



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. 373/178/B/14-RA/4057

Date of Issue 28.11.2018

ORDER NO.730/2018-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 Abdulla Kunhi

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.195/2014 dated 11.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Ahamed Ibrahim ( herein after referred to as the "Applicant") against the order in Appeal No. 195/2014 dated 11.02.2014 passed by the Commissioner of Central Excise (Appeals) Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 07.07.2013. Examination of his baggage resulted in recovery of perfumes, cigarettes and cosmetics, which were held to be in commercial quantity as detailed below;

Sl. No.	Description of Goods	Quantity	Amount (in Rs.)
1	Dove Cream	60	1500/-
2	Assorted perfumes	18	27,000/-
3	Gudang Garam Cigarettes	15 ctns	16,500/-
		<b>Total</b>	<b>45,000/-/-</b>

3. The Original Adjudicating Authority, vide its Order in Original No. 775/2013 Batch C dated .07.07.2013 absolutely confiscated the cigarettes referred above valued at Rs. 16,500/-, and held the rest of the goods to be in commercial quantity and non-bonafide baggage and confiscated them under Section 111 (d), (l), (o) and (m) of the Customs Act,1962. But allowed the Applicant to redeem these confiscated goods for re-export on payment of Rs.16,500/- . A penalty of Rs. 6,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). Commissioner of Central Excise (Appeals) Chennai, vide his Order-in-Appeal No 195/2014 dated 11.02.2014 rejected the Appeal of the Applicant.

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

5.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; The Applicant has brought these goods for his personal use and not for commercial sale; The Respondent has

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failed to note that the Applicant can bring goods upto 35,000/- as per section 79 of the Customs Act,1962; The Margin of profit was not considered; Even if some goods are in commercial quantity the entire goods will not be liable to confiscation; the only allegation is that the goods are in commercial quantity, however the goods have not been brought for commercial use; The Applicant was allowed the goods valued at Rs. 28,500/- to be redeemed for re-export on payment of fine Rs. 15,000/- and a penalty of Rs. 6,000/ and duty of Rs. 10,274/-; The penalty is more than 5%, and the Adjudicating Authority has not kept in mind that the margin of profit and the R.F, P.P. is more than the actual value of the goods. The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

5.3 The Revision Applicant cited various judgments in support of his case and prayed for setting aside the Order and reduce the redemption fine and personal penalty and thus render justice.

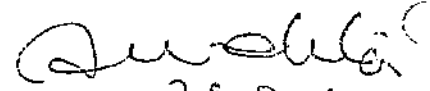
6. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of the goods was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. Some of the items were in commercial quantities and under the circumstances confiscation of the goods is justified. However, the facts of the case state that the Applicant had not cleared the Green Channel. The goods were recovered from his baggage and they were not indigenously concealed. The Applicant was not involved in any offences earlier and it was not a hardcore attempt to smuggle the goods into India. Further Government notes the total of the redemption fine, penalty and baggage duty imposed far exceeds the value of the goods. 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 reduction of the redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

8. The redemption fine imposed on the assorted goods valued at Rs. 28,500/- ( Rupees Twenty Eight thousand Five hundred ) is reduced from Rs. 15,000/- (Rupees Fifteen thousand) to Rs.10,000/- ( Rupees Ten thousand ) 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. 6,000/- ( Rupees Six thousand) to Rs. 4,000/- (Rupees Four thousand ) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.



24.9.16

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 730/2018-CUS (SZ) /ASRA/MUMBAI

DATED 24.09.2018

To,

Shri Abdulla Kunhi  
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, Airport, Chennai
2. The Commissioner of Customs (Appeals) Chennai.
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard File.
5. Spare Copy.