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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. 371/347-349/B/WZ/2019-RA/4222 : Date of Issue : 23.06.2023

ORDER NO. ^{MS-487}487/2023-CUS (WZ)/ASRA/MUMBAI DATED 22.06.2023
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.

(i). F.No. 371/347-349/B/2019-RA

Applicant No. 1 (A1) : Shri. Abubaker Amir Husein Shah,
Applicant No. 2 (A2) : Shri. Zubair Yakoob Khan,
Applicant No. 3 (A3) : Shri. Zuber Noor Mohammed.

..... APPLICANTS

Respondent : Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj
International Airport, Terminal – 2, Level – II, Sahar, Andheri
(East), Mumbai – 400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal Nos.
MUM-CUSTM-PAX-APP-251 to 253/19-20 dated 28.06.2019
issued on 12.07.2019 through S/49-320 to 322/2018/AP
passed by the Commissioner of Customs (Appeals), Mumbai –
III.

ORDER

These three revision applications have been filed by (i). Shri. Abubaker Amir Husein Shah, (ii). Shri. Zubair Yakoob Khan & (iii). Shri. Zuber Noor Mohammed (hereinafter referred to as the Applicants or alternately and more specifically as Applicant No. 1 (A1), Applicant No. 2 (A2) and Applicant No. 3 (A3) resp.) against the Orders-in-Appeal Nos. MUM-CUSTOM-PAX-APP-251 to 253/19-20 dated 28.06.2019 issued on 12.07.2019 through S/49-320 to 322/2018/AP passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that on 08.10.2016, the Officers of the DRI, Mumbai intercepted the applicant no. 1 and applicant no. 2 who were departing to Dubai by Fly Dubai Flight no. FZ-446, after they had crossed the Customs counter and had cleared themselves through immigration and were proceeding towards the boarding gate of CSMI Airport Mumbai. To the query whether they were carrying any foreign currency, A1 and A2 had replied in the negative.

2(b). Examination of baggage of A1 was carried out. The baggage contained motor parts accessories, engine tools, brake shoes, one carburetor, carburetor filters (10 pcs), hukka pipes (300 pcs), Bajaj motorcycle plugs (30 pcs) and 24 boxes of motorcycle brake shoes. Foreign currency i.e 59,500 Saudi Riyals and 6,500 Qatari Riyals were found concealed and were recovered from the 4 boxes of motorcycle brake shoes.

2(c). Search of A2 led to the recovery of 15 Omani Riyals and 800 Qatar Riyals from his person. Examination of the baggage of A2 was carried out. The baggage contained 44 spools of unbranded polyester yarn of assorted colours,

embroidery machines needles in transparent plastic boxes (10 boxes containing 12 needles in each box), one motorcycle mudguard.

2(d). Upon persistent inquiries, A1 and A2 admitted that they had both also concealed foreign currency in their body cavity i.e. rectum. A1 ejected out 2 rolls and A2 ejected out 1 roll. 2250 (45 pcs X50) Omani Riyals, 8000 (16 pcs X 500) and 34000 (34 pcs X 100) UAE Dirhams were recovered from the rectum of A1. 50000 (50 pcs X 1000) UAE Dirhams were recovered from the rectum of A2.

2(e). The assorted foreign currency recovered from the rectum and baggage of A1 are as given at Table No. 1, below;

Table No. 01.

Sl. No.	Currency Type	Total	Recovered from	Exch. Rate in INR	Equivalent INR
1.	Omani Riyals	2250	Rectum	173.21	389722
2.	Qatari Riyals	8000	Rectum	18.29	146320
3.	UAE Dirhams	34000	Rectum	18.75	637500
4.	Saudi Riyals	59500	Baggage	18.35	1091825
5.	Qatari Riyals	6500	Baggage	18.29	118885
	Total Equivalent to INR 23,84,252/-				

2(f). The assorted foreign currency recovered from the rectum and person of A2 are as given at Table No. 2, below;

Table No. 02.

