

373/119/B/14-RA
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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. 373/119/B/14-RA/1212

Date of Issue 22.02.2018

ORDER NO. 60/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.02.2018 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. Mahuthu Rajabu.

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 192/2014 dated 11.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Mahuthu Rajabu (herein after referred to as "Applicant") against the order no C.Cus No. 192/2014 dated 11.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 23.07.2013. Examination of his baggage resulted in recovery of 4 numbers of Samsung Galaxy S4 MINI Mobile Phones (herein after referred to as the "impugned goods") totally valued at Rs. 1,08,000/-. As the appellant had not declared the impugned goods and the goods were in commercial quantity the Original Adjudicating Authority, vide his order 884/2013 dated 23.07.2013 confiscated the impugned goods under Section 111 (d), (l), and (m) of the Customs Act, 1962 with an option to redeem the goods on payment of Redemption fine of Rs. Rs.54,000/-. Penalty of Rs. 10,000/- was also imposed under Section 112 (a) of the Customs Act, 1962 on the Applicant. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order C.Cus No. 192/2014 dated 11.02.2014 rejected the Appeal of the Applicant.

3. Aggrieved with the Order in Appeal the Applicant has filed this revision application inter alia on the grounds that.

- 3.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case.
- 3.2 The goods were purchased for his family and for his personal use and not for sale.
- 3.3 Duty free allowance of Rs. 35,000/- as per section 79 of the Customs Act, 1962 was not given to him.
- 3.4 That even assuming without admitting that the impugned goods were commercial in nature, it cannot be treated as non-bonafide baggage.
- 3.5 The impugned goods were purchased for a lesser price.
- 3.6 The Hon'ble Supreme Court (full bench) in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions. Hence the authority could have collected duty amount instead of imposing redemption fine and penalty.



3.5 The redemption fine of Rs. 54,000/- and and penalty of Rs. 10,000/- is very high and unreasonable.

The Revision Applicant also cited various assorted judgments in support of his case, and prays that the Hon'ble Revision Authority may please reduce the redemption fine and penalty imposed on the Applicant.

4. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed Revision Application and cited the decisions of GOI/Tribunals etc in support of his case. Nobody from the department attended the personal hearing.

5. The Government has gone through the facts of the case. The impugned goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. If the Applicant was not intercepted he would have walked away. Thus there was an attempt to evade the payment of Customs duty. Under the circumstances confiscation of the gold is justified.

6. However, There was no concealment of the goods, and neither was there a concerted attempt at smuggling the goods into India. There is no allegation that the Applicant had tried to exit through the Green Channel exit. It also appears that the valuation of the goods detailed above is on the higher side. Though 4 mobile phones were being brought, it cannot be termed absolutely commercial quantity as the same could have been brought for personal use and for the use of family members and not for sale, hence the duty free allowance should have been extended to him. The Applicant is not a frequent traveller and does not have any previous offence 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. Government therefore holds that while imposing redemption fine and penalty the applicant can be treated with a lenient view.

7. Taking into consideration the foregoing discussion, Government, reduces the redemption fine imposed by the Appellate authority from Rs. 54,000/- (Fifty two

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thousand) to Rs. 30,000/- (Rupees Thirty thousand). Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 10,000/- (Rupees Ten thousand) to Rs 6,000/- (Rupees Six thousand) under section 112(a) of the Customs Act,1962, along with appropriate Customs duty as applicable.

8. The impugned Order in Appeal stands modified to that extent.
9. Revision application is partly allowed on above terms.
10. So, ordered.

(Handwritten Signature)
21.2.18

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

ORDER No. 60/2018-CUS (SZ) /ASRA/mumbai

DATED 21-02-2018

To,

True Copy Attested

Shri Mahuthu Rajabu.
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

(Handwritten Signature)
22-2-18

एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.
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