



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

F.No. 373/77/B/17-RA

1132

Date of Issue 31/07/2018

ORDER NO. 525/2018-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 : Smt. Meharaj Gani 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. 66/2017 dated 29.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

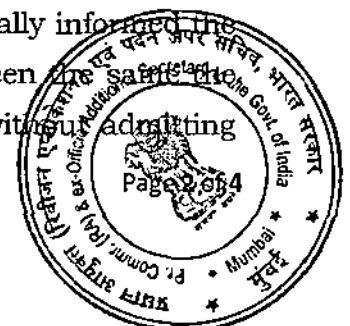
This revision application has been filed by Smt. Meharaj Gani Allaudeen (herein referred to as Applicant) against the order C. Cus I No. 66/2017 dated 29.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, was intercepted at the Anna International Airport on 03.09.2016. Examination of his baggage resulted in the recovery of foreign currency valued at Rs. 8,95,400/- (Rupees Eight lakhs Ninety Five thousand Four hundred) concealed in her blouse and panties. The original Adjudication Authority vide order no. 196/2016-17- AIRPORT dated 30.12.2016 absolutely confiscated the impugned currency. A penalty of Rs. 90,000/- 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. 66/2017 dated 29.03.2017, set aside the confiscation of foreign currency equivalent to Rs. 49,876/- and upheld the absolute confiscation of the remaining currency valued at Rs. 8,45,524/-.

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; The seized currency is not prohibited but restricted; The foreign currency equivalent to Rs. 49,876/- was obtained from BEST INDIA Money changer, Trichy and the rest was obtained from Indian Overseas Bank on 09.08.2016; She is the only bread winner in her family and the monies were for purchase of goods to be imported and sold in India; She had borrowed the money pledging her jewelry; There was no ingenious concealment; 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 in the question of declaration does not arise; Even assuming without admitting

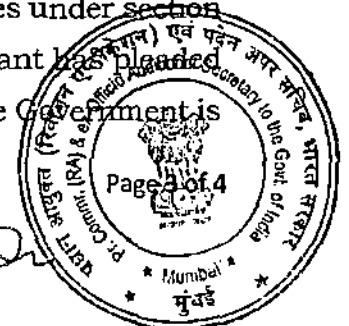


that she had not declared the currency it was only a violation of RBI rules; The adjudicating authority has not exercised the option available under section 125 of the Customs Act, 1962, this aspect was not explored before proceeding to confiscate the currency; There is no contumacious conduct on part of the Applicant but of a person ignorant of the law; 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; It has also been pleaded in a case reported in 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 her 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 on her person 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 recovered from her person, there was no ingenious concealment. Concealments are usually resorted to during travel, and it is common knowledge that large amounts of currency is usually carried in a concealed manner. 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 set aside 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 Rs. 8,95,400/- (Rupees Eight lakhs Ninety Five thousand Four hundred) is ordered to be redeemed on payment of redemption fine of Rs.4,00,000/- (Rupees Four 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. 90,000/- (Rupees Ninety thousand) to Rs. 80,000/- (Rupees Eighty thousand) 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

(ASHOK KUMAR MEHTA)

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

ORDER No. ⁵²⁵/2018-CUS (SZ) /ASRA/MUMBAI. DATED 18.07.2018

To,

Smt. Meharaj Gani Allaudeen
C/o Shri S. Palnikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

ATTESTED

Sanjiv Kumar Bhandari
21/7/18

SANJIV KUMAR BHANDARI
Off. Commissioner of Customs & 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.