Sl. No.	Currency Type	Total	Recovered from	Exch. Rate in INR	Equivalent INR
1.	Qatari Riyals	800	person	18.29	14632
2.	Omani Riyals	15	person	173.21	2598.15
3.	UAE Dirhams	50000	Rectum	18.75	937500
	Total Equivalent to INR 9,54,730/-				

2(g). A1 and A2 in their statements revealed that the foreign currency did not belong to them and that they had carried the same for monetary

consideration on the instructions of A3. They also admitted that on the instructions of A3 they travelled frequently to Dubai and carried foreign currency with them alongwith automobile accessories, mawa etc and on their return trips carried gold chains, gold biscuits, clothes, belts, burkhas, perfumes etc.

2(h). In immediate follow up action, the residential premises of A3 was searched. Automobile accessories / spare parts viz pistons, compressor filters etc were found at his residence. Foreign brand cigarettes viz Gudang Garam (9 cartons of 12 packets each) and Marlboro Cigarettes (2 cartons of 10 packets each) alongwith Hukka pipes made of wood, tubular rubber sheaths purportedly used for concealing rolls of foreign currency were recovered. Foreign and Indian currency as detailed at Table No. 3 and 4 below were recovered from the premises of A3.

Table No. 3.

Sl. No.	Foreign Currency	Denomination	No of notes	Equivalent INR
1.	Omani Riyals	5	4	3459.20
	Omani Riyals	20	24	83020.80
	Omani Riyals	50	90	778320
			Total	864800/-

Table No. 4.

Sl. No.	Currency	Denomination	No of notes	Total INR
1.	Indian Rupees	1000	8	8000
	Indian Rupees	500	84	42000
	Indian Rupees	100	100	10000
			Total	60000/-

2(i). The investigating agency carried out investigations with M/s. Jhaveri Tours and Travels through whom the flight tickets of A1 and A2 had been booked. It was informed that A3 was their regular customer; who booked tickets at least once a week for several persons on the Mumbai – Dubai Sector; that multiple entries in the names of A1 and A2 had been made in the books

/ register maintained by M/s. Jhaveri Tours and Travels; that A3 confirmed that these tickets had been booked at his instance.

2(j). Forensic analysis of the mobile phones retrieved from the A3 were carried out and it was found that there were details of international calls. A3 admitted that these calls were in relation to prospective visits of A1 and A2 to Dubai on 08.06.2016 and for earlier occasions; that there were numerous calls between A3 and A1, A3 and A2, A3 and Riyaz etc.

2(k). During the investigations, A3 admitted that he was sending foreign currency on a regular basis to Dubai and on their return trip, the passengers used to carry gold and other items; that A3 used to send atleast two passengers per week and each carried foreign currency equivalent to Rs. 15 Lakhs per trip; that the carriers were given a monetary benefit of Rs. 8 -10 thousand per trip; that the receiver of the foreign currency made the arrangement of stay and food etc of the carriers; that A1 & A2 had admitted that they had carried a total of Rs. 1.20 crores and Rs. 3 crores respectively in their earlier trips and had carried the same at the behest of A3.

3. The Original Adjudicating Authority (OAA) viz, i.e. Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/226/2017-18 dated 30.03.2018 issued through F.No. S/14-6-02/2017-18 Adjn – DRI/MZU/C/INT-98/2016 ordered for the absolute confiscation of (a). the seized assorted foreign currency equivalent to Rs. 33,38,983 recovered from A1 and A2, under Section 113(d), (e) & (h) of the Customs Act, 1962 read with Section 6(3)(g) of the FEMA, 1999 and Regulations framed thereunder; (b). absolute confiscation of the foreign currency equivalent to Rs. 8,64,800/- recovered from the residential premises of A3, under Section 113(d) (e) & (h) of the Customs Act, 1962 read with

Section 6(3)(g) of the FEMA, 1999 and Regulations framed thereunder; (c). absolute confiscation of 11 cartons of foreign brand cigarettes of brand name Gudang Garam valued at Rs. 17,920/- recovered from the residential premises of A3, under Section 111(d) of the Customs Act, 1962 read with COTPA, 2003 (Cigarettes and Other Tobacco Products Act, 2003); (d). the absolute confiscation of the 4 boxes of brake shoes recovered from the baggage of A1, used for concealing the foreign currency, under Section 118(b) of CA, 1962;

(e). The two bundles of Indian Currency notes amounting to Rs. 60,000/- was allowed to be released.

(f). The following penalties mentioned at Table No. 5 below were also imposed on the applicants.

