty four thousand ) to Rs.15,000/- ( Rupees Fifteen thousand) under section 112(a) of the Customs Act,1962.

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

11. So, ordered.

*(Handwritten Signature)*  
20/7/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 571/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30.07.2018

To,

Shri Gulam Rasul Khan  
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)*  
10/7/18

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

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.

