

373/21/B/17-RA

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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. 373/21/B/17-RA

1163

Date of Issue 01/08/2018

ORDER NO. 536 /2018-CUS (SZ)/ASRA/MUMBAI DATED 23.07.2018 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 Mohamed Azarudeen

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the

Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 348/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohamed Azarudeen (herein referred to as Applicant) against the order 348/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, who was bound for Singapore at the Chennai International Airport on 25.11.2009. Examination of his person resulted in recovery of Foreign currency notes, totally equivalent to Rs. 3,31,428/- (Rupees Three lakh Thirty one thousand and Four hundred and Twenty eight). The currency was recovered from his inner pant pockets.

3. The Original Adjudicating Authority, vide order No. 284/2016-17-AIRPORT dated 23.09.2016 absolutely confiscated the currency mentioned above under section 113 (d),(e) & (h) of the Customs Act, 1962 read with Section 3(3) of the Foreign Exchange Management Act, 1999. A Personal penalty of Rs. 35,000/- was imposed under Section 114 (i) of the Customs Act,1962.

4. 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. 348/2016 dated 28.10.2016, rejected the Appeal of the Applicant.

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

5.1 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 restricted not prohibited; ; The adjudicating authority has not exercised the option available under section 125 of the Customs Act,1962; Goods must be prohibited before import or export, simply because of not declaring goods cannot become prohibited; The Applicant had retracted his statement and claimed the currency was carried for his own needs; there is no legal requirement to declare currency below 10,000\$ and as the amount is not offending it should be returned; Hence the currency should have been released without fine and penalty. There is no contumacious conduct on part of the Applicant but a person ignorant of the law;



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 that 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 in his inner pant pockets of the Applicant. Government therefore believes that though concealed, there was no ingenious concealment. Such 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 in such instances appears to be a harsh option, and unjustifiable. Mere non-submission of the declaration cannot be held against the Applicant. 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 the Government is inclined to accept the request. 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 Rs. 3,31,428/- (Rupees Three lakh Thirty one thousand and Four hundred and Twenty eight) is ordered to be redeemed on payment of redemption fine of Rs...1,50,000/- (Rupees One lakh Fifty thousand) 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. 37,000/- (Rupees Thirty Seven thousand) to Rs.30,000/- (Rupees Thirty 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.

(Signature)
23.7.18

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

ORDER No. ⁵³⁶ /2018-CUS (SZ) /ASRA/ Mumbai, DATED 23.07.2018

To,

Shri Mohamed Azarudeen
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

Copy to:

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

ATTESTED

(Signature)
23/7/18

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

