373/380/B/14-RA





GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) 8th Floor, World Trade Centre, Centre – I, Cuffe Parade, Mumbai-400 005

F.No. 373/380/B/14-RA

Date of Issue 13 08 2018,

ORDER NO.⁶⁰⁶/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 26.07.2018 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 Abdul Salam Mubarak Basha

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. 1418/2014 dated 06.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.

Mumbai

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<u>ORDER</u>

This revision application has been filed by Shri Abdul Salam Mubarak Basha (herein referred to as Applicant) against the order no 1/418/2014 dated 06.08.2014 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 27.03.2014. He was intercepted and examination of his baggage resulted in the recovery of eight nos Sigma lens valued at Rs. 1,20,000/- and 20 nos Matin Shirts valued at Rs, 2,000/- and one Sony Bravia 32" LED TV. After due process of the law vide Order-In-Original No. 399/2014 Batch D dated 27.03.2014 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. 61,000/- and imposed penalty of Rs. 13,000/- 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. 14/8/2014 dated 06.08.2014 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 should have noticed that the Applicant has not brought any goods restricted or prohibited warranting confiscation; The goods were not mis declared and the Applicant did not try to pass through the Green Channel with an intention to evade duty; No concealment was detected by the officers; The Applicant was not arrested in any of the previous offences and have no relevance in the case; The goods were brought for professional use; The adjudicating authority wrongly came to the conclusions that the goods are in commercial quantity; The goods were old and used and purchased at a throwaway price; That except the shirts the lens cannot be termed as commercial quantities; The redemption fine and penalty is harsh and not proportionate



4.2 The Revision Applicant cited case laws in his defense and prayed for reduction of 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. Though the Applicant was 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. The goods were not concealed ingeniously. 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.

7. The redemption fine imposed on the assorted electronics valued at Rs.
1,20,000/- (Rupees One lakh Twenty thousand) is reduced from Rs.
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8. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

9. So, ordered.

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

ORDER No. 606/2018-CUS (SZ) /ASRA/MUMBAL

DATED&6.07.2018

To,

Shri Abdul Salam Mubarak Basha 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.
- A. Guard File.
- 5. Spare Copy.

ATTESTED

SANKARSAN MUNDA Asstt. Commissioner of Custom & C. Ex.

