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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. 371/01/B/14-RA/314

Date of Issue 29.11.2017

ORDER NO.16/2017-CUS (WZ) / ASRA / MUMBAI/ DATED 28.11.2017 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 Jayendra Chandulal Thakkar

Respondent: Commissioner of Customs (Appeals), Mumbai -III.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.MUM-CUSTM-PAX-APP-188/13-14 dated 08.10.2013 passed by the Commissioner of Customs (Appeals), Mumbai-III.

The Revision Applicant, Shri Jayendra Chandulal Thakkar, has filed the instant Revision Application against the Order-in-Appeal No.MUM-CUSTM-PAX-APP-188/13-14 dated 8.10.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III. Through the said Order-in-Appeal, the Commissioner (Appeal) had upheld the Order-in-Original No.ADC/KPC/ADJN/33/2010-11 dated 22.10.2010 passed by Additional Commissioner Customs, C S International Airport, Mumbai, ordering absolute confiscation of the seized foreign currency equivalent to Indian Rs.33,06,667.60 under Section 113 (d), (e) and (h) of the Customs Act, 1962 and imposing a penalty of Rs.4,00,000/- upon the applicant under Section 114 (i) of the Customs Act, 1962; confiscating the black coloured leather pouch under Section 118 (b) of the Customs Act, 1962 along with the shoes worn by the applicant and used for concealing the seized currency, under Section 119 of the Customs Act, 1962. The original adjudicating authority, Additional Commissioner of Customs had passed the said order in pursuance to the order of CESTAT, Mumbai dated 17.07.2008 . The CESTAT had, in the said order, had ordered the denovo adjudication in pursuance to the Appeal filed by the applicant against the order of first adjudicating authority, the Commissioner Customs, C S International Airport, Mumbai, Order No. COMMR/PVR/ADJN/18/2008 dated 30.1.2008 had confiscated the seized foreign currency of Rs.33,06,667.60 along with the black coloured pouch and shoes and imposed a penalty of Rs.4,00,000/- on the applicant.

02. Shri Jayendra C. Thakkar had been intercepted by the officers of the Air Intelligence Unit, Mumbai on the 14th of March, 2006, when he was on his way to board flight No. QR 201 of Qatar Airlines. When the officers asked the applicant as to whether he was carrying any contraband items or foreign currency, he had replied in the negative. The detailed examination of his baggage and his person resulted in the recovery of foreign currency equivalent to Rs.33,06,667.60 from his shoes and the black coloured pouch

and seizure which is mentioned in the Annexure-I and Annexure-II of the panchanama respectively. The statement of the applicant was recorded under Section 108 of the Customs Act, 1962.

03. After the sequence of events i.e. issuance of Show Cause Notice; order of confiscation by the first adjudicating authority, Commissioner Customs and the order by the CESTAT, the second original adjudicating authority, Additional Commissioner of Customs Airport, Mumbai has passed the order of absolute confiscation of foreign currency equivalent to Rs.33,06,667.60 and imposing penalty of Rs.4 Lakhs. The applicant also could not succeed in the Order-in-Appeal; which is under challenge before the Government in the instant Revision Application filed by the applicant.

04. The applicant has challenged the impugned order of Commissioner (Appeals) on the grounds inter alia that the contention of the department that 612 notes were concealed and recovered from the shoes is incorrect and it is impossible to carry that many notes in the shoes; the two adjudicating authorities in their orders dated 30.1.2008 and 22.10.2010 have noted that panchanama shows that there were 317 notes recovered from both shoes; there was perhaps another panchanama which was not given to the applicant; the panchanama supplied by the department recording the recovery of 612 notes from the shoes was fabricated; the observation of the adjudicating authority regarding the number of notes is not a clerical mistake; the Commissioner (Appeals)'s contention to treat the case of prosecution and adjudication as two independent proceedings is incorrect; the AIU officials had intercepted the applicant when he was attempting to disclose the foreign currency in his possession to the Customs Officers; the appellate authority seems to have been influenced against the applicant because of earlier cases of smuggling and holding of two passports etc. The applicant has pleaded for setting aside the impugned order; release of confiscated currency for export or for home consumption and waive the penalty imposed on him.



