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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. 373/20/15-RA

Date of Issue

28.11.2018

ORDER NO. 729/2018-CUS (SZ)/ASRA/MUMBAI DATED 24.09.2018 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 : Shri. Abu Bakar Bin Abdullah

Respondent : Commissioner of Customs, Calicut.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 96/2014- Cus dated 23.10.2014 passed by the Commissioner of Customs (Appeals), Cochin.

ORDER

This revision application has been filed by Shri Abu Bakar Bin Abdullah (herein referred to as Applicant) against the order C. Cus-I. no 96/2014- Cus dated 23.10.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the Officers of DRI on specific intelligence intercepted the applicant, at the Calicut International Airport on 10.04.2008. The Applicant had not declared the goods and had opted for the green channel. Examination of his baggage resulted in recovery of 3906 Computer Rams. The total CIF value of the goods was Rs. 40,18,650/- (Rupees Forty Lakhs Eighteen thousand Six hundred and Fifty).

3. The Original Adjudicating Authority, vide order No. 5/2009/ADC-CUS dated 27.10.2009 absolutely confiscated the items mentioned above under the Customs Act, 1962. As the goods were already disposed, it was ordered that the sale proceeds of Rs. 11,26,850/- was appropriated. A Personal penalty of Rs. 1,00,000/- was imposed under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order C.Cus No. 96/2014- Cus dated 23.10.2014 rejected the Appeal of the Applicant.

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

5.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Though the goods are of lesser value the officers have assessed the goods at a much higher rate; If the goods were assessed properly the Applicant would not have been arrested; Though the Applicant was willing to make a proper declaration and pay the appropriate duty the officers did not listen to him; The Applicant is not a smuggler nor does he have any past bad antecedents; the Apex court in the case of Hargovind Das vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory; The authorities have not considered the option of allowing the goods under section 125 of the Customs Act, 1962; No free allowance was given to the Applicant; The penalty imposed is more than 5% inspite of there being no previous offence registered against the Applicant. The Applicant submits that the value of the goods were assessed at

Rs. Rs. 40,18,650/- but the goods were sold for Rs. 11,26,850/-; It clearly shows that the goods were sold at a very less value and the honble authority needs to initiate action as to why the goods were sold for lesser value.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

6. 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 submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The goods were not properly declared by the passenger as required under Section 77 of the Customs Act, 1962. The goods were brought in commercial quantity and the same are not bonafide goods. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant was not intercepted while trying to exit the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveller and does not have any previous offences registered against him. Government, also observes that there is no allegation ingenious concealment and the Applicant had been intercepted when he attempted to cross the green channel. The only reason for absolute confiscation of the goods is that the goods were brought in commercial quantity and not declared. Further, 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. The absolute confiscation is therefore unjustified.

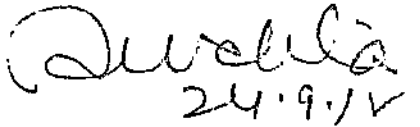
8. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for release of the goods on redemption fine and penalty and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the

confiscated goods are liable to be allowed on payment of redemption fine and reduced penalty. The government also notes that the impugned goods have been sold at a much lesser value than the value assessed at the time of seizure.

9. In view of the above, Government sets aside the Order in Appeal and allows redemption of the confiscated goods on payment of redemption fine and penalty. The impugned goods have been disposed by sale at a value of 11,26,850/-. The appropriated amount of may be redeemed on payment of a redemption fine of Rs.5,00,000/- (Rupees Five 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. 1,00,000/- (Rupees One lakh ) to Rs.50,000/- ( Rupees Fifty thousand ) under section 112(a) of the Customs Act,1962.

10. Revision application is partly allowed on above terms.

11. So, ordered.

  
24.9.18

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

ORDER No. <sup>729</sup>729/2018-CUS (SZ) /ASRA/MUMBAI

DATED 24.09.2018

To,

Shri Abu Bakar Bin Abdullah  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

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