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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. 373/57/B/15-RA/1425 Date of Issue 31/08/2018.

ORDER NO.638/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 16.08.2018 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 Suresh Kumar Thankappan Pillai

Respondent : Commissioner of Customs, Thiruvananthapuram.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 98/2014-Cus dated 30.10.2014 passed by the Commissioner of Customs (Appeals), Cochin.

ORDER

This revision application has been filed by Shri Suresh Kumar Thankappan Pillai (herein referred to as Applicant) against the Order in Appeal no 98/2014-Cus dated 30.10.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the applicant arrived at Trivandrum International Airport from Colombo and opted for the Red channel and declared that he possessed goods in commercial quantity as detailed below;

Sl. No.	Description of articles	Quantity /Weight	International value in Rs.
1	Samsung LED TV 40"	one	35,000/-
2	Fancy Plastic stones	128 kgs	19,500/-
3	Ornaments made of Silver	9kgs	6,57,756/-
4	Curvousier liquor	3 litres	3,000/-
			7,15,256/-

3. After due process of the law vide Order-In-Original No. 02/2014 CUS (ADC) dated 10.02.2014 the Original Adjudicating Authority allowed the Samsung TV and the Curvousier liquor on payment of appropriate duty. The Fancy plastic stones were revalued at Rs. 3,75,494/- and the Silver ornaments were revalued at Rs. 8,78,528/-. Both these items were confiscated under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, the Fancy plastic stones were allowed to be redeemed on payment of Rs. 93,874/- and the Silver ornaments were allowed to be redeemed on payment of Rs. 2,19,632/- in addition to appropriate customs duty. A penalty of Rs. 3,13,506/- was also imposed 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 No. 98/2014-Cus dated 30.10.2014 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 Commissioner Appeals is against the Law and weight of evidence and circumstances of the case; The authorities have assessed the value based on the internet value which are unworthy and unreliable and against the principles of natural justice; The plastic stones have been assessed at the rate of Rs. 2000/- to Rs. 3000/- per kg, whereas similar goods have been cleared at Rs. 200/- per Kg vide BR No. 644 dated 19.05.2013; these goods are used in chappies,

churidars, hair buckles ladies hand bags etc. and are of far lesser value; The Hon'ble Supreme Court in the case of M/s Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs New Delhi reported in 2000(117) ELT 49 (Tribunal) has categorically stated that " Documents displayed on internet, cannot be relied upon to calculate value". The Applicant had brought the TV for his personal use and is eligible for free baggage allowance and it was not in commercial quantity; He was all along under the control of the officers at the red channel and did not attempt to pass through the green channel; A proper declaration was made as required under section 77 of the Customs Act,1962; Due to excessive valuation the redemption fine and penalty of Rs. 20% is also high and unreasonable in addition a duty of Rs. 35% plus 2% educational cess has to be paid; The penalty and redemption fine is more than the duty amount and the same has to be reduced considerably.

4.2 The Revision Applicant prayed for setting aside the order in appeal and order consequential relief and thus render justice.

5. A personal hearing in the case was scheduled to be held on 24.07.2018, the Applicant Shri Anish Marshal vide his letter dated 20.07.2018 requested that he is unable to engage a counsel due to financial difficulties and prayed that the grounds of the Revision application, alongwith the judgements mentioned in the Revision Application may be treated as his submissions.

6. The Government has gone through the facts of the case. The goods brought by the Applicant were definitely in commercial quantity and the goods cannot be construed as bonafide baggage, under the circumstances confiscation of the goods is justified. However, the facts of the case state that the adjudication authority has relied upon internet prices for arriving at the value of the goods. The Hon'ble Supreme Court in the case of M/s Aggarwal Distributors (P) Ltd. Vs Commissioner of Customs New Delhi reported in 2000(117) ELT 49 (Tribunal) has categorically stated that " Documents displayed on internet, being unsigned are not reliable and cannot be relied upon to calculate value". The goods were declared by the Applicant at the Red channel and they were not indigenously concealed. It is also observed that the higher valuation of the goods by the adjudication authority has led to imposition of higher penalty. The government also observes that the free duty allowance has not been extended to the Applicant. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The impugned Order in Appeal therefore needs to be modified and the confiscated goods is liable to be allowed on reduced redemption fine and penalty.

9. Taking into consideration the foregoing discussion, Government reduces the redemption fine imposed on Fancy plastic stones valued at Rs. Rs. 3,75,494/- (Rupees

Three lakhs Seventy Five thousand Four hundred and Ninety Four) from Rs. Rs. 93,874/- (Rupees Ninety three thousand, Eight hundred and Seventy four) to Rs. 70,000/- (Rupees Seventy thousand) under section 125 of the Customs Act, 1962. The Government also reduces the redemption fine imposed on Silver ornaments valued at Rs. Rs. 8,78,528/-(Rupees Eight lakhs Seven eight thousand Five hundred and Twenty Eight) from Rs. 2,19,632/- (Rupees Two lakhs Nineteen thousand, Six hundred and Thirty two) to Rs. 1,75,000/- (Rupees One lakh Seventy Five thousand) under section 125 of the Customs Act, 1962.

10. 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. 3,13,506/- (Rupees Three lakhs Thirteen thousand Five hundred and six) to Rs.2,00.000/- (Rupees Two lakhs) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

12. So, ordered.

16/8/18

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

ORDER No. 638/2018-CUS (SZ) /ASRA/MUMBAI. DATED 16.08.2018

To,

Shri Suresh Kumar Thankappan Pillai
T. C. No. 32/866,
Ann Nivas, Vettucaud,
Titanium P.O.
Trivandrum-695 021.

Copy to:

1. The Commissioner of Customs, Thiruvananthapuram.
2. The Commissioner of Customs (Appeals), Cochin.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

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