05. A Personal Hearing in this regard was granted to the applicant by my predecessor on 04.01.2016 and before her the applicant had also filed the written brief and pleaded that he had procured the foreign currency from Nepal by road through the Sonauli border and he does not have any Currency Declaration Form (CDF), as he could not get the currency declaration from the customs officers because they had declined to issue the same. Another Personal Hearing was held before me on the 16th October, 2017 and the applicant filed detailed written submissions again and reiterated the same along with the grounds of appeal during the course of personal hearing and pleaded for the relief as mentioned supra.

06. The department has also filed the written submissions on 1.4.2016, submitting interalia that the AIU officers at Mumbai Airport had recovered 612 notes of foreign currency from the shoes and other currency from the black pouch and the details have been recorded before the two panch witnesses in the form of a panchanama drawn on the spot. The panchanama has a detailed description of 612 currency notes in Annexure-I and Annexure-II has the details of the recovery of assorted foreign currency from the black coloured pouch. The statement of applicant was recorded under Section 108 of the Customs Act, 1962, before the Superintendent of Customs, which is admissible evidence in the court of law. The applicant had acknowledged the details as mentioned in the panchanama by appending his signatures on the panchanama and his statement under Section 108 of the Customs Act, 1962 has been recorded before the gazetted officer and in his own handwriting. The applicant has been involved in the previous cases of smuggling at Mumbai and Bangalore airport. The theory of 2 panchanamas propelled by the applicant is wrong and there is only one panchanama, the copy of which has been supplied to the applicant; the applicant is an habitual offender and has committed various offences from time to time; the applicant has fabricated the story of another panchanama to misguide the authorities and to seek relief. The applicant when

intercepted with such large quantities of foreign currency and he had no proof for the possession of acquisition of the seized foreign currency that he had acquired these from the legal channels; the said foreign currency was liable for confiscation under the provisions of 113 (d) of the Customs Act, 1962 read with Section 6 (3) of FEMA, 1999, and the regulations framed there under. The seized foreign currency has been rightly confiscated absolutely and penalty of Rs.4,00,000/- (Rupees Four Lakhs) has been rightly imposed by the adjudicating authority and the appellate authority has rightly upheld the orders of adjudicating authority. The applicant have been changing the versions through retraction and before various Fora's to seek the relief of the offences he had committed by attempting to export the seized and confiscated foreign currency in contravention of the provisions of FEMA and rules framed and Customs Act, 1962 as Rules framed there under.

DISCUSSIONS & FINDINGS

07. The Government has carefully gone through the case records, submissions made by the applicant in the instant application along with the written arguments and the contentions of the department made in the Order-in-Original, Order-in-Appeals, as well as written brief filed by the Revenue.

08. It is seen that the main ground of appeal taken by the Applicant is the modus operandi of smuggling of impugned foreign currency attributed to the applicant and as recorded in the panchanama dated 14.03.2006 that 612 notes of foreign currency were being exported by the applicant in a concealed manner inside the shoes worn by him. It is his contention that it is impossible to keep that many notes inside the room of the shoes. The department on the other hand, in their written argument has pleaded that the whole proceedings of the seizure has been conducted/recorded in front of two independent witnesses as prescribed under law; the panchanama



bears the signature of the panchas and the applicant; the recovery of 612 notes from the shoes worn by the applicant has been truthfully recorded in the panchanama.

