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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.373/153/B/16-RA ¹⁵⁰³ 21

Date of Issue 08/12/2018

ORDER NO. ¹⁵⁰³ /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 Azeez Chooradka Ibrahim.

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed under Section 129DD(1) of the
 Customs Act, 1962 against the Order-in-Appeal No.
 294/2016 dated 31.03.2016 passed by the Commissioner of
 Customs (Appeals), Bangalore.



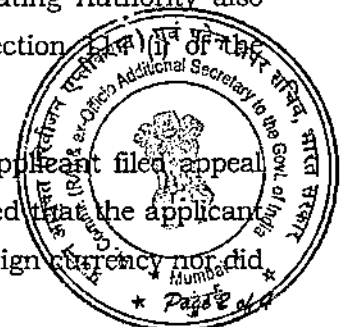
ORDER

This revision application has been filed by Shri Abdul Azeez Chooradka Ibrahim (hereinafter referred to as the "Applicant") against the Order in Appeal No. 294/2016 dated 31.03.2016 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 Azeez Chooradka Ibrahim who is of Indian nationality and was departing to Sharjah by Jet Airways Flight No. 9W 0532 on 30.06.2014. The officers questioned the applicant as to whether he had any contraband goods / foreign currency in his possession. The applicant replied in negative. The officers carried out thorough personal search recovered 1,950 Oman Riyals equivalent to Indian Currency of Rs. 3,04,200/- (Rupees Three Lakh Four Thousand Two Hundred Only) from the pockets of his trousers. 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 the travel agent at M/s Minar Travels, Uppala, Kerala at the time of booking the ticket to Sharjah for handing over the same to Shri Munawar, Manager of M/s Renjiro Advertising LLC, Dubai for which he was promised good remuneration by Shri Munawar. The officers seized the said foreign currency of 1950/- Oman Riyals 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. 59/2014 (AP) dated 30.07.2014 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 113(d) 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. 294/2016 dated 31.03.2016 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.

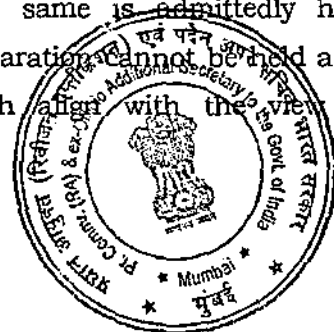
6. Aggrieved by the Order-in-Appeal, the applicant filed a revision application. The grounds on which the revision application has been filed are as detailed herein below.

- (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 1950/- Oman Riyals (One Thousand Nine Hundred Fifty Oman Riyals) was recovered from the pockets of trouser worn by the applicant. It is common knowledge that large amounts of currency are usually carried in a safely manner 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 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 1950/- Oman Riyals (One Thousand Nine Hundred Fifty Oman Riyals) equivalent to Indian Currency of Rs. 3,04,200/- (Rupees Three Lakh Four Thousand Two 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. 50,000/- (Rupees Fifty Thousand Only) under Section 114(i) 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. ¹⁰⁰³ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,
Shri Abdul Azeez Chooradka Ibrahim
R.No. VII 202, Ansar Manzil,
Chooradka, Mangalpady, Kasargod Dist.
Kerala.

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. District, Karnataka State.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File
6. Spare Copy.

