



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

F.No. 373/435/B/14-RA / 3583

Date of Issue 29.08.2020

ORDER NO. 55/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 20.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Mohammed Rafi

Respondent: Commissioner of Central Excise, Customs & Service Tax Calicut.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 94/2014-CUS dated 04.08.2014 passed by the Commissioner of Customs (Appeals), Cochin.



ORDER

This revision application has been filed by Shri Mohammed Rafi (herein referred to as Applicant) against the order 94/2014-CUS dated 04.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the officers of the Directorate of Intelligence on specific intelligence intercepted a passenger Shri Muhammed Alshab arriving from Ras-Al- Khaima at the Calicut International Airport. Examination of his baggage resulted in the recovery of fake Indian currency valued at Rs. 72,50,000/-. Investigations revealed that one Shri Abdul Majeed and the Applicant, Shri Mohammed Rafi, conspired with Shri Sajin @ Chinnan and Shri Abdul Malik to smuggle the fake Indian currency into India and arrange for its distribution. Shri Muhammed Alshab was to hand over the said fake currency to Shri Sajin @ Chinnan and Shri Moosakutty @Babu after its clearance from Customs. Shri N. M. Abdul Kareem a Sepoy, who was on duty at the exit gate of Calicut International Airport, was aware and in active communication with Shri Moosakutty @Babu and Shri Mohammed Rafi at the time of the arrival of Shri Muhammed Alshab from Ras-Al- Khaima.

3. After due process of the law vide Order-In-Original No. 12/2009/ADC-CUS dated 31.12.2009 the Original Adjudicating Authority ordered confiscated the fake Indian currency and ion of the impugned gold under Section 111 (d), (f) of the Customs Act, and imposed penalty of Rs. 5,000/- (Rupees Five thousand) under Section 112 (a) of the Customs Act,1962. Aggrieved by the said order, the department filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 94/2014-CUS dated 04.08.2014 increased the penalty from Rs.5000/- to Rs. 5,00,000/- (Rupees Five lacs) on Shri Muhammed Alshab an increased the penalty from Rs.5000/- to Rs. 1,00,000/- (Rupees One lac) on the rest of the accused, but set aside the penalty imposed on Shri N. M. Abdul Kareem.

4. The applicant, Shri Mohammed Rafi has filed this Revision Application alongwith and application for condonation of delay of 27 days on the following grounds;

4.1 The Revision Applicant is innocent of the allegations shown in the show cause notice.

4.2. The Revision Applicant has implicated as an accused on the basis of the confession statement of co-accused persons. An the co-accused in the case has retracted from the confessional statement before the Additional Chief Judicial Magistrate [Economic Offences] Court, Ernakulam.

4.3. Shri N.M. Abdul Kareem is the 6th respondent in the appeal. The appeal was filed by the Additional Commissioner of Central Excise and Customs. N.M. Abdul



Kareem is acquitted who is a Sepoy of Customs. The grounds and evidences and circumstances relied on by the Commissioner (Appeals) for setting aside the penalty against N.M. Abdul Kareem is equally favourable to the revision applicant also. The Commissioner (Appeals) ought to have set aside the penalty against the revision applicant.

4.4. It is unconstitutional and illegal that persons equally charged with an offence have given discriminating treatments. N.M. Abdul Kareem and Revision applicant are charged with abatement of the offence. Therefore they are equally entitled to be set aside the penalty imposed against both of them.

4.5. For complying with the principles of natural justice, it is highly necessary to set aside the penalty against revision applicant for giving him equal treatment with that of 6th respondent in the appeal.

4.6. The revision applicant has no knowledge regarding any of the statements allegedly given by him.

4.7 The Show Cause Notice issued to the Revision Applicant was barred by limitation.

5 In his written submissions on 11.09.2019, the Applicant submitted that 5.1

The Review Order No. 01/2010-CUS dated 21.04.2010 of the Commissioner of Central Excise, Calicut passed under Section 1290(2) of the Customs Act 1962 based on which the application by the Additional Commissioner of the Calicut Commissionerate was filed against his own order No. 12/2009/ADC-CUS dated 31.12.2009 was issued beyond the time limit prescribed under the Customs Act. The Commissioner (Appeals) failed to consider this question of law and thus the impugned order is vitiated and hence it is not sustainable in law.