09. The Government has carefully gone through the contents of the panchanama and the Government notes that on the 14th of March, 2006, when the applicant was intercepted by the Air Intelligence Unit office of Mumbai, the applicant had cleared the immigration as the boarding card had a stamp of immigration thereon and the officials intercepted the applicant after he had crossed the customs and was proceeding towards the transit lounge to board the Qatar Airways flight QR 201 to Doha. On persistent inquiry, the applicant had claimed that he has foreign currency equivalent to the tune of US \$ 4000 as he is an NRI. The search of the shoes of the applicant resulted in the recovery of 612 notes of foreign currency which has been recorded in the panchanama. It is also seen that Annexure-I to the panchanama gives the detail of each and every currency note of 612 notes recovered from the applicant which includes the currency note number and the denomination which is recorded in page no.1 to 23 of the Annexure-I to the panchanama. The applicant has nowhere disputed that the currency of 612 notes or the currency seized from the black pouch was not recovered from him nor it is his case that he was in the legal possession of such a large quantum of the foreign currency. It is seen that the most authentic document available on record is the panchanama depicting all chains of events and recovery/seizure of impugned foreign currency prepared before the two independent pancha witnesses which show the manner and detection from the shoes. The Government is inclined to rely upon the detailed panchanama and the statements of the applicant recorded under Section 108 of the Customs Act, 1962.

10. The applicant has consistently harped upon his contention that he had attempted to declare the foreign currency recovered from him in the form of 612 notes from the shoes equivalent to Rs. 31,40,705/- (Rupees

Thirty One Lakhs Forty Thousand Seven hundred and Five) as detailed in Annexure-I to the panchanama, and foreign currency equivalent to Rs.1,65,962/- (Rupees One Lakh Sixty Five Thousand Nine Hundred and Sixty Two) from his black pouch, the details of which have been recorded in Annexure-II to the panchanama and the details of each and every note of foreign currency recovered from the black pouch have been recorded from page 1 to page 6 of the panchanama. It is also evident from the statements of the applicant under Section 108 of the Customs Act, 1962 pursuant to the said seizure, in which he himself, in his hand writing admitted the recovery of foreign currency equivalent to Rs. 33,06,667.60 (Rupees Thirty Three Lakhs Six Thousand Six Hundred Sixty Seven and Sixty paise) and also admitted that he has no document to support legal acquisition or possession of the recovered foreign currency.

11. The applicant has contended that the Commissioner (Appeal), in his impugned order has brushed aside his contention by recording that the appellant has not disputed his interception or recovery of the currency from his possession irrespective of the fact that it was recovered from the shoes or his handbag and his failure to produce any document regarding licit import of the currency. The applicant has also not disputed the fact that the seized foreign currency was recovered from him. He only pleads that 612 notes cannot be kept in the shoes, hence the department's contention of the seizure from the shoes is not correct.

12. It is seen that the applicant had been changing his stand regarding the manner of acquisition of the foreign currency. Subsequent to the seizure, the applicant in his statement recorded under Section 108 of the Customs Act in response to the Question No.3 regarding the source of the foreign currency, the applicant had submitted that he had visited Nepal on the 10th /11th of March, 2006 when he went from New Delhi to Nepal by the Jet Airways flight. The impugned foreign currency was given to him by one Mr. Ravi on the instructions of his business associate Mr. Lee Wong. He

had mentioned the address of Mr Lee Wong as 47, Serangoon Road, Singapore - 218 001 and his telephone no. was 00-65 62936647. In response to Question No.5, he had submitted that he had not declared the foreign currency on his departure from Nepal or his arrival at New Delhi Airport before Customs officers even though he was fully aware that currency notes beyond \$5,000 or equivalent, have to be declared in India. In response to Question No.10, the applicant had admitted that he concealed the foreign currency notes in his shoes because he had no legal documents to support the possession of the said currency and it was a deliberate attempt to evade the checks by the Customs Authorities and also the persons who screen the baggage. In response to Question No.10 he had also submitted that Mr. Lee Wong was to give him Rs 20,000/- as compensation for carrying the foreign currency on his behalf. The applicant, in his written submissions filed before this authority in para 16 on page 7 changed his earlier stand and submitted that he had procured the various foreign currency seized from Nepal via Sonauli land border. Thus, it is seen that the applicant has now come up with a written submission that he had brought the seized foreign currency from Sonauli on Indo-Nepal border.

