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सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/486/B/2022-RA / 859

Date of Issue :

02.02.2024

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ORDER No 127 /2024-CUS (WZ)/ASRA/MUMBAI DATED. 31.01.2024  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,  
1962

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Applicant : Ms. Amarjahan Firoz Shaikh

Respondent : Pr. Commissioner of Customs, Airport-I, Mumbai

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. Mum-  
CUSTM-Pax-App-160-2022-23 dated 17.05.2022 passed  
by the Commissioner of Customs (Appeals), Mumbai-III.

**ORDER**

This revision application has been filed by Ms. Amarjahan Firoz Shaikh, (herein referred to as Applicant) against the Order-in-Appeal No. Mum-CUSTOM-Pax-App-160-2022-23 dated 17.05.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2 Brief facts of the case are that on the intervening night of 02/03.05.2019, the applicant, who was scheduled to travel to Dubai from Mumbai by Spice Jet flight no SG 13 dated 02.05.2019, was intercepted by the officers of Uniform Batch, CSI Airport, Mumbai. She was asked whether she was carrying any prohibited/restricted items either in her baggage or on her person, to which the passenger replied in negative. Not being satisfied with her reply, the officers decided to conduct her personal search and examination of her baggage. Personal search of the passenger resulted in the recovery of foreign currency i.e. 80 notes of British Pound of 50 denomination and 98 notes of USD of 100 denomination, which were concealed in her undergarment. Total foreign currency of 4000 British Pounds and 9800 USD was recovered. The recovered foreign currency of 4000 British Pounds and 9800 USD, equivalent to Indian Rs. 10,31,440/-, was seized under the reasonable belief that the same was attempted to be smuggled out of India and hence liable for confiscation under the provisions of the Customs Act, 1962 read with provisions of FEMA 1999 and Regulations made thereunder

3. The case was adjudicated and the foreign currency of 4000 British Pounds and 9800 USD equivalent to Indian Rs. 10,31,440/-, was confiscated absolutely under section 113 (d), (e) and (h) of the Customs Act, 1962 read with FEMA, 1999 AND Foreign Exchange Management (Export and Import of Currency) Regulations 2015. Personal Penalty of Rs 1,00,000/- was imposed on the applicant under section 114 (i) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai-III., who vide impugned Order-In-Appeal upheld the OIO passed by the Original Adjudicating Authority and dismissed the appeal.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant has preferred this revision application inter alia on the grounds that;

5.1 There was no previous case registered against him.

5.2 The Adjudicating Authority ought to have appreciated that there is no duty involved in Export of Foreign Currency and there is no margin of profit, therefore, Absolute Confiscation of the Foreign Currency and heavy penalty imposed on the applicant is totally unjustified as the offence if any committed by the applicant is technical in nature.

5.3 Applicant has placed reliance on various case laws.

5.4 Applicant has requested to set aside the impugned OIA and to release the foreign currency on payment of redemption fine.

6. Personal hearing in this case was scheduled on 01.12.2023. Shri N.J. Heera, Advocate appeared for the Applicant and submitted that applicant was carrying some foreign currency for business purposes. He further submitted that there was no ingenious concealment and applicant is not a habitual offender. He requested to allow redemption of currency on reasonable redemption fine and penalty.

7.1 Government observes that the applicant has filed an application for condonation of delay. The Order in Appeal (OIA) was issued on 17.05.2022; however, the applicant claims to have received it on 04.10.2022. The applicant explains that the delay in filing the application was due to the returned undelivered status of the OIA. The applicant was required to file the revision application within 3 months, i.e., by 03.01.2023. The applicant, in fact, submitted the revision application on 18.10.2022, which falls within the

stipulated 3-month time limitation period from the date of receipt of the said order and hence the Government condones the delay and goes into the merits of the case.

7.2 Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized foreign currency had not been declared by the Applicant to the Customs upon arrival as required under Section 77 of the Customs Act, 1962 and the provisions of Rule 6(b) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29th December, 2015 (Notification No. FEMA 6 (R)/2015-RB) Therefore, the confiscation of the foreign currency was justified as the applicant had not declared the same to the Customs upon arrival into India.

8(a). Insofar as the import of foreign currency into the country under the liberalized economy of the country, it is relevant to reproduce here, the Regulation no. 6 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29<sup>th</sup> December, 2015.

**6. Import of foreign exchange into India:- A person may –**

*(a) send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques,*

*(b) bring into India from any place outside India without limit foreign exchange (other than unissued notes),*

*provided that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations.*

*provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousand) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US\$ 5,000 (US Dollars five thousand) or its equivalent*

8(b). The Government notes that under the liberalized economy policy of India, foreign currency can be brought into the country and the requirements are (i).

the same must be declared upon arrival and (ii). the foreign currency notes must not be unissued notes

8(c). From the above, it is clear that the import of foreign currency is not prohibited and the same can be brought into the country provided that the two requirements stated above, are met. In this case, the foreign currency was issued notes and the only requirement not met by the applicant was that he had not declared the foreign currency upon arrival.

9(a). Section 2(33) of the Customs Act, 1962 pertaining to definitions, reads as under,

*2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;*

9(b). Government notes that the applicant upon arrival into India had not filed a declaration about the foreign currency in his possession.

10. From the foregoing paras, in respect of the foreign currency brought into the country by the applicant is concerned, Government finds that this is a case of non-declaration of foreign currency rather than a case of smuggling. No case has been made out that the concealment was ingenious or the applicant was a repeat offender. Under the circumstances, Government finds that the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 is harsh and unjustified. The order of the lower authorities is therefore liable to be set aside and the foreign currency is liable to be allowed redemption on suitable redemption fine and penalty.

11. In view of the above, the Government,

(a). modifies the impugned order of the Appellate authority in respect of the absolute confiscation of the foreign currency. The foreign currency equivalent to

realised amount of INR. 10,31,340/- after confiscation is allowed redemption on payment of a fine of Rs. 2,00,000/- (Rupees Two Lakhs Only).

(b) the penalty of Rs. 1,00,000/- imposed under Section 114(i) of the Customs Act, 1962 is appropriate and reasonable and the same is upheld.

12 The Revision Application is disposed of on above terms.

( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 127 /2024-CUS (WZ)/ASRA/MUMBAI DATED. 31.01.2024.

To,

- 1 Ms. Amarjahan Firoz Shaikh, F/403, Bharati Park, Near Macdonalds, Mira Bhayander Road, Mira Road(East), Thane- 401107.
2. Pr. Commissioner of Customs, Airport-I, Chhatrapati Shivaji International Airport, Terminal - 2, Level - II, Andheri(E), Mumbai - 400099

Copy to:

- 1 Shri. N.J Heera Advocate, Nulwala Bldg, Ground Floor, 41 Mint Road, Opp. G.P.O, Fort, Mumbai - 400 001.
- 2 Sr. P.S. to AS (RA), Mumbai.
- 3 File Copy.
- 4 Noticeboard.