

SPEED POST



F. No. 373/86/B/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...01/02/23

Order No. 31/23-Cus dated 01-02-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal AIRPORT C.Cus.I. NO. 213/2017 dated 29.12.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Yaseen Mohammed, Chennai

Respondent : Pr. Commissioner of Customs, Airport, Chennai

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ORDER

A Revision Application, bearing No. 373/86/B/2018-RA dated 16.03.2018, has been filed by Sh. Yaseen Mohammed, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal AIRPORT C.Cus.I. NO. 213/2017 dated 29.12.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs (Adjudication-Air), Anna International Airport, Chennai, bearing No. 130/2017-18-AIRPORT dated 03.10.2017, vide which 190 nos of mobile phones of various brands brought by the Applicant herein, totally valued at Rs. 15,66,720/-, had been confiscated under Sections 111(d) and 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 1,50,000/- was also imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Applicant arrived from Dubai at Chennai Airport, on 30.12.2016, and was intercepted by the Customs Officers at the exit gate, after he had passed through the Green Channel. The Applicant was asked to declare the goods brought by him, to which he replied that he had his personal goods and did not have dutiable goods and also did not produce any Customs Declaration Form. Again before examination of his baggage, the Applicant was asked whether he was in possession of any contraband either in his baggage or on his person, to which he replied in negative. However, upon search of his baggage, 190 nos of assorted mobiles of different make and brand were found. Upon being questioned about the possession of 190 nos of assorted mobiles, he replied that he had purchased 7 old and unused mobiles on a special offer sale in China and others were refurbished, however, he did not furnish any purchase bill. The Government approved Chartered Engineer Sh. T. Shashi Kumar representing M/s. TSK Engineers Pvt. Ltd. examined the phones on 15.01.2017 and appraised the value of the phones at HKD 56510, equivalent to Rs. 4,80,335/-. Since the value of the phones suggested by the Chartered Engineer appeared to be very low as compared to the seizure value of the phones, i.e., Rs. 16,75,605/-, as assessed by the Batch, which was worked out with the data available on the net and after giving forty percent discount, M/s. Valueguru, approved Valuer and Chartered Engineer was requested to examine and reassess the goods. Accordingly, Sh. N. Veerappan representing M/s. Valueguru inspected

the goods on 10.02.2017 and appraised the total value at Rs. 15,66,720/-. Thereafter, the Additional Commissioner of Customs (Adjudication-Air), vide Order-in-Original No. 287/2016-17-Airport dated 28.02.2017, ordered for provisional release of the seized mobile phones, under Section 110A of the Customs Act, 1962, on executing a Bond for the value of the goods and a Bank Guarantee of Rs. 8,75,000/- which was complied by the Applicant and goods were released to the him on 08.03.2017. The Applicant filed an appeal before the Commissioner (Appeals) against the Order-in-Original dated 03.10.2017 which was rejected by the appellate authority.

3. The revision application has been filed, mainly, on the grounds that orders of authorities below is against law and weight of evidence and probabilities of the case; that invoice was brought by the Applicant which shall be the transaction value under Section 14 of the Customs Act, 1962 and if assumed that the invoice was not brought, the same was produced as invoice no. 000108 alongwith representation dated 13.02.2017; that the order of provisional release of goods was executed only in the context of the release of the goods; that no opportunity was granted for disputing the valuation before or after the issuance of Show Cause Notice; and that Customs officers are not competent to arrive at a value for the valuation of goods under the Customs Act.

4. Personal hearing was fixed on 13.01.2023 and 01.02.2023. In the personal hearing held on 01.02.2023, in virtual mode, Sh. T. Chezhiyan, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that the Purchase Invoice was produced by the Applicant and, therefore, transaction value was available. As such, there was no requirement to resort to other methods of valuation. Further, one CE had indicated value approximating to the invoice value. There was no reason to discard this and get the valuation done by another Chartered Engineer. Upon being asked he stated that:

- (i) There is no record that the invoice value was paid through banking channels.
- (ii) There is no record that the invoice was produced at the time of Mahazar proceedings.

No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the Respondent department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The Applicant has by way of the subject revision application challenged the value adopted by the authorities below. It is observed that at the time of seizure, the total value of the seized goods was appraised as Rs. 16,75,605/-. This value was arrived at after applying a 40% discount to the values available on the open web. Thereafter, the goods were valued at Rs. 4,80,355/- by a Chartered Engineer on 18.01.2017. Another Chartered Engineer has thereafter on 14.02.2017 appraised the total value as Rs. 15,66,720/-. It is this value of Rs. 15,66,720/- which has been adopted and upheld by the authorities below.

5.2 The Applicant herein has challenged the value adopted by the authorities below by citing an undated Invoice No. 000108 indicating the value as RMB 42640 (i.e. about Rs. 4,15,740/-), which is said to be covering the purchase of subject goods. The Government, however, finds that the said undated invoice is a suspect document and has been presented only as an afterthought, for the following reasons:

- (i) The Applicant claims to be a dealer of second hand mobile phones and the seized goods are said to be for his business purposes. In such a case, the Applicant ought to have been in the possession of the Invoice when he was intercepted and the goods were seized. However, it is evident from records that the Applicant was not carrying this Invoice and did not produce the same at the time of seizure.
- (ii) The seizure was made on 30.12.2016 whereas the Invoice is claimed to have been produced only with a representation dated 13.02.2017, i.e., 1½ months after the seizure.
- (iii) In case the goods were transacted as a part of regular business, the payment would have been made through banking channel, which has not been done in the present case.
- (iv) The Applicant is a repeat offender and has been found to have indulged in smuggling in the past as well (OS No. 12/2015).

Therefore, the Government is not inclined to accept the contentions based upon this Invoice.

5.3 It is further observed that the value of Rs. 15,66,720/- was adopted by the original authority, while ordering provisional release of the seized goods, vide Order-in-Original No. 287/2016-17-Airport dated 28.02.2017. The Commissioner (Appeals) has pointed out that the Order dated 28.02.2017 was accepted by the Applicant herein and no appeal was filed against the same. Therefore, it is clear that the matter of valuation had acquired finality with the OIO dated 28.02.2017.

5.4 As such, the subject contentions of the Applicant are not acceptable.

6. A penalty of Rs. 1,50,000/- only has been imposed on the Applicant herein, which is less than 10% of the value of offending goods. Keeping in view the facts and circumstances of the case and as the Applicant is a repeat offender, the Government finds that the authorities below have been rather lenient in imposition of penalty. Therefore, there is no scope for any relief on this count as well.

7. The revision application is rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Yaseen Mohammed
C/o Sh. T. Chezhiyan, Advocate,
No. 99, Armenian Street, 3rd Floor,
Chennai-600001

Order No. 31 /23-Cus dated 02.02.2023

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
2. Pr. Commissioner of Customs, Chennai-I(Airport), New Custom House, Meenambakkam, Chennai-600027.
3. Sh. T. Chezhiyan, Advocate, No. 99, Armenian Street, 3rd Floor, Chennai-600001.

4. PS to AS(RA)
5. Guard File
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED



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