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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 380/48/B/14-RA/1601

Date of Issue 03/10/2018

ORDER NO. 676/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 19.09.2018 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 : Commissioner of Customs (Airport), Goa

Respondent 1 : Shri Anees Mohamed Iqbal Mansoori

Respondent 2 : Smt. Shaikhmullah Mumtajiben

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. GOA-EXCUS-000-APP-010-011-13-14 Dated 24.12.2013 passed by the Commissioner of C. EX. & Customs (Appeals), Goa.



ORDER

This revision application has been filed by Commissioner of Customs, Goa, (herein referred to as Applicant) against the Order in Appeal No. GOA-EXCUS-000-APP-010-011-13-14 Dated 24.12.2013 passed by the Commissioner of C. Ex. & Customs (Appeals), Goa.

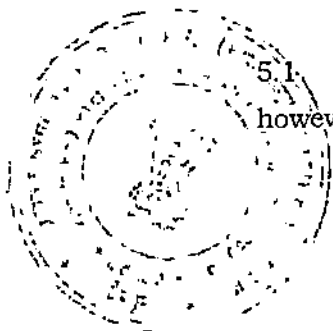
2. Briefly stated the facts of the case is that the Respondents, arrived at the Dabolim International Airport on 11.03.2013. Examination of the baggage of the respondent 2 resulted in the recovery of 31 Sony Xperia mobiles 18973 memory cards, 20 Sony Xperia car phones and 20 Sony Xperia chargers, valued at Rs. 20,83,680/- ( Rupees Twenty lakhs Eighty Three thousand Six hundred and eighty ) and Indian Currency of Rs. 5270/- and 280 UAE Dirhams. Suspecting that the these goods have been transferred to her by some International passenger the Customs officers intercepted the Respondent 1 who in his statement admitted that the goods belonged to him.

3. After due process of the law vide Order-In-Original No. 08/2013-ADC dated 23.09.2013 the Original Adjudicating Authority ordered absolute confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 10,00,000/- under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 5,00,000/- was also imposed under Section 114AA of the Customs Act, 1962 on Shri Anees Mohamed Iqbal Mansoori, the Respondent 1. A penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on Smt. Shaikhmullah Mumtajben, the Respondent 2.

4. Aggrieved by the said order, the respondent and the Applicants both filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal GOA-EXCUS-000-APP-010-011-13-14 Dated 24.12.2013 allowed the goods on payment of redemption fine of Rs. 5,00,000/- and set aside the confiscation of Indian Currency of Rs. 5270/- and 280 UAE Dirhams. The penalty of Rs. 10,00,000/- under Section 112 (a) imposed on Shri Anees Mohamed Iqbal Mansoori was reduced to Rs. 2,50,000/- and the penalty under Section 114AA was reduced to Rs. 1,00,000/-. The penalty of Rs. 2,50,000/- under Section 112 (a) imposed on Smt. Shaikhmullah Mumtajben, was also reduced to Rs. 50,000/-.

5. Aggrieved with the above order the Applicants have filed this revision application inter alia on the grounds that;

5.1. The Commissioner (Appeals) has agreed that it is a case of smuggling, however he has erred in the appreciating the factual position of the issue; The



goods held to be confiscated were being smuggled in by the passengers; The passengers have contravened the provisions of Sections 77 and 135 of the Customs Act, 1962; Therefore the impugned goods warrant absolute confiscation; The Appellate authority has erred in allowing redemption of the goods; Further the redemption fine and penalty is not commensurate with the gravity of offence; The goods have been brought in commercial quantity; The respondent 2 has acted in tandem with the respondent 1 and abetted the smuggling of the impugned goods.

5.2 The Revision Applicant therefor prayed that under the facts and circumstances whether the impugned order in Appeal is proper and correct in law or otherwise and prayed for an appropriate order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit.

6.1 The Respondents in their reply have interalia stated that; The Appellate order is a well reasoned order and the justification and rationale for permitting redemption is based on solid grounds; The Respondent submits that there was contravention of Section 77 of the Customs Act, 1962, by the Respondent and that due to the reason of contravention of Section 77 of the Customs Act, 1962, the Ld. Appellate Authority has imposed fine and penalty on the Respondent; The Respondent submits that the ground mentioned in para 1 of the Grounds of Appeal cannot be the ground for not permitting redemption of impugned goods. The Respondent submits that it may be kindly appreciated that in the Grounds of Appeal, the permission of granting redemption of goods is not challenged, but the quantum of redemption fine and Penalty is challenged; The Appellate Authority has rightly discarded the judgments relied upon by the adjudication Authority as the facts were entirely different from the facts of the case.

6.2 The Revision Applicant cited decisions in favor of their case and prayed for rejection of the Revision Application, the order of the Appellate authority be upheld and or such an order as deemed fit.

7. Accordingly a personal hearing in the case were scheduled held on 21.09.2018. However, neither the Respondent nor his advocate replied to the show



Cause Notice or attended the said hearing. The case is therefore being decided exparte on merits

8. The Government has gone through the case records it is observed that the Respondent by handing over the goods to a domestic passenger on the domestic leg of the same flight, the Respondent had blatantly tried to smuggle the goods into India in contravention of the provisions of the Customs, 1962. The confiscation of the goods is therefore justified.

9. The respondents however did not cross the green channel and was intercepted before he attempted the same. There is no allegation of indigenous concealment. There are no allegations of any previous offences. 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.

10. Further, 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 regard to goods that are not prohibited. The Government also note that the section 125 does not distinguish between and carrier and the owner of the goods. Government therefore is inclined to agree with the Order-in-Appeal in allowing the goods on redemption fine and penalty. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. Government also observes that the appellate order has imposed appropriate redemption fine of Rs.5,00,000/- and penalty of Rs. 2,50,000/- on Respondent 1 and penalty Rs. 1,00,000/- on Respondent 2 under section 112 (a) on goods valued at Rs. 20,83,680/- ( Rupees Twenty lakhs Eighty Three thousand Six hundred and eighty ) is appropriate. The impugned Order in Appeal therefore needs upheld and the revision Application needs to dismissed. The penalty of Rs. 1,00,000/- ( Rupees One lakh Twenty Five thousand ) imposed under section 114AA of the Customs Act,1962 on Respondent 1 has been incorrectly imposed, the same is liable to be set aside.

11. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order GOA-EXCUS-000-APP-010-011-13-14 dated 24.12.2013 issued by the Commissioner of C. Ex. & Customs (Appeals),



upheld as legal and proper, except setting aside the penalty of Rs.1,00,000/- ( Rupees One lakh) imposed under section 114AA of the Customs Act,1962.

12. Revision application is accordingly modified to that extent.

13. So, ordered.

*(Handwritten Signature)*  
19.09.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 675/2018-CUS (SZ) /ASRA/MUMBAI

DATED 19.09.2018

To,

1. The Commissioner of Customs (Airport),  
Dabolim International Airport,  
Goa
2. Shri Anees Mohamed Iqbal Mansoori  
111,11<sup>th</sup> Floor, Room No. 8,  
Zakaria Masjid street,  
Dongri, Mumbai 8.
3. Smt. Shaikhmullah Mumtajiben  
Fatima Building,  
Bhindi Bazaar, Hafizka X road,  
Mahdvi, Mumbai 3.

Copy to:

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

**ATTESTED**

*(Handwritten Signature)*  
31/09/18

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