13. The applicant in both the above mentioned situations claims that he did not have currency declaration form (CDF) for legal or licit import of the recovered foreign currency from him in his shoes as well as from the black pouch. In this scenario, it is not possible to believe the version of the applicant that he was attempting to make a declaration about his foreign currency to the uniformed Customs officers when the Air Intelligence Unit officials caught him. Without any documents available such as currency declaration form or other documents for legal acquisition for the recovered foreign currency, the applicant would have never taken the risk of seizure, more so when the applicant has been caught on earlier two occasions for illegal smuggling of Indian and foreign currency and smuggling of mobile phones. Therefore, the contention of the applicant regarding his intent or

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claimed act to declare the seized foreign currency to Customs officers falls flat and liable to be rejected on this count.

14. The applicant has contended that Commissioner (Appeals) failed to take note of the fact that the original adjudicating authority, in his order dated 30.1.2008 had mentioned that panchanama shows that there are only 317 notes recovered from both shoes and justified that the same could be concealed easily in the shoes and is not an impossible situation. The applicant submitted that there were two different panchanamas and copy of only one was supplied to the Revision Applicant. He further contended that the observation of Commissioner (Appeals) that mentions of 317 notes instead of 612 notes by the original adjudicating authority in his Order dated 22.10.2010 was merely a clerical mistake is not correct. The applicant had emphasized upon this contention by giving various colours to this issue. The applicant has in his book of written submissions at page 78 have furnished a copy of the letter dated 19.2.2014, issued by the Assistant Commissioner, Air Intelligence Unit which is in response to the request of the applicant to obtain a certified copy of alleged second panchanama wherein 317 currency notes were recorded. The Assistant Commissioner has mentioned in his letter that in both the orders, para 4 shows that 612 notes were recovered. He specifically mentioned that page 23 of Annexure to the panchanama distinctly highlights the recovery of 612 notes in the SBI challan dated 14.3.2006 also show the deposit of 612 notes in the bank. It has been further mentioned that there is only one panchanama vide which recovery/seizure of foreign currency of Rs.33,06,667.60 was made.

15. The Government observes that the theory of 2 panchanamas propelled by the applicant at the appellate stage does not inspire confidence particularly when the same contention has not been raised before the first adjudicating authority. The applicant had tried to take support from the mistake committed by the first adjudicating authority which subsequently trickled in the observation of the second adjudicating authority. The

applicant in para 27 of his written submission have given another twist by mentioning that the portion of 317 foreign currency notes which were 1,58,500 euros, in the denomination of Euro 500 each were removed/ stolen by the air intelligence unit officers. This clearly shows the last ditch attempt of the applicant to take undue advantage of the mistake committed by the adjudicating authority to mention 612 notes instead of 317 notes and falsely implicated the officers at this stage. Had it been the case of additional recovery of 317 notes as alleged equivalent to 1,58,500 euros, the applicant who had been arrested in the illegal export of Indian and foreign currency and had been booked with another smuggling case of mobile phones in Bangalore would not have sat idle for nearly 11 years without filing any FIR or after his release from the jail, for the so called alleged extra recovery of the foreign currency and the alleged second panchanama. When the panchanama has given the complete pictographic details of the recovery of the foreign currency indicating the number and the denomination of each and every note in the Annexure-I & II of the panchanama backed by the confessional statement of the applicant recorded before a Gazetted officer under Section 108 of the Customs Act which is admissible as a crucial piece of evidence at the relevant time. Therefore, I outrightly reject the theory of two panchanamas and additional recovery of 317 notes.

