



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

**F.No. 371/412/B/WZ/2022-RA**

/ 372

Date of Issue

18.01.2024

ORDER NO. 44 /2024-CUS (WZ) /ASRA/MUMBAI DATED 17 .01.2024  
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. 371/412/B/WZ/2022-RA**

Applicant : Shri. Shebaz Ahmed Ashraf Ali Shaik

Respondent : Pr. Commissioner of Customs, CSMI Airport, Sahar,  
Andheri (East), Mumbai 400 099.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-275/2022-23 dated 20.05.2022  
issued on 24.05.2022 through F.No. S/49-1467/2021  
passed by the Commissioner of Customs (Appeals),  
Mumbai - III

**ORDER**

This revision application has been filed by Shri. Shebaz Ahmed Ashraf Ali Shaik (herein referred to as Applicant) against the Order-in-Appeal No. MUM- MUM-CUSTOM-PAX-APP-275/2022-23 dated 20.05.2022 issued on 24.05.2022 through F.No. S/49-1467/2021 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that the applicant who was bound for Hang Zhau via Beijing by Air China Flight no. CA-890 / 22.10.2018 was intercepted by Customs Officers on 22.10.2018 after he had cleared the Immigration and Security at the CSMI Airport, Mumbai To query whether he was carrying any foreign currency either on his person or baggage, he had replied in the negative. Detailed examination of his trolley bag resulted in the recovery of USD 26,500/- all in denomination of 100 which were found wrapped in garments and the same were taken over and seized.

2(b). The applicant in his statement recorded under Section 108 of the Customs Act, 1962 stated that he was the owner of the foreign currency and that he possessed legal / valid documents for the same; that he had business of import and export of textiles items; that he holds a proprietorship firm by name M/s. Sterling Impex.

3. After due process of investigations and the law, the Original Adjudicating Authority (OAA) i.e. the Addl. Commissioner of Customs, CSMIA, Mumbai vide Order-In-Original No. ADC/VDJ/ADJN/43/2021-22 dated 02.06.2021 ordered for the absolute confiscation of the foreign currency i.e. USD 26,500/- equivalent to INR 19,23,900/- under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962 read with FEMA, 1999 and Foreign Exchange Management

(Export and Import of Currency) Regulation, 2015. A penalty of Rs. 1,50,000/- was imposed on the applicant under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority (AA) i.e. Commissioner of Customs (Appeals), Mumbai - III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-275/2022-23 dated 20.05.2022 issued on 24.05.2022 through F.No S/49-1467/2021 held that she did not find any reason to interfere in the impugned OIO dated 02.06.2021 and upheld the same in toto.

5. Aggrieved by this Order passed by the AA, the applicant has filed this revision application on the undermentioned grounds of revision;

5.01. that the applicant denies each and every charges, averment and allegation leveled in the Order-in-Original and states that no breach of the provisions of the Customs Act, 1962 or any Rules/Regulations except statutory procedural requirements was committed.

5.02. that the case is based on an erroneous understanding of the relevant facts.

5.03. that from the plain reading of the impugned Order dt. 19.03.2021, the following issues are raised; it appears that are the following issues:-

(i). whether the impugned goods were liable for absolute confiscation under Section 113(d), 113(e) and 113(h) of the C.A'62 or the same should have been allowed to be redeemed/released for home consumption and/or

(ii) whether the arbitrary, abnormal and exorbitant penalty imposed on the appellant by the OAA was required to be set aside/reduced or not.

5.03. that applicant was an outbound passenger, holding an Economy class boarding pass and was scheduled to travel to Beijing by China Airlines; that he had cleared emigration and had crossed the Customs departure counter in the departure hall of CSMI Airport; that he was intercepted by the Air Intelligence Unit near the Customs Desk in Departure Hall; that on the query of the official whether he was carrying the currency he had denied the same.

