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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. 373/433/B/14-RA | 1475

Date of Issue 24.09.2021

ORDER NO. 217/2021-CUS (SZ)/ASRA/MUMBAI DATED 07.9.21 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.

Applicant : Shri Abdul Majeed

Respondent : Commissioner of C. Ex. & Customs (Airport), Calicut

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 94/2014-CUS dated 04.08.2014 passed by the Commissioner of C.Ex. Customs & S. Tax (Appeals), Cochin.

ORDER

This revision application has been filed by Shri Abdul Majeed (herein after referred to as the Applicant) against the Order in appeal No. 94/2014-CUS dated 04.08.2014 passed by the Commissioner of C.Ex. Customs & S. Tax (Appeals), Cochin

2. Based on specific intelligence, the Senior Intelligence Officer (S10), Directorate of Revenue Intelligence (DRI), Calicut intercepted Shri Muhammed Alshab arriving from Ras Al Khaimah as he was carrying fake Indian currency notes in the checked in baggage. Examination of his checked in Baggage resulted in the recovery of fake Indian currency with face value of Rs. 72,50,000/-. Shri Muhammed Alshab informed that he had opted to walk through the green channel and was offered a consideration of 200 Singapore dollars as remuneration for carrying the goods from Singapore to Trivandrum. Shri Muhammed Alshab, in his statement deposed inter alia that he was working as sales executive in Dubai; that he visited Dubai on the basis of visiting visa sponsored by one person from his native place named Abdul Malik; that Malik contacted him one or two days back and asked him to come to Calicut urgently carrying fake currencies and that for this purpose one Majeed would contact him from Dubai and that Majeed would direct him as to what is to be done. That later Majeed called him from Dubai and informed that ticket had been arranged for him from Ras Al Khaimah and Majeed agreed to take him to the Airport; that enroute Abdul Majeed (Applicant) and Mohammed Rafi handed over one cardboard carton and a strolley bag and told him to hand over those baggage to Shri Moosakutty (Babu) and Shri Salin C. P.(Cinnan) who would be waiting out side the airport at Calicut. He also informed that he has been a carrier for the past five years.

3. The Original Adjudicating Authority vide Order-In-Original No. 12/2009/ADC-CUS dated 31.12.2009 ordered absolute confiscation of the fake currency and imposed penalty of Rs. 5,000/- (Rupees Five thousand) on the Applicant, Shri Salin C. P.(Chinnan), Shri C. S. Abdul Malik, Shri Mohammed

Rafi, Shri Abdul Kareem, and Shri Moosakutty (Babu) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant department filed an appeal before the Commissioner (Appeals) on the grounds that the order in original was not legal or proper on the grounds that the allegations against the accused were grave and considering the complicity of those accused in the case has been proved, the adjudicating authority should have imposed penalties commensurate to the alleged acts of smuggling. The Commissioner (Appeals) vide Order-In-Appeal No. 094/2014 dated 04.08.2014 taking the printed value of the fake currency as the value of the goods, enhanced the penalty to Rs. 5,00,000/- (Rupees Five lakhs) on Shri Muhammed Alshab, and Rs.1,00,000/- (Rupees One lakh) each of the other respondents. The penalty imposed on Shri N. M. Abdul Kareem was set aside as there was no cogent evidence substantiating his involvement in smuggling of fake currency other than phone calls he received from Shri Mohammed Rafi.

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

5.1 Revision Applicant is innocent of the allegations in the show-cause notice.

5.2 The Revision Applicant has been implicated as an accused on the basis of, confession statement of co -accused persons. All the co-accused in the case has retracted front the confessional statement before the Additional Chief Judicial Magistrate (Economic Offences) Court, Ernakulam.

5.3 N.M. Abdul Kareem is the 6th respondent in the appeal. The appeal was filed by the Additional Commissioner of Central Excise and Customs. N.M. Abdul Kareem is acquitted who is a Sepoy of Customs. The grounds and evidences and circumstances relied on by the Commissioner (Appeals) for setting aside the penalty against N.M. Abdul Kareem is equally favourable to the revision applicant also. The Commissioner (Appeals) ought to have set aside the penalty against the revision applicant.

5.4 It is unconstitutional and illegal that persons equally charged with an offence have given discriminating treatments. N.M. Abdul Kareem and Revision applicant are charged with abatement of the offence. Therefore they are equally entitled to be set aside the penalty imposed against both of them.

5.5 For complying with the principles of natural justice, it is highly necessary to set aside the penalty against revision applicant for giving him equal treatment with that of 6th respondent in the appeal.

