

REGISTERED  
SPEED POST

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. 380/48-49/B/15-RA

२०४५

Date of Issue

२८/११/२०१८

ORDER NO. <sup>११०-१११</sup> /2018-CUS (SZ) / ASRA / MUMBAI DATED २८.०९.२०१८ 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 : Commissioner of Customs (Airport), Chennai

Respondent : Shri Jayabal Shivakumar and Shri S. Jalaludeen

Subject : Revision Application filed, under Section 129DD of the Customs Act,  
1962 against the Order-in-Appeal C. Cus-I No. 348/2015 dated  
29.06.2015 & Order-in-Appeal No. 563 & 564/2015 dated 14.09.2015  
passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs (Airport), Chennai (herein referred to as Applicant) against the Order in Appeal C. Cus No. 563 & 564/2015 dated 14.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Respondent, was intercepted as he was departing for Kuala Lumpur from Chennai Airport. Examination of his baggage resulted in the recovery of Rs. 40,000/- from his pant pocket. Examination of his baggage resulted in the recovery of Indian currency of Rs. 40,00,000/- ( Rupees Forty lakhs). The Respondent in his statement revealed that the currency was being taken abroad as per the directions of Shri Jalaluddin of M/s JKS Air Travels. On followup action the premises of M/s JKS Air Travels was searched and Indian currency of Rs. 7,00,000/- ( Rupees Seven Lakhs) was seized from the premises.

3. After due process of the law vide Order-In-Original No. 58/30.04.2015 the Original Adjudicating Authority ordered confiscation of the currency under the provision of the of the Customs Act,1962 read with FEMA, 1999 and RBI guidelines, but allowed the respondent to redeem the currency on payment of Rs. 12,00,000/- ( Rupees Twelve lakhs). A penalty of Rs. 2,00,000/- was also imposed under Section 114 of the Customs Act,1962. A penalty of Rs. 3,00,000/- was also imposed under Section 114 of the Customs Act,1962 on Jalaluddin of M/s JKS Air Travels. The Rs. 7,00,000/- ( Rupees Seven Lakhs) was seized from the premises of M/s JKS Air Travels was not held liable for confiscation and released.

4. Aggrieved by the said order, the applicants as well as the respondents both filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. 348/2015 dated 29.06.2015 reduced the redemption file to Rs. 7,00,000/- and also reduced the penalty imposed on Shri Jayabal Shivakumar to Rs. 1,00,000 and modified the order in original giving relief to the Respondent. While disposing the Appeals filed by Shri Jalaluddin of M/s JKS Air Travels and the department the Commissioner (Appeals) vide his Order-in-Appeal No. 563 & 564/2015 dated 14.09.2015 rejected the Appeal of Shri Jalaluddin as being devoid of merits and also dismissed the Appeal of the Department as infructious.

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



5.1 Both the Order in original passed by the adjudicating authority and the Appellate order are neither legal nor proper as the respondent has contravened the provisions of Section 77 and 11 of the Customs Act, 1962; Shri Jayabal Shivakumar has admitted that he has carried currency four times earlier; The order of the Appellate authority is therefore not proper as the Respondent was a carrier who was offered monetary consideration for the job; The Appellate authority failed to verify the issue on merit and dismissed the departmental Appeal as infructuous on the grounds of merger inspite of the fact that grounds of Appeal of the Applicant were entirely different; The prayer of the Applicant and the prayer of the department was also different.

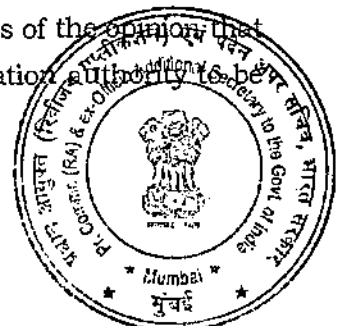
5.2 The Revision Applicant cited case laws in his favour and pleaded that the order in Appeal be set aside and absolute confiscation be ordered or any other order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled held on 16.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided exparte on merits

7. Government has gone through the facts of the case it is observed that the Respondent had kept the currency in his baggage and did not declare the same as required under section 77 of the Customs Act, 1962 and therefore confiscation of the same is justified.

8. However, the facts of the case state that the currency was recovered from the baggage, and it was not indigenously concealed. 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 Government therefore is inclined to agree with the Order-in-Appeal in allowing the currency to be redeemed on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The Respondent has admitted that he has taken currency abroad earlier undetected. Government is of the opinion that the redemption fine and penalties imposed by the Original adjudication authority to be



appropriate and therefore the impugned Order in Appeal therefore needs to be set aside and the Original adjudication order is liable to be upheld.

9. The impugned Order-in-Appeal No. 348/2015 dated 29.06.2015 and ... Order-in-Appeal No. 563 & 564/2015 dated 14.09.2015 passed by the Commissioner of Customs (Appeals), are therefore set aside. Order-In-Original 58/30.04.2015 issued by the Original Adjudicating Authority is upheld as proper and legal.

10. Revision application is partially allowed on above terms.

11. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>770-771</sup> /2018-CUS (SZ) /ASRA/MUMBAI

DATED 28-09-2018

To,

1. The Principal Commissioner of Customs (Airport),  
New Custom House,  
Menambakkam Road,  
Chennai-27.
2. Shri Jayabai Shivakumar  
No. 9-31-A, North Street,  
Paravakkottai,  
Mannarkudi Taluk,  
Thiruvarur District,  
PIN 614 015
3. Shri S. Jalaludeen  
s/o Shri Shahul Hamid,  
Proprietor of M/s JKS Air Travels,  
59A, Akbar Sahib Street,  
Triplicane, Chennai 600 005.

Copy to:

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

**ATTESTED**

  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

