

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. 380/25-27/B/SZ/2020-RA/170-172

Date of Issue : 11.05.2022

ORDER No. ¹⁷⁰⁻¹⁷² /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED. 06 .05.2022.
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.

F.No. 373/25-27/B/SZ/2020-RA

Applicant : Commissioner of Customs (Preventive), No. 1 Williams
Road, Cantonment, Tiruchirappalli – 620 001.

Respondents: (i). Shri. S. Karikalan, S/o. Sannasi
(ii). Shri. Manivannan, S/o. Sannasi
(iii). Shri. S.Thirunavukkarasu, S/o. Sannasi

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No.
TCP-CUS-000-APP-035 to 037 dated 11.05.2020.2019
[A.No. C24/103, 108 & 109/2018-TRY(CUS)] passed by
the Commissioner of GST, Service Tax & C.Ex. (Appeals),
Trichirappalli – Pin : 620 001.

ORDER

These revision applications have been filed by the Commissioner of Customs (Preventive), Tiruchirappalli (hereinafter referred to as the Applicant) against the common Orders-In-Appeal No. TCP-CUS-000-APP-035 to 037 dated 11.05.2020 [A.No. C24/103, 108 & 109/2018-TRY(CUS)] passed by the Commissioner of GST, Service Tax & C.Ex. (Appeals), Trichirappalli – Pin : 620 001 in r/o the appeals filed by (i). Shri. S. Karikalan, (ii).Shri. Manivannan and (iii). Shri. S. Thirunavukkarasu (herein after referred to as the Respondents).

2. Brief facts of the case are that the 3 respondents alongwith two other persons were intercepted by the Customs Officers on 14.09.2018 at the Trichy International Airport after they had cleared immigration and were about to board Sri Lankan Airlines flight UL 138 destined for Colombo. On their personal search, assorted foreign currencies of various denomination as listed at Table No. 01, below was recovered. To query whether they were carrying any foreign / Indian currency / contraband, the respondent had all replied in the negative. The respondents had neither declared the foreign currencies nor were they in possession of any valid document/license/permit for legal export of the foreign currency. Hence, the same were seized.

Table No. 1.

Name of Pax	Foreign Currency	Denomination	Notes qty	Total value	Total value in INR
Karikalan	US\$	100	28	2,800	2,03,758/-
	US\$	20	2	40	
	US\$	3	1	3	
Syed Mohammed	US\$	100	100	10,000	7,17,058/-
	US\$	1	5	5	
Thirunavukkarasu	US\$	100	50	5000	3,64,570/-
	T. Bhat	1000	2	2000	
	T. Bhat	500	1	500	
	T. Bhat	100	3	300	
	T. Bhat	20	2	40	
Manivannan	US\$	100	50	5,000	3,61,718/-
	US\$	20	2	40	
	US\$	5	1	5	
	US\$	1	2	2	
Jawahir	Singapore \$	100	6	600	69,699/-
	Singapore \$	50	1	50	
	Singapore \$	10	22	220	
	Singapore \$	5	26	130	
	Singapore \$	2	133	266	
	Brunei BND	10	4	40	
	Brunei BND	5	1	5	
	Brunei BND	1	7	7	
				TOTAL :	17,16,803/-

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Jt. Commissioner of Customs (CCO), Trichy vide Order-In-Original No. TCP-CUS-PRV-JTC-20/2019 issued through C.No. VIII/10/072019-CCO Cus.Adj dated 05.09.2019, absolutely confiscated the foreign currencies as detailed at Table – 01 above under Section 113 (d) of the Customs Act, 1962 readwith Section 2(22), 2(33), 77 of the Customs Act, 1962, Foreign Trade Policy 2015-2020, Section 3 & 4 of FEMA, 1999, Regulations 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015. Penalties as detailed at Table 02, below were imposed on the respondents under Section 114(i) of the Customs Act, 1962.

Table No. 2.

Sr. No.	Name of Pax (S/Shri.)	Currency seized equivalent to INR	Penalties imposed in Rs.
1.	Karikalan	2,03,758/-	41,000/-
2.	Syed Mohammed	7,17,058/-	1,43,500/-
3.	Manivannan	3,61,718/-	72,500/-
4.	Thirunavukkarsu	3,64,570/-	73,000/-
5.	Jawahir	69,699/-	14,000/-

4. Aggrieved by this order, the respondents filed appeals with the Appellate Authority viz, Commissioner of GST, Service Tax & C.Ex, Trichirappalli who vide a common Orders-in-Appeal No. TCP-CUS-000-APP-035 to 037 dated 11.05.2020 [A.No. C24/103, 108 & 109/2018-TRY(CUS)], allowed to redeem the foreign currency on payment of redemption fine and reduced penalties as detailed at Table No. 3, below.

Table No. 3.

