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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. 371/189/B/2019-RA/52 :

Date of Issue : 19.01.2023

ORDER No. 42/2023-CUS (WZ)/ASRA/MUMBAI DATED. 17.01.2023.
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. 371/189/B/2019-RA

Applicant : Shri. Khan Yaseer Meera

Respondent : Pr. Commissioner of Customs, CSMI, Mumbai..

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1160-18-19 dated 28.02.2019
(S/49-08/2017) passed by the Commissioner of
Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision application has been filed by the Shri. Khan Yaseer Meera, (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1160/2018-19 dated 28.02.2019 (S/49-08/2017) passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 14.11.2016, the applicant holding Indian Passport No. N 8272986, was intercepted by the Customs Officers, when he was clearing himself through green channel of Customs, the appellant passenger had earlier arrived at CSI Airport, Mumbai from Dubai. Personal search of the passenger and search of his baggage resulted in to the recovery of 255 nos of Indian currency of Rs. 1000/- each equivalent to Rs. 2,55,000/- and 13 bundles (containing 40 pouches each) of "Original blend Natural American Sprit tobacco" worth of Rs. 1,56,000/-. The passenger had failed to declare these goods to Customs upon his arrival. He explained that he carried Rs.50,000/- from India, for buying goods at Dubai and the rest of the currency was handed over to him by his friends in Dubai (as they were not coming in the near future) for depositing the same in their bank accounts in India as the Government of India had demonetised the Indian currencies of denomination of Rs.500/- and Rs. 1000/-

3. After due process of law, the case was adjudicated by the Assistant Commissioner vide OIO No. Aircus/49/T2/508/16 'C' dated 15-11-2016 wherein he ordered (i) absolute confiscation of the impugned Indian currency equivalent to Rs. 2,55,000/- (255 nos. of Indian rupees of the denomination 1000/-) under section 111 (d) & (1) of the Customs Act, 1962 read with the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015; (ii) absolute confiscation of 13 bundles of "Original blend Natural American Sprit tobacco worth of Rs 1.56,000/- under Section 111(d) & (1) of the Customs Act, 1962 read with the Foreign Trade (Development & Regulation) Act, 1962 and the Cigarette and other Tobacco Product (Packaging & Labelling) Amendment Rules, 2016 (COPTA) and (iii) a penalty of Rs.

50,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals) Mumbai -III, who vide his Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1160-1819 dated 28.02.2019 (S/49-08/2017) upheld the order of the Original Adjudicating Authority.

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

5.01 that he had carried Rs.50,000/- (out of the said confiscated Indian currency of Rs.2,55,000/-) from India to Dubai before the demonetization of Indian Currency notes of the denomination of 500/- and 1000/- However, on reaching Dubai, it was learnt by him that the Indian Govt. had demonetized the said 500 and 1000 rupee denomination currency notes. Therefore, the Banks in Dubai were not accepting these demonetized notes;

5.02 that the balance Indian currency amount of Rs.2,05,000/- was received by him from his friends in Dubai who had earlier taken the permissible Indian currency to Dubai and since they had no immediate plan to come back of India, they had given this amount of Rs.2,05,000/- to him for depositing in their Bank accounts in India since Indian Govt. had given a period of only 50 days to deposit the said demonetized notes in the bank accounts;

5.03 that the Adjudicating authority's order of the absolute confiscation of the Indian Currency was not justified as the said demonetized currency was not prohibited currency and was allowed by the Indian Govt. to be deposited in the accounts of the said currency holders for which the Indian Govt. had

given 50 days' time viz up to 30/12/2016. Therefore, the violation viz. non-declaration of the said currency is of technical nature.

5.04 Under the above circumstances of the case, the applicant prayed to Revision Authority to release the foreign currency on payment of redemption fine and reduce the personal penalty and to render justice.

6. Personal hearing was scheduled for 07.10.2022. Shri N. J. Heera, Advocate appeared for physical hearing and submitted that Indian Currency was brought by the applicant to deposit in the banks. He submitted that Commissioner Appeal even after accepting factual details, absolutely confiscated currency merely for no declaration. He requested to release the same on nominal Redemption fine and penalty.

7. Government has gone through the facts of the case, the impugned Order in Original, Order in Appeal and the submissions. In this case the applicant has stated that he had taken Rs. 50,000/- for buying goods when he left for Dubai. Government observes that the applicant had not declared the same to the Customs Authority before departure as required. The applicant again failed to declare Rs.2,55,000/- (which he was found to be in possession at the time of interception) to the Customs when he returned to India from Dubai, as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying the currency.