- 5.04. that examination of one the baggage of the applicant led to the recovery of USD of 26,500/-; that he had accepted the possession, carrying non-declaring, and recovery of USD 26,500/- of the foreign currency; that this foreign currency was not concealed or kept in an igneous manner; that after examination, the applicant had accepted the possession of foreign currency without any hesitation; that the had fully co-operated and attended all the summons; that he had stated that the seized foreign currency belonged to him; that he had the valid documents and had furnished the same; that Section 2(22) was crystal clear that the definition of the goods in the Customs Act included currency also; that currency was not a prohibited item or notified goods and not liable for absolute confiscation; that the currency was not smuggled goods and it belongs to him and documentary evidence was furnished; that absolute confiscation was required to be set aside and the foreign currency to be released; that he was ignorant and confused and had committed only one procedural and technical mistake of non declaring the said amount to Customs; that it was a bonafide mistake; hence, the foreign currency ought to be released, that on the issue of frequent traveler, he has to submit that for business purpose he was required to travel to foreign countries to meet his business partners, clients etc.
- 5.05. that the goods were not liable for absolute confiscation and should be released for home consumption, that Section 113(e) was not applicable as the goods were not concealed in the baggage; that Mr. Rajul Patel had proved with the documentary evidence that he was the owner of USD 1,20,000/-; that there was no loss of revenue; that he had co-operated with the investigations; that the goods were not liable for absolute confiscation under Section 113(d), (e) & (h) of the C.A. 1962.
- 5.06. that they rely on the following case laws;
- (i) Raju Sharma Vs Union of India (2020(372) ELT, 249(Del).]
  - (ii). Sudhir Kumar Vs, DRI [2019(368) ELT 270(Del).]
  - (iii). IN RE: Mohd Afir [2018(361) El T.959(G.O.I)] Order No.43/2018-Cus., dt. 23.03.2018 in F No. 380/108/B/2016-R.A.
  - (iv). Commr. of Customs Vs. Rajinder Nirula [2017(346) ELT. 9 (Bom).]
  - (v). Michael John Holyoake Vs. Commr. of Cus. & C. Ex., Goa - 2009(241) ELT.566 (Tri Mumbai).]
- 5.07. that penalty cannot be imposed on under Section 114(1) of the Act, as the applicant had not done nor omitted to do any act, which act or omission would render such goods liable to confiscation under Section

113 except procedural or technical lapse, on the basis of the ground/clarification given above; that t penalty imposed was very harsh and exorbitant; that he same was required to be set aside or reduced.

Under the circumstance, the applicant has prayed to the revisionary authority to hold a a sympathetic and judicious consideration and to set aside the Order dated 02.06.2021 passed by the OAA and to allow the USD 26,500/- to be redeemed; that the penalty amount be set aside; or pass any relief.

6. Personal hearing in the case was scheduled for 05.09.2023, 12.09.2023, 10.10.2023, 17.10.2023. None turned up on behalf of the Applicant / Respondent for the personal hearing. Sufficient opportunities have been given to the applicant / respondent. Therefore, the case is being taken up for a decision, ex-parte, on the basis of evidence available on the records.

7. At the outset, Government notes that the applicant while filing this revision application has not supplied the copy of the TR-6 challan evidencing that he had paid the fee of Rs. 1000/- in compliance to the provisions of Section 129DD(3) of the Customs Act, 1962. Accordingly, the office of the revision authority had issued a letter of even no. dated 12.09.2022, calling upon the applicant to furnish documentary evidence that the fees of Rs. 1000/- has been was paid by him in terms of Section 129DD of the Customs Act, 1962. Later, in the personal hearing intimation letter dated 25.09.2023 also, at para 4(ii), the applicant was requested to submit the TR-6 challan as evidence of payment of the fees. However, the applicant has not furnished the TR-6 challan evidencing that he has paid the fees.

8. The Government has examined the matter and at the outset itself, it is observed that the revision application dated 01.09.2022 was not accompanied by a fee of 1000 - which was required to be paid alongwith the revision application in terms of Section 129DD(3) of the Customs Act, 1962. As per this

Section, a fee of Rs. 1000- is mandatorily required to be paid while filing the revision application in those cases where the amount of duty and interest demanded, fine or penalty imposed by an Officer of Customs exceeds Rs. 1,00,000/-. Since, in this case the amount of penalty is undisputedly above Rs. 1,00,000/-, a fee of Rs. 1000/- was required to be paid before the revision application was filed. But as no fees have been paid and as a consequence, this revision application filed by the applicant cannot be considered to have been filed properly. The payment of the fees of Rs 1000/- has been mandated in the statute itself, and no such power to condone this fee has been vested with the revision authority. In the said situation, the instant revision application filed by the applicant cannot be considered and is accordingly, rejected, as the same is non-maintainable.

9. Accordingly, for the above given reason, the revision application is rejected as non-maintainable.

( SHRAWAN KUMAR )

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

**ORDER No.** 44/2024-CUS (WZ) /ASRA/

**DATED 17.01.2024**

To,

1. Shri. Shebaz Ahmed Ashraf Ali Shaik, Room No. 1, 1<sup>st</sup> Floor, 4/6, Ali Umer Street, Null Bazar, Mumbai – 400 003.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Level - 2, Terminal – 2, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
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