REGISTERED SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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

Mumbai-400 005

F.No. 380/93-B/B/13-RA / 8175 Date of Issue 28.11.2018

ORDER NO. 871/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.10.2018 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 & Air Cargo), Chennai

Respondent : Shri Vardharajoo Thangaveloo

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 1114 to 1117/2013 dated 19.08.2013 passed by the Commissioner of Customs(Appeals), Chennai

ORDER

This revision application has been filed by Commissioner of Customs(Airport & Air Cargo), Chennai against the Order in Appeal No. C. Cus No. 1114 to 1117/2013 dated 19.08.2013 passed by the Commissioner of Customs (Appeals), Chennai in respect of Shri Vardharajoo Thangaveloo (hereinafter referred to as the "Respondent") & three others.

2. Briefly stated, the facts of the case are that the respondent and three others had brought one Sony Bravia EX 65 40" TV valued at Rs. 35,000/- (Rupees Thirty Five Thousand Only) from abroad. As the respondent and the other three persons had admitted that they had brought the TV's for a monetary consideration and that they would be handing these TV's to a person waiting outside. The respondent and the other three persons did not appear to be the actual owners of the goods. The adjudicating authority vide Order-in-Original No. 138/Batch A dated 3.02.2013 therefore ordered absolute confiscation of the goods under Section 111(d), (l), (m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1962. Penalty of Rs. 15,000/- was imposed under Section 112(a) of the Customs Act, 1962 on the respondent as well as the three others.

3. Aggrieved by the order of the adjudicating authority, the respondent and the other three passengers preferred appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide Order-in-Appeal No. C. Cus No. 1114 to 1117/2013 dated 19.08.2013 observed that in all these cases, one Sony Bravia EX 65 40" TV had been ordered to absolute confiscation by the adjudicating authority in the case of the respondent as well as the three others. He further observed that the adjudicating authority had not given any reasons for ordering absolute confiscation of the goods. It was averred by the appellate authority that absolute confiscation can be ordered only if the goods are prohibited or if the quantity of import is in very high commercial quantity or wherever any condition for import has not been adhered to. The Commissioner(Appeals) found that on the face of the record, no such situation exists and he therefore set aside the order for absolute confiscation and allowed clearance of the goods on payment of duty and eligible free allowance as per the Baggage Rules in force. He also set

aside the penalty imposed. The appeal filed by the respondent and the other three passengers was allowed in the above terms.

4. Aggrieved by the Order-in-Appeal, the Department has filed revision applications on the following grounds:

(i) It has been stated in all the Orders-in-Original that "the pax has brought the goods for monetary consideration and will be handing over to the person who is waiting outside and therefore the pax is not the actual owner of the goods." Section 111(d) pertaining to prohibitions had also been invoked while ordering absolute confiscation.

(ii) Three other passengers had brought identical goods for identical reasons and that they had brought these goods for monetary consideration for handing over to a person waiting outside. In view of these observations, it was averred that the possibility of an organized smuggling activity should not be lost sight of.

(iii) It was pointed out that the adjudicating authority had in cases involving carriers ordered absolute confiscation in Order-in-Original No. 343/2012 dated 30.06.2011, 32/10 dated 3.05.2012, 33/10 dated 3.05.2011 and in several other orders. The said orders had been upheld by the Commissioner(Appeals) in Order-in-Appeal No. 480/11 dated 29.07.2011, 479/2011 dated 29.07.2011 and 481/11 dated 29.07.2011. Thereafter, the absolute confiscation ordered in these cases was upheld by the Government in Revision Order No. 352-354/12 dated 28.08.2012. Similarly, the Government had in Revision Order No. 401-406/12-Cus dated 11.10.2012 and 407-409/12 dated 12.10.2012 pertaining to cases booked in Chennai upheld the absolute confiscation of goods brought by carrier passengers.

(iv) So also in 2013, the Government had in Revision Order No. 181/2013-Cus dated 19.08.2013 passed by JS(RA) in respect of revision application filed by Commissioner of Customs, Chennai upheld absolute confiscation in respect of goods carried by passengers on behalf of someone else for monetary consideration.

(v) Absolute confiscation in such cases had been upheld in the judgments of the Hon'ble Tribunal in Order No. 1980-1995/09 dated 24.12.2009 in the case of G. V. Ramesh and Others vs. CC, Air Chennai[2010(252)ELT 212(Tri-Mad)].

