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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. 373/149/B/15-RA

1283

Date of Issue 13/08/2018

ORDER NO. <sup>596</sup>/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018 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 Shiek Fareed Mohamed

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-I No. 48/2015 dated 23.02.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Shiek Fareed Mohamed (herein referred to as Applicant) against the Order in Appeal C. Cus No. 48/2015 dated 23.02.2015 passed by the Commissioner of Customs (Appeals), Chennai.

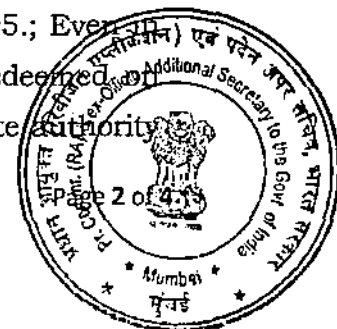
2. Briefly stated the facts of the case are that the applicant, was intercepted at the Chennai Airport when he was about to go abroad on 13.10.2014. He was intercepted and examination of his baggage resulted in the recovery of 200 shirts valued at 20,000/- and \$2000/- valued at Rs. 1,22,600/- ( Rupees One lakh Twenty two thousand Six hundred ).

3. After due process of the law vide Order-In-Original No. 1282/ Batch B dated 13.10.2014 the Original Adjudicating Authority ordered confiscation of the Shirts under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act But allowed redemption of the goods on payment of Rs. 5,000/- as fine. The order absolutely confiscated the currency and imposed penalty of Rs. 60,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 48/2015 dated 23.02.2015 reduced the penalty from Rs. 60,000/- to Rs. 25,000/- and rejected rest of the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that

4.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Appellate authority ought to have taken into consideration that he carried foreign exchange of \$2000/- and Indian made shirts for gifting his customers abroad; The Appellate authority has not considered the provisions of FEMA regulations which stipulates that any Indian National can import or export foreign currency without declaration when value of currency does not exceed \$5000/-. Indian goods in commercial quantities are legally permitted under Exim policy , CBEC circular No. 17/95-Cus dated 01.03.1995.; Even in deep concealment cases currencies were ordered to be redeemed on payment of redemption fine and penalty; Though the Appellate Authority



has reduced the penalty it should also be noted that imposition of penalty amounts to awarding a punishment whereas in this case there is no act of commission or omission; The Appellate authority should have considered that there are a plethora of decisions permitting redemption on payment of redemption fine and penalty; The quantum of penalty should also be proportionate to the role played by the individual.

4.2 The Revision Applicant cited case laws in his defense and pass such orders as deem fit in the facts and circumstances of the case and render justice.

5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The 200 shirts have been confiscated on the grounds of it being in commercial quantities. The shirts were purchased by the Applicant in India as gifts to further his business abroad; It is however observed that the CBEC circular No. 17/95-Cus dated 01.03.1995 specifically deals with this issue, the Circular in fact allows foreign citizens to carry goods abroad, as baggage in commercial quantities provided they have been purchased through foreign exchange brought with them on their arrival in India. Under the circumstances The Government therefore notes that foreign citizens when allowed to take goods abroad in commercial quantities, denial of such permission to Indian citizens in the current liberalized scenario is unjustified. The shirts however, have been allowed on redemption fine and penalty.

7. Further, the foreign currency of \$2000/- has been absolutely confiscated on the premise that the legal acquisition of the currencies was not submitted. The Government observes that FEMA regulations stipulates that any Indian National can import or export foreign currency without declaration when value of currency does not exceed \$5000/-. Under the circumstances the absolute confiscation is therefore harsh and unjustified. The Applicant has pleaded for redemption of currencies and reduction of fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.



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9. The Government sets aside the absolute confiscation of the of the foreign currency of \$2000/-. The impugned currency valued at Rs. 1,22,600/- ( Rupees One lakh Twenty two thousand Six hundred ) is also allowed to be redeemed on payment of redemption fine of Rs. 60,000/- ( Rupees Sixty 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. 25,000/- ( Rupees Twenty Five thousand ) to Rs. 15,000/- ( Rupees Fifteen thousand ) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

11. So, ordered.

*(Handwritten Signature)*  
20/7/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 596/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30-07.2018

To,

Shri Shiek Fareed Mohamed  
c/o M/s L. K. Associates  
"Time Tower" Room No. 5, II Floor,  
169/84, Gengu Reddy Road,  
Egmore, Chennai- 600 008.

**ATTESTED**

*(Handwritten Signature)*  
13/8/18

**SANKARSAN MUNDA**

Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

