



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/70/B/17-RA / 138

Date of Issue 31/07/2018

ORDER NO. 524/2018-CUS (SZ)/ASRA/MUMBAI DATED 18.07.2018 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. Yazar Arafath

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. 64/2017 dated 28.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

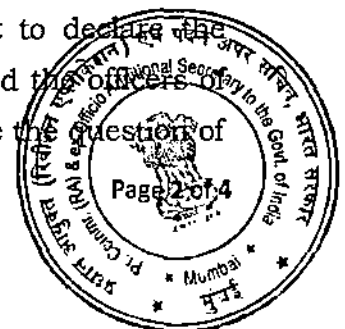
This revision application has been filed by Shri. Yazar Arafath (herein referred to as Applicant) against the order C. Cus I No. 64/2017 dated 28.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, was intercepted at the Anna International Airport on 20.11.2015. Examination of his baggage resulted in the recovery of foreign currency valued at Rs. 64,90,326/- (Rupees Sixty Four lakhs Ninety thousand Three hundred and Twenty six). The currency was indigenously concealed with adhesive tapes in a black color cushion type packing and the package was kept in the inner lining of the top and bottom of the suitcase. The original Adjudication Authority vide order no. 155/25.11.2016 absolutely confiscated the impugned currency. A penalty of Rs. 6,50,000/- was also imposed on the Applicant under section 114 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. 64/2017 dated 28.03.2017, 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; Goods must be prohibited before import or export simply because of non declaration goods cannot become prohibited.; The adjudicating authority has not exercised the option available under section 125 of the Customs Act,1962, this aspect was not explored before proceeding to confiscate the currency; The seized currency belongs to him and he was taking it to Singapore for business but it has been recorded contrary to these facts; he was not aware that taking monies out of India was an offence; The seized currency is not prohibited but restricted; There is no legal requirement under the Act to declare the currency upto \$10,000; The Applicant had orally informed the officers of the currency and showed it to them having seen the same the Question of



declaration does not arise; There is no contumacious conduct on part of the Applicant but of a person ignorant of the law; 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;

4.3 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.

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

6. The Government has gone through the case records it is observed that the Applicant had concealed the currency by ingeniously concealing The currency was indigenously concealed with adhesive tapes in a black color cushion type packing and the package was kept in the inner lining of the top and bottom of the suitcase. The concealment was planned so as to avoid detection and evade Customs officers and smuggle the currency into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the currency out of India in contravention of the provisions of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the currency to the authorities and if he was not intercepted before the exit, the Applicant would have taken it out of the country.

7. The above acts have therefore rendered the Applicant liable for penal action under Section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the currency absolutely and imposed a penalty of Rs. 6,50,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.



8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 64/2017 dated 28.03.2017 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

(Handwritten Signature)
15/7/18

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

ORDER No. ⁵²⁴/2018-CUS (SZ) /ASRA/MUMBAI

DATED 18.07.2018

To,

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

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.

ATTESTED

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

