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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. 373/109/B/16-RA / 3476

Date of Issue 28.07.2020

ORDER NO 69/2020-CUS (SZ)/ASRA/MUMBAI DATED 26.05.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Azarudeen

Respondent : Commissioner of Customs, Airport, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 364/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Azarudeen (herein after referred to as the Applicant) against the order in appeal No. 364/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case is that the applicant arrived at the Kempegowda International Airport on 10.07.2015. Examination of his baggage resulted in the recovery of 5 (five) new Sony Xperia Mobile phones totally valued at Rs. 1,25,000/-, One Yaesu FM Transreceiver valued at Rs. 10,000/-, 2 (two) used Acer Laptops valued at Rs. 18,000/- and 3 outers of More International cigarettes containing 10 packs each valued at Rs. 4,650/-.

3. The Original Adjudicating Authority vide Order-In-Original No. 312/2015 dated 28.07.2015 ordered confiscation of the impugned goods under Section 111 (d) and (l) of the Customs Act,1962. The electronic goods i.e. 5 (five) new Sony Xperia Mobile phones, One Yaesu FM Transreceiver and allowed redemption on payment of Rs. 41,000/- ( Rupees Forty one thousand), The 2 (two) used Acer Laptops and 3 outers of More International cigarettes were confiscated absolutely. A penalty of Rs. 32,000/- ( Rupees Thirty two thousand) was imposed under Section 112 (a) of the Customs Act,1962 and a penalty of Rs.16,000/- was imposed under Section 114AA of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 364/2016 dated 21.04.2016 set aside the penalty imposed under section 114AA of the Customs Act,1962 and rejected rest of the Appeal.

5. The applicant has filed this Revision Application interalia on the grounds that;

5.1 The order of the Commissioner (Appeals) is unjust unfair and totally devoid of merits; The Applicant never concealed the items and the goods were valued without any basis; after the baggage was marked there was no possibility that the Applicant would attempt to pass through the green Channel as the baggage, being marked was required to be checked; therefore there was no concealment; As the goods were freely importable

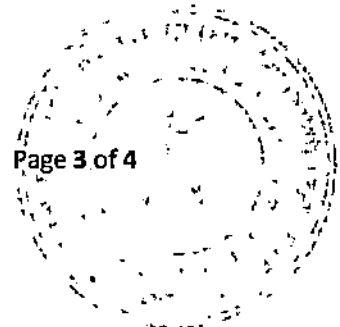


and not prohibited or restricted, the adjudicating authority should have allowed them to be released on payment of duty and nominal fine and penalty; Barring the Cigarettes and Mobile phones the other items were not commercial quantity and therefore the Applicant should have been given Free Baggage allowance; The transciever was a single item and the two Laptop computers were old and used and purchased at throwaway price; The two old Laptop computers should also have been allowed for redemption.

5.2 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of the redemption fine and personal penalty.

6. A personal hearing in the case was scheduled on 21.11.2019. The Consultant for the Applicant Shri B. Kumar, Consultant for the Applicant attended the hearing and pleaded that it was a baggage case and sought reduction of redemption fine and penalty as it was too harsh. Nobody from the department attended the said hearing.

7. The Government has gone through the facts of the case, The Yaesu FM Transreceiver and the two used Acer Laptops are definitely not in commercial quantity and should have been allowed under free baggage allowance. The goods namely mobiles and the Cigarettes were in commercial quantity. As the Cigarettes did not have the mandatory pictorial warnings the absolute confiscation of these Cigarettes is justified. However, the five Sony Xperia mobile phones brought by the Applicant are in commercial quantity and therefore the confiscation of the same is justified. As the mobiles are neither restricted not prohibited the Adjudicating authority has rightly allowed them to be redeemed on fine and penalty. However, the five Sony Xperia mobile phones have been valued at Rs. 1,25,000/-, the Government is of the opinion that a redemption fine of Rs. 41,000/-, Personal penalty of Rs. 32,000/- under section 112 (a) and Customs duty of Rs. 48,670/- is high and unjustified. The case is old and the electronics obsolete, a lenient view is therefore required to be taken in the matter. The Applicant has pleaded for reduction of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be modified accordingly.



8. Accordingly, the redemption fine imposed is reduced to Rs... 20,000/- (Rupees Twenty thousand ). The penalty imposed under section 112 of the Customs Act is also reduced to Rs.20,000/- (Rupees Twenty thousand). Once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 16,000/- ( Rupees Sixteen thousand ) imposed under section 114AA of the Customs Act,1962 is set aside.

9. Revision application is allowed on above terms.

10. So, ordered.

( SEEMA ARORA )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 69/2020-CUS (SZ) /ASRA/Mumbai

DATED 26/05/2020.

To,

Shri Azarudeen  
S/o Hyder Ali, No. 2/215, Maraikar Street, S. P. Pattinam (PO),  
ThiruvadanaI (TK) Ramanathapuram - 623 406.

Copy to:

1. The Pr. Commissioner of Customs, Airport & Air Cargo Complex, Kempegowda International Airport, Bangalore.
2. M/s B. K. Associates, No. 117/55, Egmore, Chennai - 600 082
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)

