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SPEED POST

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

F.No. 373/93/B/17-RA

Date of Issue 12.10.2018

ORDER NO. 689/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.08.2018 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 M. H. Mohamed Hussain

Respondent : Commissioner of Customs, Chennai .

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 356/2016 dated 19.12.2016 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri M. H. Mohamed Hussain (herein referred to as Applicant) against the Order in Appeal C. Cus No. 356/2016 dated 19.12.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Anna International Airport on 02.09.2016. He was intercepted and examination of his baggage and person resulted in the recovery of 109 assorted used mobile phones totally valued at Rs. 2,92,000/- (Rupees Two lakhs Ninety two thousand)and 153 counterfeit watches valued at Rs. 62,778/- (Sixty two thousand Seven hundred and Seventy eight).

3. After due process of the law vide Order-In-Original No. 604/2016 – Batch A the Original Adjudicating Authority ordered absolute confiscation of the counterfeit watches under Section 111 (d), (l), (m) & (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. The other assorted goods were confiscated under Section 111 of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act but allowed to be redeemed on payment of Rs. 1,46,000/- under section 125 of the Customs Act, 1962. A penalty of Rs. 35,000/- was also imposed under Section 112 (a) of the Customs Act, 1962

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 356/2016 dated 19.12.2016 reduced the redemption fine to Rs. 60,000/- and modified the order in original giving relief to the applicant.

5. The Revision application has been filed alongwith a condonation of delay Application pleading that the delay in filing the Revision Application by 60 days may be condoned as the Applicant was unwell and could not contact the counsel for filing the revision application. The applicant has filed this Revision Application interalia on the following grounds that;

5.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles and legally unsustainable; The goods imported by the Applicant are neither prohibited nor restricted and are freely importable; The applicant has purchased the obsolete goods for his own purposes for repairs; The department had no case of any

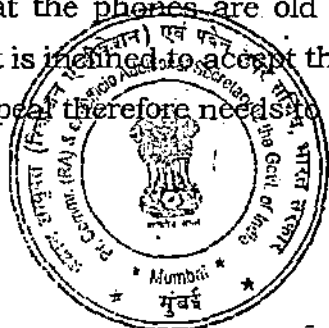


misdeclaration , non-declaration or concealment; The adjudicating officer has entertained reasonable belief in considering the cell phones as E-waste based on examining officers report who are not experts and competent to give expert opinion; The applicants case is not an import but a baggage case, and the adjudicating authority should have considered the same when considering absolute confiscation invoking the IPR Act; The goods allowed and cleared by the applicant were in trade quantities and the fine and penalty imposed was very high without any basis; The applicant places his reliance on various instances wherein the Revision Authority in identical cases has reduced the fine and penalty;

5. A personal hearing in the case was scheduled to be held on 09.08.2018, 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. In the interest of justice, delay of 60 days is condoned and revision application is decided on merits. The goods are in commercial quantities and 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. There is no allegation that the Applicant had tried to pass through the green channel. There is no allegation of concealment of the goods and the impugned goods were not indigenously concealed. The Government notes that the Order in Appeal has observed that 49 phones of Nokia make are very old and cannot be put to further use, the wrist watches are counterfeit replicas and the import contravenes the provisions of IPR, Act. The Government therefore does not feel the need for any interference on the absolute confiscation of these goods in the order in Appeal. The government upholds the absolute confiscation of these goods valued at Rs. 62778/- (Rupees Sixty Two thousand Seven hundred and seventy eight). The Applicant has pleaded for reduction of fine and penalty on the grounds that the phones are old and used and need repairs before use. The Government is inclined to accept the plea for reduction of penalty. The impugned Order in Appeal therefore needs to be modified.



9. The Government holds that the redemption fine of Rs. 60,000/- (Rupees Sixty thousand) imposed on the impugned goods valued at Rs. 2,92,000/- (Rupees Two lakhs Ninety two thousand) is appropriate. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 35,000/- (Rupees Thirty five thousand) to Rs.15,000/- (Rupees Fifteen 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.

(Signature)
21.8.18

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

ORDER No. 689/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.08.2018

To,

Shri M. H. Mohamed Hussain
c/o M/s B. 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-II), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.

ATTESTED

(Signature)
12/10/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

