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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/42/B/14-RA/2018

Date of Issue 20.11.2018

ORDER NO. ⁷⁷⁴ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 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 : Commissioner of Customs (Airport) Trichy.

Respondent : Shri M. Srinivasan

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 99/2013 (TRY) dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Trichy.



ORDER

This revision application has been filed by Commissioner of Customs Trichy, (herein referred to as Applicant) against the Order in Appeal No. 99/2013 (TRY) dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Trichy.

2. On 12.03.2013 acting on the basis of intelligence the respondent was intercepted at the Trichy Airport while attempting to pass through the green channel. Examination of his baggage and person resulted in the recovery of the following items.

S. No.	Item Description	Quantity	Value in Rs.
1	Sony Xperia Mobile Phones	24	1,68,000/-
2	Watch Batteries	14,000/-	28,000/-
3	St. Remy Brandy bottles	02	2,000/-
4	Sony video Camera	01	90,000/-
5	Sony LED TV 40"	01	28,000/-
		TOTAL	3,16,000/-

3. After due process of the law vide Order-In-Original No. 170/2013 dated 01.08.2013 the Original Adjudicating Authority ordered confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the same on payment of Customs duty and payment of redemption fine of Rs. 90,000/- and Customs duty of Rs. 1,16,197/- and imposed penalty of Rs. 60,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the respondent and the Applicants both filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. 99/2013 (TRY) dated 05.12.2013 observed that not all the items were in commercial quantity and therefore ordered quantification of duty after allowing free allowance, and reduced the redemption fine to Rs. 40,000/- and also reduced the penalty to Rs. 25,000/-.

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



5.1 The Order in original in para 3 rightly points out that the respondent is a frequent traveler and brings goods for other persons on commission basis; The respondent has been previously penalized in four cases. Which proves that he is an habitual offender; The responding being penalized before was fully aware of the provisions of the Customs Act,1962; the subject goods are non-bonafide baggage and therefore free allowance is not available in the case; Para 3 of the CBEC circular No. 9/2001-Cus. Dated 22.02.2001 reiterates that the import of commercial goods would not be permissible within the scope of baggage rules even on baggage rate of duty and emphasizes that the redemption fine and penalties should be such that it wipes out the margin of profit and acts as a strong deterrent; Therefore the order of the Commissioner (Appeals) is not legal and proper and may not act as a deterrent for habitual offenders.

5.2 The Revision Applicants prayed that the order in Appeal be set aside or any such order as the Revisionary Authority as deems fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled on 16.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

7. The Government has gone through the case records it is observed that the items under import were not declared by the Respondent and therefore the confiscation of the gold is justified. However the Government also notes that except the two items ie the Sony Xperia mobiles and the Watch batteries the other items were not in commercial quantity. Under the circumstances the Commisioner (Appeals) has ~~therefore rightly~~ extended free baggage allowance to the respondent. Government however notes that the redemption fine and penalties on the items which are in commercial quantities should be commensurate so as to dissuade such acts in future ~~and act as a deterrent~~. The Respondent had brought the mobile phones and watch batteries in commercial quantities as baggage and he did not declare it and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal.

8. The impugned Order in Appeal is modified as below. The Government allows redemption of the goods brought by the respondent. The redemption fine imposed in lieu of confiscation is increased from Rs. 40,000/-/- (Rupees Forty Thousand) to Rs. 60,000/- (Rupees Sixty thousand) under section 125 of the Customs Act, 1962. The penalty of Rs. 25,000/- (Rupees Twenty five thousand) imposed on the

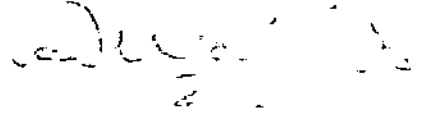


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Respondents under section 112(a) of the Customs Act,1962 is increased to Rs. 30,000/- (Rupees Thirty thousand).

9. Revision application is partly allowed on above terms.

10. So, ordered.



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

ORDER No. 774/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

1. Commissioner of Customs,(Airport) Trichy,
Williams Road, Cantonment, Trichy.
2. Shri M. Srinivasan
No. 1254, Kamban Nagar,
Rajagopalapuram,
Pudukottai,
Pin 622 003.

Copy to:

3. The Commissioner of Customs (Appeals-I), Trichy.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED

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

