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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. 380/07/B/15-RA/2068

Date of Issue 28.11.2018

ORDER NO. 77/2018-CUS (S Z) / 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, D. Thirumurugan, Shri S. Sultan Abdul Kadar and
Shri R. Athmanathan

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 72 -74 dated 18.11.2014 passed by the Commissioner of Central Excise(Appeals-II), Trichy.

ORDER

This revision application has been filed by Commissioner of Customs, Trichy, (herein referred to as Applicant) against the Order in Appeal No 72 -74 dated 18.11.2014 passed by the Commissioner of Central Excise (Appeals-II), Trichy.

2. On 25.08.2013 Shri D. Thirumurugan along with two other passengers Shri S. Sultan Abdul Kadar and Shri R. Athmanathan arrived at the Trichy Airport and proceeded to the red channel and declared two TV sets each. The Six TV sets totally valued at Rs. 1,08,900/- (Rupees One lakh Eight thousand Nine hundred) were detained under the reasonable belief that the same were brought for commercial purposes. Shri D. Thirumurugan later claimed all the TV sets and Shri S. Sultan Abdul Kadar and Shri R. Athmanathan later stated that the TV sets were not owned by them and Shri D. Thirumurugan had requested them to bring them to Trichy Airport as he was having lots of luggage.

3. After due process of the law vide Order-In-Original No. 28/2014 dated 04.04.2014 the Original Adjudicating Authority ordered confiscation of the TV sets under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the same on payment of Rs. 27,500/- as redemption fine and customs duty and imposed penalty of Rs. 11,000/- under Section 112 (a) of the Customs Act, 1962 on the Shri D. Thirumurugan. A penalty of Rs. 5,000/- each was also imposed on Shri S. Sultan Abdul Kadar and Shri R. Athmanathan under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the Department filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal 72 -74 dated 18.11.2014 allowed free allowance to each of the Respondents and reduced the redemption fine by 35% and reduced the penalty by 50% on each of the Respondents with consequential benefits.

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

5.1 The Respondent Shri D. Thirumurugan has stated that all the six TVs belong to him and the other two respondents have stated that the TV sets were not their own and they would not claim them in future; It is evident that the Respondents have brought TV sets and were not independent of each other; But attempted to clear the TV's as bonafide baggage with an intention to be sold in India for commercial consideration; It is clearly established that Shri D. Thirumurugan is not a genuine passenger and therefore the goods were held liable for confiscation; The Commissioner (Appeals) has failed to take cognizance of this findings of the Adjudicating authority; Only bonafide baggage are entitled for free allowance as per Baggage rules, and therefore Commissioner (Appeals) has erred in extending he duty free allowance to the respondents.

5.2 The Revision Applicants prayed that after taking into consideration the above facts, the Appellate order does not appear to be legal and proper and prayed for setting aside the said order in appeal and pass further orders as deemed 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 19.07.2018, 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 impugned six TV's were brought by a single passenger and do not constitute to be bonafide baggage therefore the confiscation of the TV's is justified.

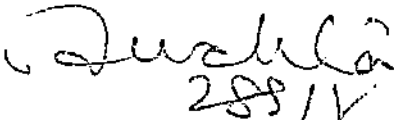
8. However, the respondents had attempted to clear the TVs as individual bonafide baggage. It is only when the TVs were detained that the respondents revealed the all the TVs belonged to one person. The Original adjudicating authority is right in noting that the respondents had formed a syndicate so as to clear the TV's as bonafide baggage after availing the free baggage allowance. The Respondents have accepted that the TVs were belonging to one single passenger

and therefore the Appellate order has therefore erred in extending free baggage allowance to the respondents and reducing the redemption fine and penalties. Government also observes that the redemption fine and penalties should be commensurate to the offence committed, and is therefore is inclined to agree with the Order-in-Original and the same is liable to be upheld and the impugned order in Appeal is liable to be set aside.

9. In view of the above, the Order in Appeal No. 72 -74 dated 18.11.2014 passed by the Commissioner of Central Excise(Appeals-II), Trichy is set aside. The impugned Order in Original No. 28/2014 dated 04.04.2014 is upheld as legal and proper.

10. Revision application is allowed on above terms.

11. So, ordered.



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

ORDER No. ⁷⁹⁷/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28-09.2018

To,

1. The Commissioner of Customs(Airport) Trichy
Williams Road, Cantonment, Trichy.
2. Shri, D. Thirumurugan,
133, Mela street, Paravakottai P.O.,
Manargudi,Thiruvarur Dist.
3. Shri S. Sultan Abdul Kadar
4. Shri R. Athmanathan

Copy to:

5. Commissioner of Central Excise(Appeals-II), Trichy.
6. Sr. P.S. to AS (RA), Mumbai.
- ✓ 7. Guard File.
8. Spare Copy.