7.1 Government observes that the Regulations 3 and 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, states that no foreign or Indian currency can be sent out of India or brought into the country without the permission of the Reserve Bank of India. The relevant provisions read as follows:-

"3. Export and Import of Indian currency and currency notes. –

1) Save as otherwise provided in these regulations, any person resident in India,

a. may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding **Rs.25000/- (Rupees Twenty Five Thousand Only)** per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time;

b. may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.....

c. who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), **currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000/- per person** or such amount and subject to such conditions as notified by Reserve Bank of India from time to time.

(2) Save as otherwise provided in these regulations, any person resident outside India, not being a citizen of Pakistan or Bangladesh, and visiting India,

a. may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding **Rs.25000/- (Rupees Twenty Five Thousand Only)** per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

b. may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding **Rs.25000/- (Rupees Twenty Five Thousand Only)** per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.....

5. *Prohibition on export and import of foreign currency:-*

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.”

7.2 Regulation 3(1)(c) and 3(2)(b) pertain to import of Indian currency into the country and stipulates that an amount not exceeding Rs. 25,000/- per person or such other amount and subject to conditions as notified by RBI can only be brought into the country. From the above, it is clear that the import of Indian currency exceeding Rs. 25,000/- is prohibited and can be brought in only subject to permission from RBI. These regulations also indicates that the person going abroad can take upto Rs. 25,000/- which he can then bring back to the country. In this case, the applicant had not obtained permission from RBI to bring in Indian currency in excess of Rs. 25,000/-. For Indian currency in excess of Rs. 25,000/-, the applicant did not have any valid explanation.

7.3 Further Section 2(33) of Customs Act, 1962 stipulates that

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

7.4 Government observes that the Applicant did not make the statutory declaration on his arrival to the customs authorities since the currency Rs. 2,55,000/- carried by him was much higher than the prescribed limit of Rs.25,000/- under the FEMA, 1999 read with Foreign Exchange Management (Export and Import of Currency) Regulations, 2000. The legal provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and Section 2(33) of the Customs Act, 1962 clearly stipulate that the import of Indian currency is ‘prohibited’ and merits confiscation under provisions of Customs Act, 1962.

8. Government notes that in this case the quantity of the Indian currency is Rs 2,55,000/- and the applicant has stated that Rs.50,000/- was carried by him when he left for Dubai and Rs.2,50,000/- was given by his friends while returning, for depositing the same in their Bank accounts . However he was unable to give the details of his friends who had handed the currency over to him and the amount given by each of them to be deposited. Applicant was unable to show that the impugned currency in his possession was procured from authorized persons. The provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 stipulates that Passengers may bring up to Rs 25,000 to India or take Rs 25,000 out of India, in Indian currency. Government finds that the impugned currency in excess of Rs.25,000/- remained unaccountable, thus discretion used by OAA to absolutely confiscate the currencies is appropriate and judicious.

9. Government notes that the applicant is eligible to bring an amount of Rs. 25,000/- into the Country. However, for an amount exceeding Rs. 25,000/- i.e. Rs. 2,30,000/-, the applicant neither was able to produce any permission from RBI for the importation of the said Indian currency into India nor had filed any declaration as required under section 77 of the Customs Act, 1962. Government finds that the absolute confiscation of the excess Indian currency amounting to Rs. 2,30,000/- is appropriate.

10. Government notes that the applicant had brought the demonetized currency on 14-11-2016 which was during the validity period to deposit the same in the banks. In view of the same, the Government finds that the personal penalty of Rs. 50,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is harsh and excessive and not commensurate with the omissions and commissions committed.

11. In view of the above, the Government holds that,

a) the absolute confiscation of Rs. 2,55,000/- upheld by the AA is modified to the extent that Rs. 25,000/- being eligible is allowed to be released to the applicant. The absolute confiscation of the remaining i.e. Rs. 2,30,000/- upheld by the AA is sustained.

b) the penalty of Rs. 50,000/- imposed under Section 112(a) & (b) of the Customs Act, 1962 imposed by the OAA and upheld by the AA is reduced to Rs. 15,000/- (Rupees Fifteen Thousand only).

12. The Revision Application is disposed of on above terms.

Shrawan
17/1/23
(SHRAWAN KUMAR)

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

ORDER No. H2/2023-CUS (WZ)/ASRA/MUMBAI DATED. 17.01.2023.

To,

1. Mr. Khan Yaseer Meera, Siddque House, DongarPalli Road, Khalifa Station, Bhatkal PO, Karwar, Karnataka 581 320
2. Commissioner of Customs, CSI Airport, Terminal-2, Level-II, Sahar, Andheri East, Mumbai-400099.

Copy to:

3. Advani Sachwani & Heera, Advocates, Nulwala Building, 41 Mint Road, Fort, Opp. G.P.O. Fort, Mumbai 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File,
6. File Copy
7. Notice Board