

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.373/154/B/16-RA | 2381

Date of Issue 10/12/2018

ORDER NO. ¹⁰⁰⁶/2018-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 Basheer Kadappuram Mohammed.

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed under Section 129DD(1) of the
Customs Act, 1962 against the Order-in-Appeal No.
372/2016 dated 21.04.2016 passed by the Commissioner of
Customs (Appeals), Bangalore.

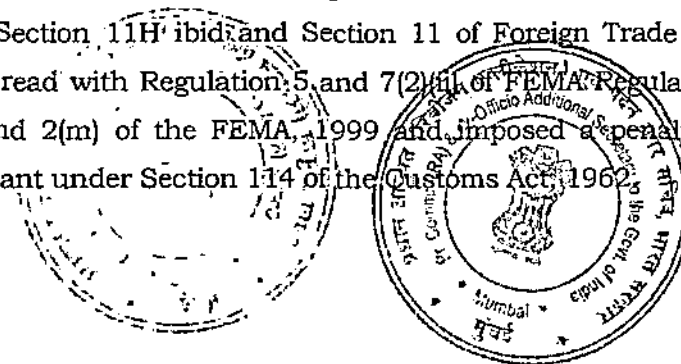


ORDER

This revision application has been filed by Shri Abdul Basheer Kadappuram Mohammed (hereinafter referred to as the "Applicant") against the Order in Appeal No. 372/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The officers of Directorate of Revenue Intelligence (DRI) intercepted a passenger by name Shri Abdul Basheer Kadappuram Mohammed who is of Indian nationality and was departing to Dubai by Air India Express Flight No. IX 383 on 10.02.2014. The DRI officers questioned the applicant as to whether he had any contraband goods / foreign currency in his possession. The applicant replied in negative. On examination of the baggage, the DRI officers recovered 55,000 US Dollars (Fifty Five Thousand US Dollars) equivalent to Indian Currency of Rs. 34,07,250/- (Rupees Thirty Four Lakh Seven Thousand Two Hundred Fifty Only) concealed inside the inner cloth cover of the trolley bag of the applicant. The applicant could not produce the documents in respect to its purchase from an authorised foreign exchange dealer. The applicant stated that he is partner with his uncle in business at Dubai and often visits India through various Airports. They buy materials from various companies and sell through their shops on profit. While coming to India, he brings goods on commercial quantity for sale and these goods include burkha cloth, perfume, hair dyes etc. and sell in Indian market. In India he procures US Dollar Currency notes and smuggle the same to Dubai on profit and he gets a sum of Rs.3,000/- Indian Currency as profit when he smuggle US Dollar equal to Rs. One Lakh. The officers seized the said foreign currency of 55,000/- US Dollars 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. 70/2014 JC dated 13.11.2014 ordered absolute confiscation of the seized foreign currencies under Section 113(d) of the CA, 1962 read with Section 11H ibid and Section 11 of Foreign Trade Development Regulation Act, 1992 read with Regulation 5 and 7(2) of FEMA Regulations, 2000 and Section 2(c), 2(i) and 2(m) of the FEMA, 1999 and imposed a penalty of Rs. 34,07,250/- 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 not 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. 372/2016 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.

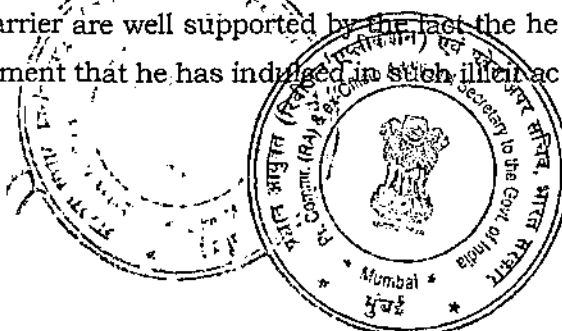
6. Aggrieved by the Order-in-Appeal, the applicant filed a revision application. The grounds on which the revision application has been filed are as detailed herein below.

- (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 Officers recovered impugned foreign currency of 55,000/- US Dollars (Fifty Five Thousand US Dollars) concealed in the inner cloth of the trolley bag with clear intention of not declaring the same to the competent authority.

9. The Government observes that foreign currencies are restricted goods in terms of the norms set by the RBI though 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 is frequent flyer and considering the huge amount of foreign currency, he attempted to smuggle in the instant case, the Government holds that this is not a simple case of mis-declaration. The said offence was committed in a premeditated and clever manner. The Government finds that the findings of the appellate authority that the applicant is a carrier are well supported by the fact that he is frequent flyer and has admitted in his statement that he has indulged in such illicit activities in past also.



10. In view of the above observations, the Government is inclined to agree with the Order in Appeal and holds that the impugned foreign currency has been rightly confiscated absolutely so as to deter such passengers from such activities in the future. Hence the Revision application is liable to be rejected.

11. The Government therefore finds no reason to interfere with the Order in Appeal. The Appellate Order No. 372/2016 dated 21.04.2016 passed by the Commissioner of Customs (Appeals), Bangalore is upheld as legal and proper.

12. Revision Application is dismissed.

13. So ordered.

Ashok Kumar Mehta
30.11.2018

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

ORDER No. ¹⁶⁰⁶ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,
Shri Abdul Basheer Kdappuram Mohammed.
Badira Manzil,
Cherangai, Kodappuram, Kudlu,
Kasargod Dist. Kerala-671124.

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, Bengalore - 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.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