Sl. No.	Applicant No.	Quantum of Penalty imposed	Penalty imposed under Section
1.	A1	Rs. 2,00,000/-	Section 114(iii) of CA, 1962
2.	A2	Rs. 2,00,000/-	Section 114(iii) of CA, 1962
3.	A3	Rs. 4,00,000/-	Section 114(iii) of CA, 1962
4.	A3	Rs. 1,00,000/-	Section 114(iii) of CA, 1962
5.	A3	Rs. 2,000/-	Section 112(b) of CA, 1962
6.	A2	Rs. 5,00,000/-	Section 114(iii) of CA, 1962 in r/o foreign currency equivalent to Rs. 3 crores smuggled out of India in the past and admitted by A2.
7.	A3	Rs. 10,00,000/-	Section 114(iii) of CA, 1962 in r/o foreign currency equivalent to Rs. 4 crores smuggled out of India in the past as per his directions and admitted by A3.
8.	A1	Rs. 2,00,000/-	Section 114(iii) of CA, 1962 in r/o foreign currency equivalent to Rs. 1.2 crores smuggled out of India in the past and admitted by A1.

4. Aggrieved by the said order, the applicants filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who vide Order-in-Appeal-Airport No. MUM-CUSTOM-PAX-APP-251/19-20 dated 28.06.2019 issued on 12.07.2019 through F.No. S/49-320/2018/AP, rejected the appeal holding that he did not find any reason to interfere in the OIO passed by the OAA.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant has filed this revision application inter alia on the grounds that;

5.01. that the OIA is not on merits and not a speaking order. Principles of natural justice had not been followed. On these issues, to buttress their defense, that decision of the authority should include findings and conclusions; that the authority had failed to take cognisance of all submissions made by the applicants and did not assign any reasons; etc; they have relied upon the undermentioned case laws;

- (a). Apex Court's Order in the case of State of Punjab vs. K.R Erry,
- (b) Liberty Oil Mills vs. Union of India,
- (c) C. L Tripathi vs. State Bank of India
- (d) Pitchaiah vs. Andhra University
- (e) A.K Kraipak vs. UOI
- (f) Chintamoni Pradhan vs. PaikaSamal
- (g) CESTAT, New Delhi's order in Sahara India TV Network vs. CCE, Noida, relying upon the Apex Court's Order in the case of JT. Commr. IT, Surat vs. Saheli Leasing & Industries Ltd [2010-253-ELT-705-SC ; CESTAT, New Delhi order M/s. Vikas Enterprises vs. CCE, Allahabad ; M/s. Sharp Carbon India vs. Commr. Of C.Ex, Kanpur,
- (h) M/s. International Woollen Mills Ltd. Vs. Standard Wool (UK) Ltd
- (i) Masood Ahmed Khan (Citation:- 2011 (273) ELT 345 (SC))
- (j) M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union and another, AIR 1973 SC 2758
- (k) Etc.

5.02. that the following are some important issues which had not been discussed in the OIA;

- (i). Seizure proceedings were manipulated and seizure panchnama dated 8-10-16 was fabricated.
- (ii). Seizure Panchnama dated 8-10-16 drawn in English was invalid.

