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सत्यमेव जयते

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. 373/34/B/16-RA

Date of Issue 12.10.18.

ORDER NO. 699/2018-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 Kareem Sadhik Basha

Respondent : Commissioner of Customs, Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 384/2015-16 dated 05.02.2016 passed by the Commissioner of Customs (Appeals), Cochin.



ORDER

This revision application has been filed by Shri Kareem Sadhik Basha (herein referred to as Applicant) against the order no 384/2015-16 dated 05.02.2016 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the applicant, filed a baggage declaration for clearance of consignments arrived vide Air way bill No. 62911754610 dated 28.09.2010. As per the declaration the consignment was said to contain blankets used clothes, books and assorted crockery totally valued at Rs. 1,000/-. The consignments were however found to contain 794 Titan watches, 388 Still cameras, 24 Handy cams, lenses and other accessories totally valued at Rs. 76,71,664/- ( Rupees Seven Lakhs Seventy one thousand, Six hundred and sixty four). After due process of the law vide Order-In-Original No. 04/2013 dated 23.01.2013 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. 20,00,000/- and imposed penalty of Rs. 10,00,000/- 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. 384/2015-16 dated 05.02.2016 rejected the appeal of the applicant.

3. The applicant has filed this Revision Application interalia on the following grounds that

4.1 The order of the respondent is against the law, weight of evidence ,circumstances and probabilities of the case; The Appellate Authority has not applied his mind and simply glossed over the judgments and points raised in the Appeal grounds; The Applicant respectfully submits that he brought goods of lesser value and the assessed value of the goods is very high; A comparative study of similar items under import adjudicated by the Customs department has resulted in the entire consignment to be valued at Rs. 52,46,180/-. Therefore if the goods are identical the adjudication authority needs to accept these valuation as they have been valued by their precedents; The valuations are not supported by any cogent materials;

The retractions made by the Applicant should necessarily be reflected in the order; The redemption fine which is imposed so as to wipe out the profit margin is on the higher side; Taking into consideration the duty to be paid



on the goods the total amount of redemption fine, penalty and customs duty will be more than the value of the goods; The Applicant further submits that the authority was well aware that the value of the goods would lessen over time and the models will become outdated and become scrap.

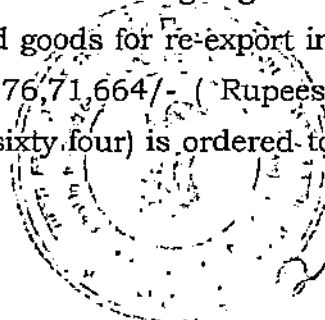
3.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to allow the single I-phone under duty free allowance and the I-pad may be allowed without duty Notification no. 11/2004 dated 08.01.2004 reduce the redemption fine, penalty and thereby render justice.

4. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and requested for the reduction of redemption fine and penalty. Nobody from the department attended the personal hearing.

5. The Government has gone through the facts of the case. The Applicant had clearly misdeclared the goods and under the circumstances the confiscation of the goods is justified. The Applicant has however questioned the valuation of the goods and has listed several similar goods that have been valued lower than those valued by the department in the impugned case. The higher valuations have therefore led to imposition of higher penalty by the adjudicating authority. 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 Government therefore holds that a lenient view can be taken in the matter. The Applicant has pleaded for re-export on reduced redemption fine and personal penalty due to higher valuations and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods is liable to be allowed for re-export on payment of reduced redemption fine and penalty.

शुद्धि कर देना

(A.R) 106: Taking into consideration the foregoing discussion, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned goods valued at Rs. 76,71,664/- (Rupees Seven Lakhs Seventy one thousand Six hundred and sixty four) is ordered to be redeemed for re-export.



The redemption fine of Rs. 20,00,000/- ( Rs. Twenty lakhs) is reduced to Rs. 15,00,000/- (Rupees Fifteen Lakhs ) under section 125 of the Customs Act, 1962. 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. 10,00,000/- (Rupees Ten lakhs) to Rs. 7,50,000/- ( Rupees Seven Lakhs Fifty thousand) under section 112(a) of the Customs Act,1962. The dues as required under section 125(2) of the Customs Act 1962 shall be payable by the Applicant.

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

8. So, ordered.

*(Handwritten Signature)*  
D. J. A. / ✓

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

ORDER No. 699/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.08.2018

To,

Shri Kareem Sadhik Basha  
C/o Shri S. Palinikumar,  
Advocate,  
No. 10, Sukurama Street,  
Second Floor,  
Chennai -600 001.

Copy to:

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

**ATTESTED**

*(Handwritten Signature)*  
12/10/18 ✓

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

