

373/220/B/16-RA

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सत्यमेव जयते

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. 373/220/B/16-RA / 597

Date of Issue 13/08/2018

ORDER NO. 597/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.07.2018 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 Noor Mohamed Hyder Ali

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus I No. 266/2016 dated 28.06.2016 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Noor Mohamed Hyder Ali against the order no C.Cus I No. 266/2016 dated 28.06.2016 passed by the Commissioner of Customs (Appeals) Chennai passed by the Commissioner of Customs (Appeals), Chennai.

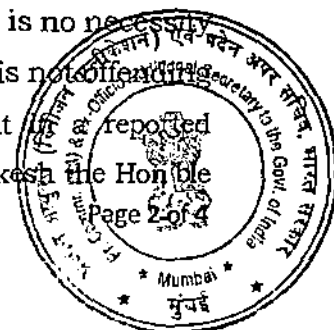
2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, who was bound for Kaulalampur at the Anna International Airport on 31.12.2015. Examination of his baggage resulted in recovery of 325 notes of Malaysian Ringgits of denomination 100 each totally equivalent to Rs. 5,03,100/- (Rupees Five lakhs Three thousand one hundred ).

3. The Original Adjudicating Authority, vide order No. 16/22016-17-AIRPORT dated 26.04.2016 absolutely confiscated foreign currency. A Personal penalty of Rs. 50,000/- 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, vide his order No. 266/2016 dated 28.06.2016 rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia 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 impugned order passed by the Commissioner (Appeals) has not properly appreciated the grounds of Appeal; The order of the authorities has been passed without considering any of the submissions of the Applicant and is therefore non speaking order; The applicant when questioned has immediately revealed the possession of the foreign currency; The Applicants father and two brothers are residing in Malaysia and the applicant had withdrawn the currencies during his several visits to meet them; Some of the currencies was also given to him during his visits to Malaysia and he had also purchased some currencies from an authorized dealer; there is no legal requirement to declare currency below 10,000\$ and as there is no necessity to submit any documentary evidence for the same; amount is not reported it should be returned; . The Applicant further pleaded that the Hon'ble judgement 2012 (276) ELT 129 (GOI) in the case of Chellani Mukesh



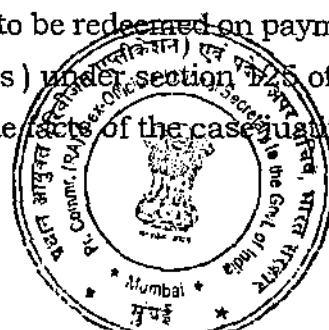
Revisionary Authority had set aside absolute confiscation and allowed redemption of the of the same under section 125 of the Customs Act,1962; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation.

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 scheduled to be held on 23.07.2018, the Advocate for the respondent Shri G. Derrick Sam attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and allow the revision application.

7. The Government has gone through the case records it is observed that the currency was recovered from the baggage of the Applicant. Government therefore believes that there was no ingenious concealment. It is common knowledge that large amounts of currency is usually carried in a safely concealed manner, and such concealments are usually resorted to during travel. The taking of currency abroad is restricted and not prohibited. Absolute confiscation for even part of the currency 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, and Government prefers to take a lenient view due to the afore mentioned reasons. The impugned Order in Appeal therefore needs to be modified and the redemption fine and penalty imposed on the currency is liable to be reduced.

8. In view of the above, The absolute confiscation of the Malasian Rinnggits is set aside. The impugned currency equivalent to Rs. 5,03,100/- (Rupees Five lakhs Three thousand one hundred is ordered to be redeemed on payment of redemption fine of Rs. 2,00,000/- (Rupees Two 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. 50,000/- (Rupees Fifty thousand ) to Rs. 40,000/- ( Rupees Forty 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.

*(Handwritten Signature)*  
21.7.18

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

ORDER No. <sup>597</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.07.2018

To,

Shri Noor Mohamed Hyder Ali  
c/o Shri G. Derrick Sam  
17, First Cross Street,  
Fourth Avenue,  
Besant Nagar,  
Chennai – 600 090.

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.

**ATTESTED**

*(Handwritten Signature)*  
13/8/18

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

