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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. 373/127/B/14-RA / 1456

Date of Issue 03/04/2018

ORDER NO. 114/2018-CUS (SZ)/ASRA/MUMBAI DATED 19.03.2018 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. M. Shajahan

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 1791/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

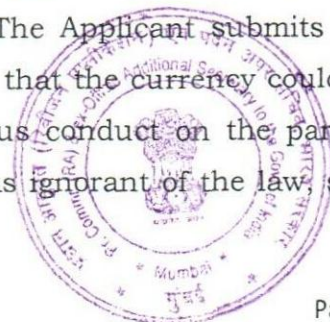
This revision application has been filed by Shri M. Shajahan (herein referred to as Applicant) against the order C. Cus. no 1791/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National was bound for Singapore from Chennai International Airport on 19.02.2012. Based on specific intelligence, the officers of DRI, rummaged the area around his seat in the aircraft and recovered \$ 36,000/- from the seat pouch in front of his seat in the Aircraft. The cash was placed in the pouch by Shri M.N.V.K. Prasad, senior catering Superintendent, of Air India. Subsequent search of the person and baggage of the applicant resulted in the recovery of foreign currency equivalent to Rs. 2,06,551.85 and Indian currency of Rs. 1,26,250/- and imitation jewelry valued at Rs.1,09,315/- . The Applicant was arrested and subsequently released on bail. As the impugned currency was being illegally exported, the foreign currency, Indian currency and imitation jewelry totally equivalent to Rs. 22,15,836 was confiscated absolutely by the original Adjudication Authority vide order 579 dated 05.07.2013 under section 113 (d), (e) and (h) of the Customs Act,1962 read with FEMA 1999, FEMA (Exp and Imp of Currency,2000). A penalty of Rs. 2,00,000/- was also imposed on the Applicant under section 114 (i) of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his order C.Cus No. 1791/2013 dated 05.12.2013 extended the option for redemption under section 125 of the Customs Act,1962 and allowed the redemption of the impugned goods on payment of Redemption fine of Rs. 7,00,000/- and reduced the penalty to Rs. 1,00,000/-.

4. Aggrieved by the order of the Commissioner (Appeals), the Applicant has filed the Revision Application on the grounds that;

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case; The Applicant submits that he did not know the procedure and also unaware that the currency could not be taken out of India; there was no contumacious conduct on the part of the appellant but the conduct of a person who was ignorant of the law, since he



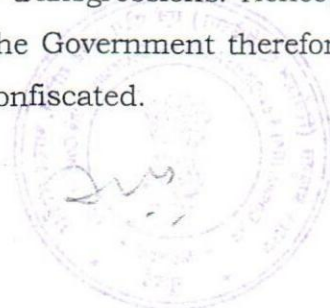
violated the provisions of Customs Act,1962 and FEMA1999.; that he had taken loans from various persons and friends and he had to return the loan and therefore he is claiming the currency; There is no legal requirement to declare currency upto \$10,000/-; the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.

4.2 It has also been pleaded that the Applicant that the detection in this case was not in pursuant to any information. The applicant when asked whether he had any foreign currency himself declared that he possessed currency in his handbag and voluntarily gave the currency to the officers.

4.3 The Applicant cited various assorted judgments in support of his case and prayed that the Hon'ble Revision Authority may please reduce the redemption fine and personal penalty and thus render justice.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals in support of his case. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant was well aware all along that smuggling currency out of the country was illegal. He therefore engaged the help of Shri M.N.V.K. Prasad, senior catering Superintendent, of Air India to smuggle the currency into the Aircraft. If he was unaware that the currency could not be taken out of India, he would not have engaged the services of Shri Prasad. The facts should be seen in its entirety, it is clear that the whole charade was elaborately planned to circumvent scrutiny by the officers and avoid the custom officers. The Government observes that the offences committed indicate the Applicants his contempt for the law of the land and if treated leniently he will continue these transgressions. Hence, such transgressions need to be thoroughly discouraged. The Government therefore agrees that the impugned Indian currency is liable to be confiscated.



7. Government further observes that the Appellate Authority has been considerate enough and rightly exercised the option available under section 125 of the Customs Act, 1962 and has extended the option to redeem the impugned currency and goods on payment of redemption fine and penalty. Further, the redemption fine of Rs. 7,00,000/- (Seven Lacs) for the redemption of the impugned currency and goods is The penalty of Rs. 1,00,000/- (Rupees One lac) imposed is also appropriate, therefore holds that Commissioner (Appeals) has rightly upheld the order of the Original Adjudicating Authority.

8. Under the circumstances, the Government is not inclined to interfere with the said Order-in-Appeal. The Appellate order C. Cus. No. 1791/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. So, ordered.

Ashok Kumar Mehta
19.3.18

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

ORDER No. 114/2018-CUS (SZ) /ASRA/Mumbai DATED 19-03.2018

To,

True Copy Attested

Shri M. Shajahan
C/o Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

Sankarsan Munda
22/3/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