- (iii). The applicants had not concealed anything in their rectums,
- (iv). Search of the residential premises of appellant Mr Zuber Noor Mohammed Chali was illegal. The Officers were on a fishing expedition.
- (v). Goods and currency found during the search at the residence of Shri Zuber Noor Mohammed Chali (A3) had not been seized and therefore, was not liable for confiscation; that these goods were not prohibited goods;
- (vi). Shri Abubaker Amir Husein Shah (A1) and Shri Zubair Yakoob Khan (A2) had claimed that the currency seized from them on 8-10-16 was owned by them.
- (vii). Statements of appellants Shri Abubakar Amir Husein Shah (A1) and Shri Zuber Yakoob Khan (A2) are involuntary and against the truth.
- (viii). Statement of Shri Zuber Noor Mohammed Chali (A3) dated 8-10-16 and 27-3-17 cannot be relied upon against him and the co-accused.
- (ix). Evidence allegedly retrieved from the mobile phone of appellant Shri Zuber Noor Mohammed Chali (A3) should not have been relied upon.
- (x). Improper handling of mobile devices by the Investigating Agency and manipulation of evidence was not be ruled out.
- (xi). CDRs cannot be relied upon.
- (xii). Confession of co-accused cannot be relied upon. Alleged smuggling in the past is not proved.
- (xiii). No penalty can be imposed on the applicants.
- (xiv). Foreign currencies recovered from the residence of Shri Zuber Noor Mohammed Chali (A3) cannot be confiscated.
- (xv). Shri Abubakar Husein Amir Shah (A1) and Shri Zubair Yakoob Khan (A2) were unaware that they were supposed to declare the foreign currency carried by them to Customs. Ignorance of law can be an excuse.
- (xvi). Guilt of the Shri Zuber Noor Mohammed Chali (A3) was not proved.
- (xvii). Imposition of penalty of Rs 2000/- on Shri Zuber Noor Mohamed Chali (A3) under Section 112(b) was invalid.
- (xviii). The O-i-O dated 30-3-2018 is not an order on merits.
- (xix). The case law of Samynathan Murugesan cannot be made applicable to the case of the applicants.
- (xx). the applicants had claimed ownership of the goods/currency under absolute confiscation and pray for redemption.

5.03. that the seizure proceedings had been manipulated and seizure panchnama dated 8-10-16 was fabricated. The seized currency was not concealed in the checked-in bags or the rectums of the applicants:

Reliance has been placed on the following case laws;

- (a). RAJENDRA BAJAJ Versus COMMR. OF CUS. (C.S.I. AIRPORT),
- (b). Gunwantraï Harivallabha Jani, vs Collector Of Central Excise

5.04. Reliance has been placed on the undermentioned decisions for their contentions mentioned at paras 5.02 & 5.03 above.

- (a). In the case of Madras High Court in PALANIAPPAN Vs PRINCIPAL COMMISSIONER OF CUSTOMS, CHENNAI-I -2016 (339) ELT 367 (Mad)
- (b). In the case of Mohammad Serajuddin vs. R.C. Misra 1983(13) ELT 1370 (SC),
- (c). In the case of Gopal Kishan vs. R.N. Sen 1983 (13) ELT 1434 (SC)
- (d). In the case of F.K. Ghosh vs. KM Mazodia 2000 (117) ELT 14 (Cal.),
- (e). In the case of UWE Hoppe vs. CCP 1988 (37) ELT 561 (T),
- (f). In the case of Innovation, Secunderabad vs. CBEC 1984 (15) ELT 91(AP),
- (g). Godari Rai v. Commissioner of Customs - 2003 (160) E.L.T. 1027
- (h). Dipak Deb - 2003 (157) E.L.T. 237
- (i). Laxmi Narayana Somani v. Commissioner of Customs - 2003 (156) E.L.T. 131
- (j). Jitendra Pawar v. Commissioner of Customs - 2003 (156) E.L.T. 622
- (k). M/s AG International Vs CC, Allahabad (Dated: September 19, 2011) Customs -
- (l). Ravinder Khurana v. CCs, Delhi - 2003 (161) E.L.T. 360
- (m). Sadbhavana v. Commissioner of Customs - 2003 (158) E.L.T. 652 New Delhi
- (n). Commissioner of Customs v. National Radio Products E.L.T. 908 2003 (156)
- (o). Patna High Court in the case of Union of India & ors vs Md.Mazid @ Md.Tufani on 20 July,
- (p). Bombay High Court in the case of Dina Baldev Pathak vs Collector of Customs and ors. on 20 March, 1961: AIR 1962 Bom 290, (1961) 63 BOMLR 873
- (q). Gujarat High Court in the case of ManilalBhanabhai Patel vs Kaul and ors. on 3 September, 1974: AIR 1976 Guj 134
- (r). Allahabad High Court in the case of L. Kashi Nath Seth vs Collector.
- (s). Felix Dores Fernandes v. CC - 2000 (118) ELT 639.
- (t). Union of India Vs Harish Muljimal Gandhi reported in 2016 (340) ELT 93 (Bom)

(u). A.T.Maideen vs The Senior Intelligent Officer on 9 February, 2012 of Madras High Court.