Sr. No.	Name of the Appellant (S/shri.)	Foreign Currency Seized – equivalent to INR	Redemption fine order in Rs.	Penalties in Rs.
1.	Karikalan	2,03,758/-	5,000/-	5,000/-
2.	Manivannan	3,61,718/-	72,000/-	36,000/-
3.	Thirunavukkarasu	3,64,570/-	72,000/-	36,000/-

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

5.01. the respondents had attempted to smuggle the foreign currency in a concealed manner in their wallets in order to avoid detection by the Customs; the currency in their possession was beyond the permissible limit without any supportive documents. It clearly established that they were trying to take the same out of the country and had attempted to smuggle foreign currency in an illicit manner;

all these is in violations of the norms and regulations and rendered the foreign currency as prohibited. same out of which proves that attempted smuggle Foreign Currency in manner.

5.02. the foreign currency above the legal limit which the respondents had intended to take out of India clandestinely were rightly held as prohibited by OAA as the same was above the permissible limit and no supportive documents towards its licit acquisition had been produced by the respondents.

5.03. The appellate authority ought to have rejected the appeal filed by the respondents and ought to have upheld the Order in Original No. TCP-CUS-PRV-JTC - 20/2019 dated 05.09.2019 passed by the OAA.

The applicant have prayed to the revision authority to uphold the original order passed by the OAA or pass any other order as deemed fit under the circumstances of the case.

6. Smt. Kamalamalar Palanikumar, Advocate for the respondents vide her written submission dated 04.03.2022 stated that there was no contumacious conduct on the part of the respondents and they were clearly ignorant of the law; that foreign currency is not prohibited and the same is restricted item; that there was no ingenious concealment; that respondents are not involved in any previous offence; that they have relied upon some case laws to buttress their case. They have prayed to the revision authority to dismiss the revision application filed by the department.

7(a). Personal hearing through the online video conferencing mode was scheduled for 02.12.2021 / 08.12.2021, 11.01.2022 / 03.02.2022, 11.01.2022 / 03.02.2022, 23.03.2022 / 30.03.2022. Smt. Kamalamalar Palanikumar, Advocate for the respondents appeared for physical hearing on 30.03.2022. She reiterated her submissions dated 04.03.2022. She requested to allow the redemption on nominal RF and penalty as currency amount was very small and same was for personal use. No one appeared on behalf of the applicants.

8. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized foreign currency was not declared by the respondents to the Customs at the point of departure. Further, in their statement the respondents had admitted the possession, carriage, concealment, non-declaration and recovery of the foreign

currency. Thus, it has been rightly held that in absence of any valid document for the possession of the foreign currency, the same had been procured from persons other than authorized persons as specified under FEMA, which makes the goods liable for confiscation in view of the prohibition imposed in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the confiscation of the foreign currency was justified as the respondent could not account for the legal procurement of the currency and that no declaration as required under section 77 of the Customs Act, 1962 was filed.

9. The Government finds that the amount involved in this case is very small. There is no case made out that the respondents are habitual offenders. The Appellate Authority at para 7 of the order has observed, "..... However, I find that the foreign currencies were recovered from the wallets of the appellants and there was no ingenious concealment. The ownership of the impugned currencies was also not in dispute. I find that the appellants viz, Shri. Manivannan and Shri. Thirunakkarasu were carrying only slightly above the permissible limit and the other appellant Shri. Karkkalan was carrying only USD 2843 which is within permissible limit of the RBI Master Circular. It is observed that there are catena of judgements passed by higher appellate forums where option to the passengers to redeem the foreign currency on payment of fine and penalty under Section 125 of the Customs Act, 1962 have been given". Government finds that the appellate authority has passed a legal and judicious order and is not inclined to interfere in the same.

10. Section 125 of the Customs Act, 1962 provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s. Raj Grow Impex has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below;

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion

conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

11. The Government finds that the amount involved in this case is very small. Also, the respondents had kept the currencies in their wallet and had not concealed it. This case is at best a case of mis-declaration rather than smuggling. Government finds that the discretion not to release the foreign currency with reasonable RF under the provisions of Section 125 of the Customs Act, 1962 would be harsh and unreasonable. For the aforesaid reasons, Government is not inclined to interfere in the order passed by the appellate authority.

12. The Government finds that the quantum of redemption fine under Section 125 of the Customs Act, 1962 and personal penalty imposed on the respondents under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

13. The 3 Revision Applications are decided on above terms.


(SHRAWAN KUMAR)

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

176-172
ORDER No. /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 06.05.2022.

To,

1. Shri. S. Karikalan, S/o. Shri. Sannasi, No. 1/1, P.V. Kovil Street, 6th Lane Royapuram, Chennai - 13.
2. Shri. Manivannan, S/o. S/o. Shri. Sannasi, No. 4/8, 2nd Floor, Appapillai Lane, Arthoon Road, Royapuram, Chennai - 13.

3. Shri. S. Thirunavukkarasu, S/o. Shri. Sannasi, Old No. 118, New No. 14, 2nd Floor, P.V. Kovil Street, Royapuram, Chennai – 13.
4. Commissioner of Customs (Preventive), No. 1 Williams Road, Cantonment, Tiruchirappalli – 620 001.

5.

Copy to:

6. Smt. Kamalamalar Palanikumar, No. 10, Sunkurama Street, Second Floor, Chennai – 600 001..
7. Sr. P.S. to AS (RA), Mumbai.
8. File Copy.
9. Noticeboard.