

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.380/51/B/16-RA

Date of Issue 17.12.2018

ORDER NO. 1059/2018-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 : The Principal Commissioner of Customs, Chennai-I.

Respondent : Shri Jainulabideen Mohammed Abubacker.

Subject : Revision Application filed under Section 129DD(1) of the
Customs Act, 1962 against the Order-in-Appeal No. 868 &
869/15 dated 23.12.2016 passed by the Commissioner of
Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by The Principal Commissioner of Customs, Chennai-I (hereinafter referred to as the "Applicant") against the Order in Appeal No. 868 & 869/15 dated 23.12.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

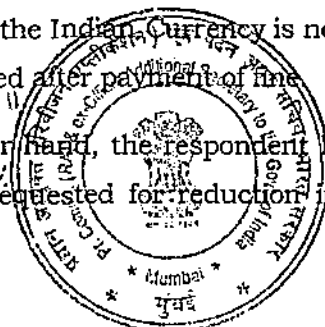
2. The Customs Officers, Chennai Airport intercepted a passenger by name Shri Jainulabideen Mohammed Abubacker who is of Indian nationality and was departing to Kuala Lumpur by Malaysian Airlines Flight No. MH 0183 on 24.03.2015. The officers questioned the respondent as to whether he had any contraband goods / Indian or Foreign currency in his possession. The respondent replied in negative. However, on detailed examination of the respondent and his baggage, the Custom Officers recovered 1,132 notes of denomination of Indian Rs.1,000/- and 32 notes of denomination of Indian Rs. 500/- were recovered. Thus totally Indian Currency of Rs. 11,50,000/- (Rupees Eleven Lakh Fifty Thousand Only) were recovered from the respondent. The respondent stated that he is engaged in import and export firm named "Evergreen Enterprises" in Chennai which deals in export of tea and travel. He is suffering from various ailments especially heart problems for which he is taking medicine. The currency belongs to him and he was taking out the same to Kuala Lumpur for his medical treatment.

3. After due process of the law, the adjudicating authority vide Order-in-Original No. 181/2015- AIRPORT dated 23.06.2015 ordered confiscation of the seized Indian currencies under Section 113(d), (e) & (h) of the CA, 1962. However, the respondent was given an option to redeem the same on payment of fine of Rs. 4,75,000/- under Section 125 of the Customs Act, 1962. The Adjudicating Authority also imposed a penalty of Rs. 1,75,000/- on the respondent under Section 114 (i) of the Customs Act, 1962.

4. Aggrieved by the order of the adjudicating authority, the applicant as well as the respondent filed appeal before the Commissioner (Appeals).

4.1 The department filed an appeal with plea to set aside the adjudicating order and requested the absolute confiscation of the impugned currency. The appellate authority dismissed the appeal filed by the department stating that the Indian Currency is not prohibited for export and the same was redeemed after payment of fine.

4.2 On the other hand, the respondent had also filed appeal against original order and requested for reduction in redemption fine and penalty. The



appellate authority find that the quantum of redemption fine and penalty is disproportionate to the margin of profit and gravity of offence and hence reduced the redemption fine to Rs. 2,00,000/- and personal penalty to Rs. 1,00,000/- .

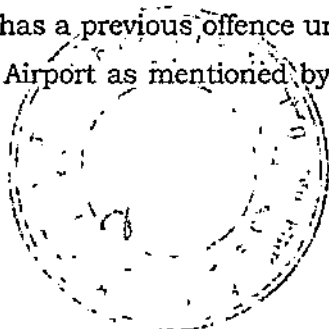
5. Aggrieved by the Order-in-Appeal, the Department filed a revision application. The grounds on which the revision application has been filed are as detailed herein below.

- (i) The respondent did not declare the currency possessed by him as required by him under Section 77 of the Customs Act, 1962.
- (ii) The impugned currency has become prohibited goods as per Section 2(33) of the Customs Act, 1962.
- (iii) The respondent has admitted that he is a frequent traveller .
- (iv) The respondent is a habitual offender.
- (v) The applicant requested to set aside the impugned order in appeal /original.

7. The personal hearing was granted in the matter on 24.08.2018 and 12.09.2018. However, the same was not attended by any of the parties.

8. The Government has gone through the case records. It is observed that the impugned Indian currency of Rs. 11,50,000/- (Rupees Eleven Lakh Fifty Thousand Only) was recovered from the respondent on person and from his baggage. 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 Indian currency in the instant case.

9. The Government observes that the passenger is bound by the law to declare to the Customs any export of Indian currency beyond Rs. 25,000/- and above this limit without valid license / document is restricted as per the Foreign Exchange Management (Export and Import of currency) (Amendment) Regulations, 2009 and hence the same is liable to confiscation under Section 113 of the Customs Act, 1962. However, mere non submission of declaration cannot be held against the respondent. 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 Government, therefore, finds no infirmity in the orders of the adjudicating authority in allowing the impugned Indian Currency on payment of redemption fine. However, the Government finds that the respondent is a habitual offender and frequent traveller. The respondent has a previous offence under OS 223/20111 for Rs.4,10,000/- as per COPS available at Airport as mentioned by the adjudicating authority. The Government finds



that the appellate authority had not taken cognisance of this aspect while reducing the redemption fine and penalty. Hence, the Order in Appeal does not meet the ends of justice in this case and the Government holds that the redemption fine and penalty reduced by the appellate authority needs to be restored to curb such illicit act being repeated by the respondent in future. The Order in Appeal is liable to be set aside.

10. The Government sets aside the Order in Appeal and restores the Order in Original.

11. Revision Application is allowed accordingly.

12. So ordered.

Ashok Kumar Mehta
20.11.18

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

ORDER No. 1059/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-11-2018

To,

1. The Principal Commissioner of Customs,
Chennai-I Commissionerate,
New Customs House, Meenambakkam,
Chennai- 600 207.
2. Shri Jainulabideen Mohammed Abubacker
Old No.. 15, New No. 31,
Linghi Chetty Street,
Chennai – 600 001.

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai, 60, Rajaji Salai, Custom House, Chennai 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