5.6 The revision applicant has no knowledge regarding any of the statements allegedly given by him.

5.7 That the Show Cause notice issued to the revision applicant was barred by limitation.

6. Personal hearings in the case were scheduled on 05.06.2018, 03.02.2021, 17.02.2021 in reply to this office letter for personal hearing dated 17.02.2021 the Applicant and his advocate Shri M. Shaiju, vide their letters dated 15.02.2021 requested three months time, due to Covid for attending final hearing in the matter. Accordingly as requested personal hearings were again scheduled on 23.07.2021 and 29.07.2021, however there was no response from the Applicant or the Department. The case is therefore being decided on the basis of existing records on merits.

7. It is not disputed that the fake currency was being smuggled into the country. The Applicants main grounds are that Shri C. S. Abdul Malik and Shri Mohammed Rafi made arrangements with Shri Abdul Kareem, who was a sepoy in the Customs department posted at the Airport. However he was acquitted by the Commissioner (Appeals) and penalty imposed on him was set aside. The Applicant submits that the grounds and evidences and circumstances relied on by the Commissioner (Appeals) for setting aside the penalty against Shri N.M. Abdul Kareem are equally favourable to the revision applicant, and therefore the Commissioner (Appeals) ought to have set aside the penalty against the revision applicant.

8. The Government has perused the case records carefully. Government observes that Shri Abdul Kareem's involvement in the case was alleged on the basis of the calls received by him from Shri Mohammed Rafi, one of the accused in the case. During the period and arrival of the flight from Ras-Al-Khaima, Shri Abdul Kareem was attending duty and posted at the exit gate of the Airport, his duty was to collect gate passes from passengers and assist his superiors. As a Sepoy in the airport he has no authority or independent power or control in the matter of checking and clearing passengers from abroad and therefore it is far-fetched to assume that he had in any way rendered assistance in the act of smuggling. There is no material evidence on record to show that Abdul Kareem has assisted in any manner in the smuggling of fake currency. Hence the charges framed against Shri Abdul Kareem appeared to be vague without clear evidence and hence not maintainable. It appears that Shri Kareem has been unnecessarily dragged into this case for the sole reason of receiving a few phone calls and an SMS from the parties involved in this case. Shri Abdul Kareem has explained that the reason he received the calls is because he had requested Shri Babu to get an LCD TV from abroad and in that connection he has received calls from Shri Babu and from Babu's friend and there is no material to disbelieve this version.

9. There are also no evidences to indicate that Shri Kareem based on phone calls received, had acted in a manner to help in the smuggling activity, that has not been looked into by the investigating officers. He has not concealed any fact from the investigating officers and explained all the phone calls received by him and what transpired between him and the callers. Shri. Mohammed Alshab had confirmed that he was not approached by any officer at the airport offering assistance to clear him out of the airport with the baggage. None of the other accused in the case Shri. Alshab, Shri. Sajin, Shri Abdul Malik or Shri Usman have named Shri Kareem's involvement in the import of fake currency. In the absence of any proper evidence in rendering some contribution directly or indirectly in the act of smuggling, there cannot be a charge of abetment in smuggling. It is also observed that the Department has not contested the setting aside of penalty against Shri N.M. Abdul Kareem. Government opines that a reasonable doubt must grow out of the evidence in the case. There is an unmistakable subjective element in the evaluation of the degrees of probability

and the quantum of proof. Hence, Government does not find force on this contention of the applicant.

10. On the other hand the culpability and involvement of the Applicant has been conclusively brought out in the facts of the case. The main accused Shri Mohammed Alshab informed that the Applicant contacted him in Dubai and arranged his tickets and handed over a carboard carton and strolley bag and was instructed to hand over the same to Shri Sajin and Shri Moosakutty @ Babu after his arrival in India. Shri Sajin C. P. in his statements has stated that he met Mohamed Rafi and the Applicant in Dubai and they agreed to give him Rs. 50,000/- if he distributes the fake currency as per their directions. The statement of Shri Sajin was corroborated by Shri Malik. Unlike Shri N.M. Abdul Kareem, the statements of the other co-accused in the case have clearly brought out the role played by the Applicant in the smuggling of fake currency and therefore he cannot seek to absolve himself in the matter. Revision Application is therefore liable to be dismissed.

11. Revision Application is accordingly dismissed.

Shrawan Kumar
7/9/21
(SHRAWAN KUMAR)

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

ORDER No.217/2021-CUS (SZ) /ASRA/MUMBAI DATED 07.09.2021

To,

1. Shri Abdul Majeed, Mannuparanbil House, Thamalassery, Ponani Taluk, Malappuram District.
2. The Commissioner of Commissioner of C.Ex. Customs & S. Tax, Calicut.

Copy to:

3. Shri M. Shaiju, Jem Villa, Combara Jn., Near High Court of Kerala, Ernakulam, Cochin - 682 018.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. Spare Copy.