(vi) The Hon'ble High Court of Bombay in the case of UOI vs. Mohamed Aijaj Ahmed in W.P. No. 1901/2003 decided on 23.07.2009 reported in [2009(244)ELT 49(Bom)] has set aside the order of CESTAT allowing redemption of gold and upheld the order passed by the Commissioner of Customs ordering absolute confiscation of gold. In this case, the gold did not belong to the passenger Mr. Mohamed Aijaj who acted as a carrier of gold. The said order of the Bombay High Court was upheld by the Hon'ble Supreme Court in its decision reported in 2010(253)ELT E83(SC)].

(viii) It was contended that by granting free allowance as well, the Commissioner(Appeals) had effectively rendered the offending goods free to the operators, thus effectively condoning such activity.

(ix) It was apprehended that the Order-in-Appeal if implemented would jeopardise revenue interests irreparably and the likelihood of securing revenue interest as per original order in the event of restoration by the revisionary authority would be grim.

5. The respondent was granted personal hearing on 6.12.2017 and 19.04.2018. However, none appeared on behalf of the respondent and since the issue falls within a very narrow compass, the case is being taken up for decision.

6. The Government has gone through the facts of the case. The facts of the case are that the respondent has arrived at Chennai Airport from abroad by Flight No. MH181 and the respondent as well as three other passengers had brought One Sony Bravia EX 65 40" TV valued at Rs. 35,000/-(Rupees Thirty Five Thousand Only). As the respondent and the other three passengers had admitted that they had brought the TV's for monetary consideration, that they would be handing over the TV's to a person waiting outside. Since the respondent and the other three passengers were not the actual owners of the goods, the adjudicating authority had ordered absolute

confiscation of the goods and imposed penalty of Rs. 15000/-(Rupees Fifteen Thousand Only) on the respondent and the three other passengers. On appeal, the Commissioner(Appeals) had set aside the confiscation ordered; allowed clearance of the goods on payment of duty after allowing eligible free allowance as per baggage rules in force and set aside the penalty imposed. The Department has now applied for revision on various grounds as set out in para 4 hereinbefore.

7. Government observes that the grounds of the Department allude to the statement of the passengers at the time of their arrival that they had brought the goods for some other person in lieu of some monetary consideration. The order of the adjudicating authority does not bring on record the consideration received by the passenger or the purported owner of the goods. There is also an averment that all the four passengers had brought identical goods and therefore the possibility of an organized smuggling racket could not be overlooked. These averments are merely assertions without any investigation and/or evidences to substantiate them. The quantity of goods imported is merely one TV for each of the four passengers and hence the finding of the appellate authority that there is no case of import in commercial quantity cannot be found fault with.

8. The respondent is not a frequent traveller and does not have any previous offences registered against him. Government, also observes that there is no allegation of ingenious concealment of these goods or that the respondent had not been intercepted while attempting to cross the green channel.

9. Government observes that the cases relied upon by the Department are also not applicable to the facts of the case as they involved non-declaration/misdeclaration etc. Moreover, the inference that follows on a careful reading of the judgment of the Hon'ble High Court of Bombay in the case of UOI vs. Mohammed Aijaj Ahmed reported at [2009(244)ELT 49(Bom)] is that in terms of the provisions of Section 125 of the Customs Act, 1962, in a case where the actual owner of the goods has not been identified the option of redeeming the goods would be available to the person who has possession

of the goods. In the present case, since the alleged actual owner of the goods has not been identified it would follow that the option of redeeming the goods would be available to the person having possession of the goods; viz. Shri Vardharajoo Thangaveloo.

10. The Government does not find any justifiable reason to interfere with the order of the lower appellate authority setting aside the order for absolute confiscation and allowing clearance of the impugned goods on payment of duty after allowing eligible free allowance.

11. In view of the above, Government upholds the Order-in-Appeal. The revision application is dismissed.

12. So, ordered.

31/X/2018

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

ORDER No.871/2018-CUS (SZ) /ASRA/MUMBAI DATED 31.10.2018

To,
Shri Vardharajoo Thangaveloo
21-C-1, Srihari Apartments,
Gangayam Kovil Street,
Vadaloni

Copy to:

1. Commissioner of Customs(Airport & Air Cargo), Chennai
2. Commissioner of Central Excise(Appeals), Chennai
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File
5. Spare Copy