5.2 The quantum of penalty to be imposed under Section 112 of the Customs Act, 1962 depends upon the value of goods seized/ confiscated. Fake currency has no market or commercial value and in such cases maximum penalty that can be imposed is only Rs. 5,000/-. The Commissioner (Appeals) has failed to consider this point of law while enhancing the penalty to Rs. 1,00,000/-.

5.3 The Hon'ble Delhi Tribunal in the case of Mohammed Zaheer Ahamed, relied upon to enhance penalty cannot be applied as a precedent as it does not examine this important question of law regarding fake currency for the purpose of imposition of penalty under section 112 of the Customs Act, 1962.

5.4 That he was dragged into the fake currency case by vested interests and the penalty was imposed based on the third party and hearsay evidences which are not enough to punish a person for abetment in smuggling.

5.5 The Customs Act, 1962 (in force at the relevant time) does not extend beyond territory of India and any Act of commission or omission if at all done from



outside the territory of India is not punishable under Customs Act, 1962 as per the settled law.

5.6 That he could not defend the case before the Original Authority as I was abroad at that time and Original Authority decided the case (imposed penalty of Rs. 5,000/-) ex- parte.

6. Personal hearings in the case were scheduled to be held on 05.06.2018, 29.08.2019, and 01.10.2019. Nobody from the department or the Applicant attended the said hearings the case is therefore being decided on merits ex-parte.

7. The Government has carefully gone into the facts of the case, the Order in Original and Order in Appeal. In the interest of justice the delay in filing the Revision Application by 27 days is condoned and the case is taken up on merits. The applicants role as the mastermind in this case in sending the fake notes to India through Shri Mohammed Alshab is not disputed. This is confirmed by the statement of Shri. Mohammed Alshab, Shri. Sajin and Shri. Malik. This is further corroborated by the facts brought out by the investigative agencies through the print out details of the phone calls of Shri. Sajin and Shri. Babu, between Shri. Majeed and Shri. Rafi on the day and on the preceding days of seizure. The Order in Original also reveal that Shri Mohammed Rafi has been involved in an earlier similar case involving fake Indian currency. The Applicants submissions, dwells on the issue of discrimination on the grounds, evidence and circumstances relied upon by the Commissioner(Appeals) for setting aside the penalty imposed on Shri N. M. Abdul Kareem is equally favourable to him.

8. In addressing the issue in the above para the Government notes that, the paras 8, 9 and 10, 22, 25(f), 34 (7) of the Order in Original clearly bring out the role of Shri N. M. Abdul Kareem in the said conspiracy. He was clearly aware of the conspiracy to import fake Indian currency as admitted by him in his statement dated 17.08.2008 recorded before the DRI officers. The call records also reveal that Shri N. M. Abdul Kareem was in touch with the Applicant, Shri Mohammed Rafi, before and on the day and prior to the flights arrival. It is therefore inconceivable that he is innocent of the crime. The Order in Original has conclusively pointed out that *"being aware it was his bounden duty to inform the officers and assist them in detecting the crime. If he does not do it, it is not only a dereliction of duty but also in abetting smuggling. A member of public knowing in advance about a smuggling may not be liable for punishment for abetment of smuggling. But if an officer refuses to intentionally inform when knowing about it specifically, is nothing but abetting in smuggling."* Therefore, Shri N. M. Abdul Kareem is also liable for penalty under

Section 112 (a) of the Customs Act, 1962.



9. In view of the above the government agrees with the Order in Appeal in that there are substantial grounds for increase in the penalty imposed on the Applicant Shri Mohammed Rafi from Rs. 5,000/- to Rs. 1,00,000/-. However, Government also observes that the Order in Appeal has erred in setting aside the penalty imposed on Shri N. M. Abdul Kareem. The Order in Appeal also does not bring out any grounds for the exclusion, therefore the Order in Appeal is liable to be modified.

10. The Government therefore imposes penalty of Rs. 1,00,000/- (Rupees One lac) on Shri N. M. Abdul Kareem. The Order in Appeal is modified to that extent.

11. So, ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 55/2020-CUS (SZ) /ASRA/MUMBAI.

DATE 20.05.2020

To,

1. Shri Mohammed Rafi, Valiyakath House, Orumanayur, Chowghat, Trichur.
2. Shri N. M. Abdul Kareem, S/o M. C. Marakkur, Nanethan House, Near Ashramam High School, Perumbavoor.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. Shri M. Shaiju, Advocate, Jem Villa, Combara Junction, Near High Court of Kerala, Ernakulam, Cochin - 682 018, Kerala.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