5.05. Evidence allegedly retrieved from the mobile phones of applicants cannot be relied upon; that the improper handling of mobile devices by the Investigating Agency could not be out and manipulation of evidence had taken place; that no proper legal procedure had been followed in the seizure and forensic analysis of the mobile phones; that no chain of custody of evidence was maintained; that the CDRS cannot be relied upon; that procedure under Section 65B of the Indian Evidence Act had not been followed; that the confession of co-accused should not be relied upon; that the alleged smuggling in the past had not been proved; that mere possession of foreign currency does not attract the provisions of either Section 111 or Section 113 of the Customs Act, 1962 and that the same having been improperly seized was liable to be returned to the person from whose custody it had been seized without going into the question of ownership thereof. In view of the above submission, applicant Shri Zuber Noor Mohammed Chali (A3) prayed that the foreign currency equivalent to Rs 8,64,800/- may be ordered to be released to him immediately.

5.06. that the applicants were not aware that that they were supposed to declare the foreign currency carried by them to Customs; that ignorance of law was excuse; that the applicants had brought the seized foreign currencies in piece meal within the permissible limit on their return from abroad during many occasions as listed in the SCN; that they had carried the foreign currencies to Dubai for the purpose of starting their own business.

5.07. Reliance has been placed on the under mentioned decision of ;
(a). Income Tax Appellate Tribunal, Mumbai in the case of Mahabal S Shetty, Additional Commissioner Vs Reepal G Tralshawala
(b). Krishan Mohan v. Surpati Banerjee AIR 1925 Calcutta 684
(c). Ramchandra v. Sabhapati AIR 1928 Madras 404
(d). Mehar Singh v. Sohan Singh AIR 1936 Lahore 710 and
(e). Abdul Latif v. Fazal Ali.

5.08. that imposition of penalty of Rs 2000/- on applicant Shri Zuber Noor Mohamed Chali under Section 112(b) was invalid; that the OAA had failed to record in his finding as to how the factual matrix of the case of the applicants was same as that of S.Murugesan vs Commissioner and therefore reliance placed on the decision of the case of S.Murugesan was not sustainable.

- 5.09. that the applicants claimed ownership of the goods/currency under absolute confiscation and prayed for redemption; that the applicant Shri Zuber Noor Mohammed Chali (A3) submitted that he was the owner of the goods and foreign currencies recovered from his residence on 8.10.2016 and that he had never been involved in any smuggling activity in the past.
- 5.10. that the Andhra Pradesh High Court in the case of Shaikh Jamal Basha vs Government of India - 1992 (91) ELT 227(AP) has held that option to pay fine in lieu of confiscation has to be given to imported gold as the same is otherwise entitled to be imported on payment of duty.
- 5.11. that in the case of Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai - 2006 (205) ELT 383 (Tri-Chennai), the Chennai Bench of the Tribunal had allowed redemption of the confiscated gold on payment of redemption fine.
- 5.12. that the the Government of India in the case of Mohd Zia-Ul-Haque Vs Addl Commissioner of Customs, Hyderabad vide revision order no 443/12-Cus dated 8-8-12, 2014 (214) ELT 849 (GOI) allowed the confiscated gold to be redeemed on payment of redemption fine.
- 5.14. that in a catena of decisions, Tribunals, High Courts, Apex Court and the Government of India in its orders have directed that confiscated currencies have to be allowed to be redeemed on payment of appropriate fines by the persons from whom they were seized and confiscated.

Under the above circumstances of the case, the applicants have prayed to the Revision Authority that the foreign currency under absolute confiscation recovered from them may be ordered to be released to them unconditionally and penalties imposed on them may be set aside and further proceedings be dropped as they were in no way concerned in any smuggling activity.

6. Personal hearing was scheduled for 12.12.2022. Shri. Prakash Shingrani, Advocate, appeared on 12.12.2022 on behalf of the applicants and submitted that currency seized is not prohibited goods. He further submitted

that form of concealment is no ground for absolute confiscation. He requested to release foreign currency on redemption fine and penalty.

