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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. 373/40/B/15-RA

Date of Issue 10/08/2018

ORDER NO. 579/2018-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 Hussain

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. 45/2014 dated 11.11.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Gulam Rasul Hussain (herein referred to as Applicant) against the Order in Appeal C. Cus No. 45/2014 dated 11.11.2014 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 08.09.2014. He was intercepted and examination of his baggage resulted in the recovery of assorted goods ie 2000 nos Gutka, 960 nos Gudang Garam cigarettes, 10 Towels, 10 Perfumes and 10 ladies gowns valued at Rs. 1,53,932/- (Rupees One lakh Fifty Three thousand Nine hundred and Thirty two).

3. After due process of the law vide Order-In-Original No. 1117/2014 Batch C dated 08.09.2014 the Original Adjudicating Authority ordered absolute confiscation of the Gutka and cigarettes valued at Rs. 58,932/- under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, Confiscated the other goods valued at Rs. 95,000/-. But allowed redemption of the goods on payment of a fine of Rs. 47,500/- and imposed penalty of Rs. 15,500/- 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. 45/2014 dated 11.11.2014 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 failed to consider the excessive valuation made by the Adjudicating authority; Frequent travel is not an offence; the applicant never brought any restricted or prohibitive goods by non declaration or concealment; Baggage which is not in commercial quantity would be eligible for free baggage allowance; No credence was given to baggage rules; The attempt to clear without declaration is not clearly made out by the department; The goods were purchased during Bakri Eid sale; The Applicant is not a repeat offender and the goods were brought for his own purpose.



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.

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 had he not been intercepted he would have gone without paying the requisite duty, 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 goods were recovered from his baggage and it was not indigenously concealed. The Applicant is a frequent traveler, however he is not a repeat offender and does not have any previous cases registered against him. 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 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 redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.



ADDITIONAL SECRETARY

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9. The absolute confiscation of the Gutka and cigarettes is upheld. The redemption fine imposed on the assorted goods totally valued at Rs. 95,000/- (Rupees Ninety Five thousand) is reduced from Rs. 47,500/- (Rupees Forty Seven thousand Five hundred) to Rs. 30,000/- (Rupees Thirty 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. 15,500/- (Rupees Fifteen thousand Five hundred) to Rs. 10,000/- (Rupees Ten 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.

Ashok Kumar Mehta
30/7/18

(ASHOK KUMAR MEHTA)

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

ORDER No. ⁵⁷⁹/2018-CUS (SZ) /ASRA/mum~~672~~

DATED 30.07.2018

To,

Shri Gulam Rasul Hussain
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.

