

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.373/163/B/16-RA / 332 ✓ Date of Issue 06/12/2018.

ORDER NO. ¹⁰⁰² /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.11.2018
 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 Abdul Rahiman Muhammedaly.

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed under Section 129DD(1) of the
 Customs Act, 1962 against the Order-in-Appeal No.
 373/2016 dated 21.04.2016 passed by the Commissioner of
 Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Abdul Rahiman Muhammedaly (hereinafter referred to as the "Applicant") against the Order in Appeal No. 373/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. On the basis of intelligence, Customs Officers, Mangalore International Airport intercepted a passenger by name Shri Abdul Rahiman Muhammedaly who is of Indian nationality and was departing to Sharjah by Jet Airways Flight No. 9W 0532 on 25.06.2014. The officers questioned the applicant as to whether he had any contraband goods / foreign currency in his possession. The applicant replied in negative initially, but on further enquiry, he conceded that he was carrying 18,000/- UAE Dirham (Eighteen Thousand UAE Dirham) equivalent value of Rs. 2,84,400/- (Rupees Two Lakh Eighty Four Thousand Four Hundred Only). The applicant could not show the documents in respect to its purchase from an authorised foreign exchange dealer. The applicant informed that the impugned foreign currency was handed over to him by a person working at Sahar International Tours and Travels, Kasargod, Kerala, with a direction to hand over the same to one person at Sharjah. The officers seized the said foreign currency of 18000/- UAE Dirham under reasonable belief that the same was liable for confiscation under the Customs Act, 1962 read with Foreign Exchange Management Act, 1999.

3. After due process of the law, the adjudicating authority observed that the applicant had not produced any documents to show legal acquisition of the said foreign currency nor had he produced any authentic documents showing the source of the money used for acquiring the said foreign currency. In this view, the adjudicating authority vide Order-in-Original No. 28/2014 dated 16.11.2014 ordered absolute confiscation of the seized foreign currencies under Section 113(d) of the CA, 1962 read with Section 2(18), 2(22), 2(33) and 125 of CA, 1962 read with Section 2(c), 2(i) and 2(m) of the FEMA, 1999 and ordered the appropriation of the said foreign currency equivalent to Indian Rupees in the Canara Bank, Perambur, Mangalore towards deposit of the same in terms of Section 110(1A) of the CA, 1962. The Adjudicating Authority also imposed a penalty of Rs. 1,00,000/- on the applicant under Section 114 of the Customs Act, 1962.

4. Aggrieved by the order of the adjudicating authority, the applicant filed appeal before the Commissioner (Appeals). The appellate authority observed that the applicant did not have permission from the competent authority to export foreign currency nor did he declare the foreign currency in CDF. Therefore the currency under seizure was



prohibited goods under the provisions of the Customs Act and therefore liable to confiscation.

5. The Commissioner (Appeals) vide Order-in-Appeal No. 373/2016 dated 21.04.2016 concluded that the applicant was taking foreign currency out of India in violation of the provisions of FEMA, 1999, without declaration to Customs and thus the illegal nature of the transactions was manifest and amounted to smuggling of foreign currency. The appellate authority upheld the original order.

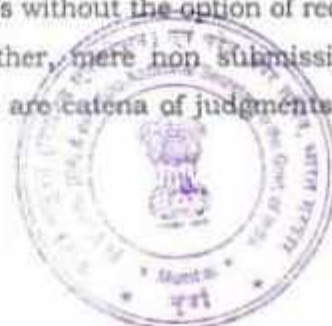
6. Aggrieved by the Order-in-Appeal, the applicant filed a revision application. The grounds on which the revision application has been filed are as detailed herein below.

- (i) The adjudicating authority and the appellate authority have acted beyond their power in a harsh, tyrannical and oppressive manner.
- (ii) The currency is not a prohibited article.
- (iii) The absolute confiscation is not warranted in the case of currency.
- (iv) The applicant requested to set aside the impugned order in appeal and restore the order in original.

7. The applicant was granted a personal hearing in the matter on 19.11.2018. Shri K P A Shukoor, Advocate appeared for the same on behalf of the applicant. He reiterated the submissions and requested to set aside the order in appeal.

8. The Government has gone through the case records. It is observed that the impugned foreign currency of 18,000/- UAE Dirham (Eighteen Thousand UAE Dirham) was recovered from the trolley bag of the applicant. It is common knowledge that large amounts of currency are usually carried in a safely concealed manner and such concealment are usually resorted to during travel. Therefore, there is no ingenious concealment of the foreign currency in the instant case.

9. The Government observes that foreign currencies are restricted goods in terms of the norms set by the RBI. As such, they are not prohibited goods. The import and export of foreign currency is subject to laws and rules and regulations issued by the competent authority. The applicant has submitted that the foreign currency belongs to him and the same was purchase by him through his salary savings. The Government finds that the findings of the appellate authority that the applicant is a carrier are not supported by any Concrete evidence on record. There is no corroboration of the fact that the applicant was indulging in the activity of smuggling foreign currency per se. In the circumstances, absolute confiscation of the foreign currencies without the option of redeeming the same is admittedly harsh and unjustifiable. Further, mere non submission of declaration cannot be held against the applicant. There are catena of judgments which align with



the view that the discretionary powers vested in the lower authorities under section 125(1) of the CA, 1962 must be exercised invariably. The applicant has pleaded for release of the currencies on imposition of redemption fine, reasonable personal penalty and the Government is inclined to accept the plea. The impugned Order-in-Appeal is therefore needs to be modified and the currency could be allowed to be redeemed on payment of redemption fine and penalty.

10. The Government sets aside the absolute confiscation of the impugned foreign currency of 18000 UAE Dirham equivalent to Rs.2,84,400/- (Rupees Two Lakh Eighty Four Thousand Four Hundred Only) at the time of seizure. The impugned currency is ordered to be redeemed on payment of redemption fine of Rs. 1,00,000/- (Rupees One Lakh Only) 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.1,00,000/- to Rs. 40,000/- (Rupees Forty Thousand Only) under Section 114(j) of the Customs Act, 1962.

11. The impugned Order in Appeal is modified as detailed above. Revision Application is partly allowed accordingly.

12. So ordered.

Ashok Kumar Mehta
30.11.18

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

ORDER No. ¹⁶⁰² /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-11-2018

To,
Shri Abdul Rahiman Muhammedaly,
Bekal Alamia Manzil,
Palikara, Kasargod Dist.
Kerala.

ATTESTED

S.R. Hirulkar
6/12/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, I/c Mangalore International Airport, Bajpe, Kenjar, Mangalore.
2. The Commissioner of Customs(Appeals), Bangalore, C.R. Building, P.B. No.5400, Queen's Road, Bangalore - 560 001.
3. Shri K.P.A. Shukoor, Advocate, United Law Chamber, 2nd floor, Krishnaprasad, Building, K.S. Rao Road, Mangaluru-575 001. D.K. district, Karnataka State.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File
6. Spare Copy.

