

ORDER

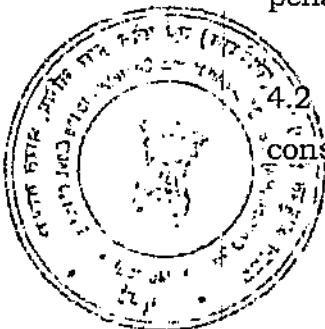
This revision application has been filed by Shri Thagagani (herein referred to as Applicant) against the order no 1780/2013 dated 04.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 04.04.2013. He was intercepted and examination of his baggage resulted in the recovery of assorted mobile phones and cameras, some old and used, totally valued at Rs.1,40,000/- (Rupees One lakh forty thousand). After due process of the law vide Order-In-Original No. 354/ Batch B dated 04.04.2013 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. 70,000/- and imposed penalty of Rs. 14,000/- 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. 1780/2013 dated 04.12.2013 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 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; The adjudicating authority wrongly inferred that the goods were in commercial quantity and has denied the applicant free baggage allowance; Except mobile phone even the remaining items cannot be termed as commercial goods; Without giving credence to the baggage rules the adjudication authorities have inferred the importing mobile phones were a violation when they and the other goods are not in trade quantities; It is a well settled principle that the quantum of penalty should also be proportionate to the role played by the individual.

4.2 The Revision Applicant cited case laws in his defense and prayed for considering the eligible goods under free allowance and release of 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 not involved in 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 there was no 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 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.

UNRECORDED

7. The redemption fine imposed on the assorted electronics valued at Rs. 70,000/- (Rupees One lakh forty thousand) is reduced from Rs. 70,000/- (Rupees Seventy thousand) to Rs. 50,000/- (Rupees Fifty 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. 14,000/- (Rupees Fourteen thousand) to Rs. 10,000/- (Rupees Ten 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.

(Signature)
20/7/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 572/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.07.2018

To,

Shri Thagagani
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

(Signature)
10/8/18

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