7. Government has gone through the facts of the case. Government finds that there is no dispute that the seized foreign currency had not been declared by A1 and A2 to the Customs at the point of departure. Further, in their statements, A1 and A2 had admitted the possession, carriage, concealment, non-declaration and recovery of the foreign currency. A1 and A2 were unable to give the source of how they came in possession of the foreign currency. A1 and A2 were frequent travellers and were well aware of the law. Though later, A1 and A2 in their representations have claimed possession of the foreign currency, they were unable to show that the impugned foreign currency in their possession was procured from authorized persons as specified under FEMA. Source of currency had remained unaccounted. Also, bulk of the foreign currency was found concealed in their body cavity i.e. rectum. A1 and A2 had adopted an ingenious and risky method to conceal the foreign currency and evade detection. Investigations carried out revealed that they were actually professional couriers carrying foreign currency for a monetary consideration. They were frequent travellers and had admitted to carrying foreign currency in the past on a regular basis. Thus, Government observes that it has been rightly held by the lower adjudicating authority that in the absence of any valid document for the possession of the foreign currency, inability to show that the foreign currency had been procured from authorized persons as specified under FEMA, the ingenious and risky concealment method adopted, being frequent travellers, made the same liable for confiscation in view of the prohibition imposed in Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the confiscation

of the foreign currency was justified as the applicants had been carrying foreign currency in excess of the permitted limit and no declaration as required under section 77 of the Customs Act, 1962 was filed.

8. The Government finds that the Applicants had not taken any general or special permission from the RBI to carry the foreign currency / Indian currency as stipulated under Regulations 3(1)(a) and 7(1), (2)(ii) and (3) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 framed with clause (g) of sub-Section (3) of Section 6 and under sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 and had attempted to take it out of the country without declaring the same to Customs at the point of departure. The Government notes that admittedly the applicants are frequent travellers and were well versed with the law. They had knowingly attempted to smuggle out substantial amount of foreign currency i.e Rs. 23,84,252/- and Rs. 9,54,730/- Further, the applicants had used an ingenious method to conceal the foreign currency and hoodwink the authorities. The foreign currency was concealed in their body cavity and in the automobile spare parts, textile machinery spools etc. Also, A1 and A2 were frequent travellers engaged for the express purpose of smuggling the foreign currency for a monetary consideration. Hence, the Government finds that the conclusions arrived at by the lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 have been violated by A1 and A2 is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Government finds that the lower adjudicating authority had applied the ratio of the judgement of the Apex Court in the case of Sheikh Mohd. Umar v/s. Commissioner of Customs, Calcutta [1983(13) ELT 1439 (SC)] wherein it is held that non-fulfilment of the restrictions imposed would bring the goods within the scope of "prohibited goods".

9. Government finds that the case of Commissioner of Customs v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad))] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

10. On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.

11. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :

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. Export of foreign exchange and currency notes. -

(1) An authorized person may send out of India foreign currency acquired in normal course of business.

(2) any person may take or send out of India, -

(i). cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii). foreign exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder

.....
12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in

case of M/s. Raj Grow Impex has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

11. Government finds that considering that substantial quantity of foreign currency was being carried concealed in the automobile spare parts, spools etc kept in the baggage and in body cavity i.e. rectum, currency remained unaccounted, method of concealment being ingenious, thus, discretion used by OAA to absolutely confiscate the foreign currency recovered from A1 and A2, is appropriate and judicious. Facts and circumstances of the case warrants absolute confiscation of foreign currency as held by the adjudicating authority. The penalties of Rs. 2,00,000/- each imposed on applicant no. 1 and 2 respectively for the foreign currency seized from them on 08.12.2016, is reasonable and judicious and would be a deterrent to others harbouring such plans. Government therefore, in respect of the foreign currency seized from A1 and A2 on 08.12.2016 and the penalties

imposed on them finds no reason to interfere in the OIA passed by the AA which has upheld OIO passed by the OAA.