16. Both the adjudicating authorities in their order dated 30.1.2008 and 22.10.2010 in para 4 have mentioned that there were 612 notes of different currency of various denominations recovered from the shoes worn by the passenger. Moreover, the applicant has admitted in the application that 612 notes of foreign currency were recovered from him out of the total foreign currency equivalent to Rs. 33,06,667.60. Therefore, I hold that the observation of the adjudicating authority mentioning 317 notes instead of 612 notes was merely a clerical mistake.

17. The applicant, in his written statement and submissions, highlight some discrepancies in the version of the independent panch witnesses

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during the course of examination of the trial of the criminal case pending before the Chief Judicial Magistrate. It is the contention of the applicant that the Commissioner (Appeals) has wrongly mentioned that quasi-judicial proceedings of the department are independent of the legal proceedings in the criminal case. It is quite likely that some discrepancies might have occurred during the trial proceedings as a long time has elapsed between the seizure and the proceedings. The adjudicating authority has to decide the case on the basis of the facts of the evidences available on record and their proceedings and definitely independent of the penal proceedings before the court of law, though they might have emanated from the same seizure proceedings resulting in the arrest of a person. From the records, it is evident that the applicant had admitted the carriage, possession, as well as the recovery and seizure of the foreign currency equivalent to Rs.33,06,667.60. He, in his statement recorded under Section 108 of Customs Act, 1962, had also admitted that he had concealed the currency to evade from the checks of the Customs authorities as he did not have any documents to prove the legal acquisition of the seized foreign currency.

18. Further, the applicant was fully aware of the fact that carrying foreign currency more than US \$ 5000 or equivalent without declaration and without documents of legal acquisition and possession was an offence. The Government also notes that the applicant had been involved in the smuggling case of Indian currency of Rs.20,10,000/- and foreign currency equivalent to Indian Rs.1,83,000/- for which he was arrested and the proceedings of the court were pending. The Government also notes from the record that the applicant, namely; Jayendra Chandulal Thakkar had changed his name from his earlier name of Jitendra Chimanlal Thakkar deliberately to hide his identity, since a case had been booked against him in his earlier name in Indian currency case to evade the process of law. This has been the solitary reason for rejection of the bail of the applicant by the Chief Judicial Magistrate. It is also evident from the records that he was



holding different passports Z-139912 and E-7913318 in two different names with the intent to evade the process of law and to continuously engage himself in the nefarious activities of smuggling as he had been earlier booked with the case of smuggling of Nokia mobile phones at Bangalore.

19. It is not the case by the applicant that he had been travelling abroad for the first time and was not aware of the laws and procedures relating to the import and export of foreign currency, he had travelled abroad many a times and he had been arrested in the charge of the smuggling of foreign and Indian currency and other contraband goods. It is a settled legal position that taking or sending foreign and Indian currency out of India without general or special permission of the permitting authority, in this behalf i.e. Reserve Bank of India is prohibited in terms of the Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 framed under Section 47 of the Foreign Exchange Management Act, 1999. Under Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, in exercise of the power conferred by Section 6 (3)(g) and Section 47 (2) of Foreign Exchange Management Act, 1999, except as otherwise provided no person shall without the general or specific permission of Reserve Bank of India, export or send out of India any foreign currency in terms of Regulation 6 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 a person may bring into India from any place outside India, foreign exchange equivalent to US Dollars 5000/- in cash without filing a declaration to Customs Authorities. By virtue of Regulation (3) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 any person can take out of India foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000.

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20. The Government notes that the Appellant has not disputed about his interception of the recovery of the seized foreign currency from his possession whether it is recovered from the shoes or his black pouch. The applicant had also not produced any documents regarding the legal acquisition or possession of the seized foreign currency in the form of Currency Declaration Form or other documents etc. It is, therefore, imperative that the original adjudicating authority had accordingly ordered for the confiscation of the seized foreign currency for the various contravention of Foreign Exchange Management Act, 1999 and rules framed there under along with the provisions of the Customs Act and the rules framed there under.

