

373/84/B/15-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
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F.No. 373/84/B/15-RA

Date of Issue 28/06/2018

ORDER NO. 345/2018-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. K. S. Mohamed Farook

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-I No. 99/2015 dated 24.03.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri . K. S. Mohamed Farook (herein referred to as Applicant) against the order C. Cus-I no 99/2015 dated 24.03.2015 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 21.08.2014. Indian currency amounting to Rs. 5,50,000/- (Rupees Five lakhs Fifty thousand) 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 1035/2014- AIU dated 07.01.2015 under section 113 (d), (e) and (h) of the Customs Act,1962 read with FEMA 1999, FEMA (Exp and Imp of Currency,2000). An option of redeeming the same was extended on payment of Rs. 1,75,000/- as redemption fine. A penalty of Rs. 50,000/- 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 Appellate authority has glossed over the judgements and points raised in the Appeal and rejected the Appeal; While passing the order the Adjudication Authority failed to consider RBI's rules and allow the passenger limit of Rs. 25,000/-; The currency was borrowed from two persons on interest; there was no contumacious conduct on the part of the appellant but the conduct of a person who was ignorant of the law, since she violated the provisions of Customs Act,1962 and FEMA1999; the currency was orally declared and shown, having seen the same the question of declaration does not arise;

4.2 It has also been pleaded 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; 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;

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 reduce 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.

7. However, the Applicant was not aware that carrying currency abroad was not permitted. 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. Under the circumstances Government holds that the Redemption fine and penalty imposed on the currency of Rs. 5,50,000/- (Rupees Five lakhs Fifty thousand) is on the higher side and the applicant can be treated with a lenient view. The Applicant has pleaded for lesser redemption fine and the Government is inclined to accept the plea. The impugned Order therefore needs to be modified reduced redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government, reduces the redemption fine imposed from Rs. 1,75,000/- (Rupees One lac Seventy Five thousand) to Rs 1,25,000/- (Rupees One lakh Twenty five thousand).



Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs.25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962.

9. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

(Handwritten Signature)
14.5.2018

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

ORDER No.345/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 14.05.2018

To,

True Copy Attested

Shri . K. S. Mohamed Farook
C/o Shri S. Palinikumar, Advocate,
No., 10, Sukurama Street,
Second Floor,
Chennai -600 001.

(Handwritten Signature)
28/6/18
एस. आर. हिरूलकर
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.
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