



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. 373/66/B/17-RA

1192

Date of Issue 31/07/2018

ORDER NO. 5<sup>20</sup>/2018-CUS (SZ)/ASRA/MUMBAI DATED 17.07.2018 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. Allaudeen

Respondent : Commissioner of Customs, AIA, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus I No. 62/2017 dated 27.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Allaudeen (herein referred to as Applicant) against the order C. Cus I No. 62/2017 dated 27.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National was intercepted at the Anna International Airport on 27.11.2015. Examination of his baggage resulted in the recovery of foreign currency valued at Rs. 26,57,902/- (Rupees Twenty Six lakhs Fifty Seven thousand Nine hundred and Two). The original Adjudication Authority vide order no. 162/0712.2016 absolutely confiscated the impugned currency. A penalty of Rs. 2,65,000/- 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, Commissioner of Customs (Appeals) Chennai, vide his order No. 62/2017 dated 27.03.2017, rejected the Appeal of the Applicant.

4. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

4.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; Currency is not prohibited for export and the same can be redeemed on payment of fine as per the order of High Court of Delhi in the case of Mohd. Ayaz vs UOI reported in 2003 (151) ELT 39 (Delhi); The seized currency is not prohibited but restricted; There is no legal requirement under the Act to declare the currency upto \$10,000 ; The adjudicating authority has not exercised the option available under section 125 of the Customs Act, 1962; The Applicant had orally declared the foreign currency to the officers and hence the adjudicating authority should have released the currency without imposing fine or penalty; Even assuming without admitting the act of the Applicant is violation of RBI rules; There is no contumacious conduct on part of the Applicant but of a person ignorant of the law; The Applicant was not aware that it was illegal to take monies out of India;



5.2 The Applicant further pleaded that 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 and option to allow redemption is mandatory; In the case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259( Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate. The Applicant further pleaded in a reported judgement 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.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for release of the impugned currency on the redemption fine and reduce the personal penalty and thus render justice.

6. 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 submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant had concealed the currency in his baggage and did not declare the same and therefore confiscation of the same is justified. However, the facts of the case state that the Applicant has not been involved in such offences earlier. The currency was recovered from the baggage, and it was not indigenously concealed. There is also no requirement to declare currency above \$10,000, and taking of currency abroad is restricted and not prohibited,. Absolute confiscation is therefore a harsh option, and unjustifiable. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The Applicant has pleaded for release of the currency on redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal



therefore needs to be modified and the currency is liable to be allowed on payment of redemption fine and penalty.

8. In view of the above, Government allows redemption of the confiscated currency in lieu of fine. The impugned currency totally valued at 26,57,902/- (Rupees Twenty Six lakhs Fifty Seven thousand Nine hundred and Two) is ordered to be redeemed on payment of redemption fine of Rs. 10,00,000/- (Rupees Ten lakhs ) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 2,65,000/- (Rupees Two lakhs Sixty five thousand ) to Rs. 2,00,000/- ( Rupees Two lakhs ) 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 on above terms.

10. So, ordered.

*Ashok Kumar Mehta*  
17.7.18

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

ORDER No.520/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 17.07.2018

To,

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

**ATTESTED**

*Sankarsan Munda*  
31/7/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Chennai
2. The Commissioner of Cus. & C. Ex. (Appeals), Chennai
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