21. The applicant has also raised the issue that the confessional statement had been recorded by the Air Intelligence Unit Officers under duress and hence should not be relied upon. The Government notes that the adjudicating authority had at length discussed this aspect with detailed reasoning which Government is inclined to accept. Mere retraction of statement on a very specific part of statement cannot be considered, when the applicant had given the detailed source of acquisition along with the name of the persons who had handed over the seized foreign currency. Moreover, the applicant is not a novice. He had been involved in the previous cases of smuggling as detailed supra. The impugned foreign currency had been recovered from the applicant after he had cleared the immigration and was in the transit lounge on the way to board the aircraft. The non-declaration of such a large quantum of foreign currency without any documents for legal acquisition of impugned foreign currency, before the Customs had rendered the same as prohibited goods and hence liable to confiscation.

22. The applicant had requested for redemption of confiscated foreign currency for home consumption or for export. The applicant himself has admitted that he had brought the foreign currency from Nepal on the

instructions of one Mr. Lee Wong from Singapore and was delivered by one Mr. Ravi at Nepal airport when he had travelled from Delhi to Nepal and then back to Delhi by Jet Airways flight. He had changed the version in his written submissions before the Government that he brought this currency from Sonauli, a land border customs station on Indo-Nepal border. In both these versions he had admitted that no Currency Declaration Form was obtained, be that as per his version at Delhi Airport of Sonauli border. In the absence of any of such evidences as Currency Declaration Form etc. it can be safely concluded that the impugned foreign currency has been procured from the illegal channels. The applicant has been travelling abroad so frequently and has been caught with contraband foreign / Indian currency and other smuggled goods such as 85 mobile phones at Bangalore. He had also been involved in keeping two passports illegally under two different names for which the legal proceedings had also been going on. In these circumstances, the Government of India holds that the applicant is a habitual offender who is well aware of the provisions of the Customs Act and the Foreign Exchange Management Act, 1999 and was concealing the foreign currency with the intent to smuggle the same out of India in contravention of various provisions as mentioned supra, for which the original adjudicating authority has taken the correct decision to absolutely confiscate the seized foreign currency and along with the articles used for concealment and imposed a penalty of Rs.4,00,000/- upon the applicant.

23. The Government also holds that, the order of Commissioner (Appeals) upholding the order of the original Authority dated 22.10.2010 confiscating the foreign currency of Rs.33,06,667.60 under the provisions of 113 (d) of the Customs Act, 1962 read with Section 6 (3) of FEMA, 1999, and the regulations framed there under along with confiscation of black pouch and shoes and imposition of penalty of Rs.4,00,000/- upon the applicant is legal and in order. The Government does not find any infirmity in this order



of the Commissioner (Appeals) and decline to interfere with the same. The Government also holds that the instant application is liable to be dismissed.

ORDER

24. The Government accordingly upholds the impugned order of the Commissioner (Appeals) No. MUM-CUSTOMS-PAX-APP-188/13-14 dated 8.10.2013 in its entirety.

25. The instant Revision Application is, accordingly, dismissed as ordered.

Ashok Kumar Mehta
28.11.2017

(ASHOK KUMAR MEHTA)

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

ORDER No. 16 /2017-CUS (WZ) /ASRA/ DATED 28.11.2017

To,

M/s Jayendra C Thakkar,
B-201, Ratnapuri Complex,
Opp : Banapura Petrol Station
Vadodara-390 004

Attested
Sud
29/11/17
(S. Munda)
Asst Commr (RA)

Copy to:

1. The Commissioner, of Customs, Chhatrapati Shivaji International Airport, Level -2, Terminal -2 Mumbai 400099.
2. The Commissioner of Customs (Appeals), Mumbai -III, Awas Corporate Point , 5th Floor, Makwana lane, Behind S.M. Centre, Andheri Kurla Road, Marol, Mumbai 400 059.
3. The Additional Commissioner of Customs, Chhatrapati Shivaji International Airport, Level -2, Terminal -2 Mumbai 400099
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.

