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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. 373/38/B/17-RA / 2424

Date of Issue 20/12/2018

ORDER NO. ¹⁰⁸⁵ /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 Kaja Mohamed

Respondent : Commissioner of Customs, (Airport), Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal 23/2017 dated 11.01.2017 passed by the Commissioner of Customs (Appeals-I), Trichy.



ORDER

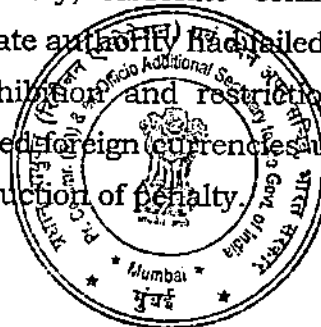
This revision application has been filed by Shri Kaja Mohamed (herein referred to as Applicant) against the order No. 23/2017 dated 11.01.2017 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated the facts of the case are that the applicant, was bound for Malaysia and was intercepted at the Trichy Airport on 08.11.2015. Examination of his baggage and person resulted in the recovery of US dollars, Euros, Canadian dollars and Pounds etc totally equivalent to Rs. 11,48,031/- (Rupees Eleven lakhs Forty eight thousand and Thirty one). The Foreign currency was recovered from his clothes kept in his hand baggage carried by the Applicant.

3. After due process of the law vide Order-In-Original No. 43/2016 dated 24.05.2016 the Original Adjudicating Authority ordered absolute confiscation of the currency under Section 113 (d) (e) & (h) of the Customs Act,1962 read with Foreign Exchange Management (Export and Import of currency) Regulations, 2015 and imposed a penalty of Rs. 3,00,000/- under Section 114 (i) of the Customs Act, 1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal 23/2017 dated 11.01.2017 reduced the penalty to Rs. 2,00,000/- and rejected the rest of Appeal of the applicant.

4. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

4.1 the order of the Commissioner (Appeals) did not consider or discuss the retraction given by the applicant; The currency was simply kept in the hand baggage and not concealed in any manner; There is no declaration counter at the departure hall and therefore the Applicant could not make the declaration; The Applicant orally declared the currency when he was intercepted at the security hold area and therefore the provisions of section 77 of the Customs Act, 1962 have been satisfied; The impugned foreign currency was procured domestically; Absolute confiscation was not warranted in this case; The appellate authority has failed to appreciate the difference between complete prohibition and restriction; The applicant pleads for redemption of confiscated foreign currencies under section 125 of the Customs, Act, 1962 and reduction of penalty.



4.2 The Revision Applicant cited various other assorted judgments and boards policies in support of his case and prayed for quashing the impugned order in Appeal with consequential benefits by means of redemption fine and reduce the personal penalty and thus render justice.

5. A personal hearing in the case was scheduled in the case, the Advocate for the Applicant Shri N. Manickam in his letter dated 29.10.2018 has stated that his applicants do not wish to be heard in person and in view of the same the Revision Application may be decided on merits.

6. The Government has gone through the case records it is observed that the Applicant had concealed the currency in in his hand baggage carried by him and it was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the currency is justified.

7. However, the facts of the case state that the Applicant has not been involved in such offences earlier. There is also no requirement to declare currency below \$5,000, or equivalent and taking of currency abroad is restricted and not prohibited. Government notes that the currency was kept in his hand baggage and it was not ingeniously concealed. Absolute confiscation in such circumstances is therefore a harsh option, and unjustifiable. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The Applicant has pleaded for release of the currency on redemption fine and reduced penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the currency is liable to be allowed on payment of redemption fine and penalty.

8. In view of the above, Government allows redemption of the confiscated currency in lieu of fine. The impugned currency totally valued at totally equivalent to Rs. 11,48,031/- (Rupees Eleven lakhs Forty eight thousand and Thirty one) is ordered to be redeemed on payment of redemption fine of Rs.5,00,000/- (Rupees Five lakhs) under section 125 of the Customs Act, 1962. The facts of the case also justify reduction in the penalty. The penalty of Rs. 2,00,000/- (Rupees Two



lakhs) imposed on the Applicant is reduced to Rs.1,50,000/- (Rupees One lakh Fifty thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.

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

ORDER No. ¹⁰⁸⁵ /2018-CUS (SZ) /ASRA/MUMBAI DATED 30-11-2018

To,

Shri Kaja Mohamed
S/o Anifa,
No. 19/19 Muslim Street,
Varaganeri, Trichy Urban,
Trichy - 620 008.

Copy to:

1. The Commissioner of Customs, Trichy
2. The Commissioner of Customs (Appeals) Trichy
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

