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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. 373/23/B/15-RA

Date of Issue 28/06/2018

ORDER NO. 344/2018-CUS (SZ)/ASRA/MUMBAI DATED 14.05.2018 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. Basith Ibrahim

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.
978/2014 dated 19.06.2014 passed by the Commissioner of
Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Basith Ibrahim (herein referred to as Applicant) against the order C. Cus-I no 978/2014 dated 19.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National was going abroad from Chennai International Airport on 02.03.2014. Indian currency amounting to Rs. 2,70,000/- was recovered from him by the Customs officers. As the impugned currency was meant for illegal export The currency was confiscated absolutely by the original Adjudication Authority vide order 224/ AIU C dated 02.03.2014 under section 113 (d), (e), (h) and (i) of the Customs Act, 1962 read with FEMA 1999, FEMA (Exp and Imp of Currency, 2000). A penalty of Rs. 27,000/- was also imposed on the Applicant under section 112 (a) 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-I No. 978/2014 dated 19.06.2014 rejected the Appeal of the Applicant.

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 in the operative part of the Order in original the intention to release the currency is clear; Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit: Provided that, ...such fine shall not exceed the market price of the goods confiscated.....; Mere possession of currency is not an offence; There is no legal requirement to declare currency upto US\$10,000; There is no record to state that the Applicant has not declared the currency and this amounts to extraneous consideration; the currency was orally declared and shown, having seen the same the question of declaration does not arise; he did



not know the procedure and also unaware that the currency could not be taken out of India;

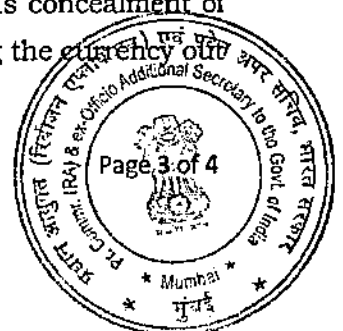
4.2 It has also been pleaded that the Hon'ble Supreme Court has state that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; In a reported in 2012 (276) ELT 129 (GOI) in re Chellani Mukesh and in the case of Keetheswari 373/46/B/11 04.05.2012 the hon'ble Revisional Authority has stated absolute confiscation is very harsh and granted the option to redeem the confiscated currency.

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

5. A personal hearing in the case was held on 19.04.2018, 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 carrying Indian currency beyond permissible limits. He was not having any documentary support or any specific permission for the same and therefore confiscation of the currency is justified. However, the facts should be seen in its entirety. The Applicant was not questioned whether he was carrying currency, the facts of the case also do not allege that the Applicant was searched, it appears that the Applicant voluntarily disclosed he was carrying Indian Currency. If he had not disclosed the same he could have walked off without being discovered by the Customs officers. Under this background the absolute confiscation is not justified.

7. There are numerous judgments wherein currencies have been released on payment of redemption fine and penalties. Further, the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. Government also observes that there were no allegations of ingenious concealment of the currency, and neither was there a concerted attempt at smuggling the currency out



of India. Government therefore holds that absolute confiscation of the Indian currency of Rs. 2,70,000/- (Rupees Two lacs Seventy thousand) currency is harsh and not commensurate with the facts and circumstances of the case and the applicant can be treated with a lenient view. Government therefore observes that the Order in Appeal needs to be modified and the absolute confiscation of Indian currency is liable to be set aside.

8. Taking into consideration the foregoing discussion, Government, sets aside the absolute confiscation and allows redemption of the confiscated currency in lieu of fine. Hence, Government allows the impugned Indian currency of Rs. 2,70,000/- (Rupees Two lacs Seventy thousand) to be released on payment of redemption fine of Rs. 1,00,000/- (Rupees One lakh). Government also observes that facts of the case justify reduction of the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 27,000/- (Rupees Twenty Seven thousand) to Rs.20,000/- (Rupees Twenty thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal is modified as detailed above. Revision Application is partly allowed.

8. So, ordered.

(Signature)
14.5.2018

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

ORDER No. 344/2018-CUS (SZ) /ASRA/mumbai

DATED 14.05.2018

To,

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

True Copy Attested

(Signature)
28/5/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C.)

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.