12. On the issue of foreign currency recovered from the premises of A3 and penalty imposed on him both for the foreign currency under seizure and smuggling in the past, Government notes that in immediate follow up action, based on the disclosures made by A1 and A2 the premises of A3 had been searched. Foreign currency amounting to Rs. 8,64,800/- alongwith the goods similar to that found in the possession of A1 and A2 i.e. the specified automobile spare parts, tubular rubber sheaths etc were found in the premises of A3. This clearly establishes link of A3 with A1 and A2. A3 could not furnish the details that the foreign currency recovered from his premises had been obtained from legitimate sources. A3 in his statement had admitted that he had supplied the foreign currency found in the possession of A1 and A2; that he had used the services of A1 and A2 to smuggle out foreign currency; that monetary consideration was given to A1 and A2 for their services; that A1 and A2 during their return trips used to carry gold, perfumes etc; that the tour and travel agent had revealed that A3 was their regular customer and used to book return tickets for his passengers; that details of the travel made by the passengers booked by A3 were found with the tour and travel agent; that through his contacts, he (i.e. A3) used to arrange for the stay of A1 and A2 and others while they were abroad; A3 had admitted to his role in the smuggling operation; that CDRs established that A3 was in regular touch with A1, A2 and others at Dubai etc. A3 arranged for the (i) foreign currency (ii). passengers who would take the foreign currency, (iii). the goods to be carried by these passengers (iv). return tickets for these passengers (v). arranged for their stay abroad, (vi) gave instructions regarding the goods to be brought by these passengers, (v). gave compensation to A1 and A2, etc. All these clearly indicates that A3 was the

mastermind behind the entire smuggling operation as alleged by the investigating agency. The foreign currency recovered from the premises of A3, admittedly was for taking he same overseas. Considering, the evidence stacked up against A3, especially him being a mastermind and regularly arranging for taking the foreign currency out of the country, Government is not inclined to interfere in the OIA passed by the AA upholding the absolute confiscation held by the OAA. In respect of the penalties imposed on A3 both for the foreign currency under seizure recovered from A1 and A2 and for his admitted involvement in smuggling out foreign currency in the past, which was in excess of Rs. 4 crores, Government finds that the AA had rightly the original order passed by the OAA and confirmed the imposition and quantum of penalty. From afore-stated facts, Government finds that the absolute confiscation of the foreign currency recovered from the premises of A3 as upheld by the AA, is proper and legal. Government finds that the penalty imposed on A3 both for the foreign currency under seizure and for the past smuggling activity of foreign currency and goods imported is commensurate with the omissions and commissions committed. This would act as a deterrent to those who harbor similar intentions on engaging in smuggling activity as a profession.

13. On the issue of the penalties of Rs. 2,00,000/- and Rs. 5,00,000/- imposed on A1 and A2 resp. for the import of foreign currency in the past equivalent to Rs. 1.20 crores and Rs. 3 crores, respectively, Government finds that they have confessed and admitted to their roles of having indulged in the smuggling activity and further, the details of the previous travels have been corroborated from the evidence of booking of air tickets from the said tour and travel agent. A1 and A2 have admitted that they were frequent travellers who on their way, abroad would regularly carry foreign currency and on their return trip would be carrying gold, perfumes etc; that they did

this smuggling activity for a monetary consideration. Evidence gathered on their past travel, frequency, their admission, etc, all this clearly indicates that A1 and A2 were professional couriers, consciously involved in the smuggling activity for monetary consideration. Hence, Government is not inclined to interfere in the said penalties imposed on A1 and A2 by the AA. Government finds the OIA as legal and proper.

14. On the issue of absolute confiscation of the 11 cartons of foreign brand cigarettes ie. Gudang Garam recovered from the premises of A3, Government finds that no prayer has been made for its release, therefore, is not inclined to interfere in the same.

15. Considering the aforesaid facts, Government finds that the OIA passed by the AA is proper and legal and does not find any reason and necessity to interfere in the same. The 3 revision applications filed by the applicant, fails.

16. Accordingly, the three revision applications are dismissed.


(SHRAWAN KUMAR)

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

485-
ORDER NO. 487/2023-CUS (WZ)/ASRA/MUMBAI DATED 22.06.2023

To,

1. Shri. Abubaker Amir Husein Shah, 7/39, 257, Noorani Manzil, Nagdevi Street, Mumbai - 400 003.,
2. Shri. Zubair Yakoob Khan, Room No. 26, 4th Floor, 48, Ghoghari Mohalla, Mohamadi Manzil, Pydhonie, Mumbai - 400 003.,
3. Shri. Zuber Noor Mohammed, Chali No. 30/32, Abbas Building, 3rd Floor, Room No. 3, Ibrahim Rehmatullah Road, Mumbai - 400 003.

4. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Terminal - 2, Level - II, Sahar, Andheri (East), Mumbai - 400 099.

Copy To,

1. Shri. Prakash K. Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.