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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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F.No. 373/121/B/2018-RA / 1950

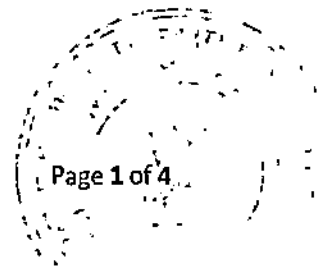
Date of Issue 19.11.2018

ORDER NO. 833/2018-CUS (SZ)/ASRA/MUMBAI DATED 23.10.2018 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 Ali Syed Abbas

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. 32-33/2018 dated 26.02.2018 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohamed Ali Syed Abbas (herein referred to as Applicant) against the order C. Cus I No. 32-33/2018 dated 26.02.2018 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the officers of the Directorate of Revenue Intelligence based on specific intelligence intercepted 6 persons along with applicant, bound for Singapore at the Chennai Airport on 23.09.2016. Examination of the Applicants his baggage and person resulted in the recovery of Euros, Swiss Francs, Saudi Riyals, and Singapore dollars totally equivalent to Rs. 15,91,254/- (Rupees Fifteen lakhs Ninety one thousand Seven hundred and Sixty Nine). The foreign currency was kept concealed in the pulling rods and various cavities of the trolley bag carried by the Applicant.

3. After due process of the law vide Order-In-Original No. 165/2017-18-AIRPORT dated 30.11.2017 the Original Adjudicating Authority ordered absolute confiscation of the currency under Section 113 ( d) (e) & ( h) of the Customs Act, 1962 read with Foreign Exchange Management ( Export and Import of currency ) Regulations, 2015 and imposed a penalty of Rs. 1,60,000/- under Section 114 of the Customs Act, 1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus I No. 32-33/2018 dated 26.02.2018 rejected the Appeal of the applicant.

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

4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Currency is considered as goods as under section 2(22) of the Customs Act, 1962 and the same is neither dutiable nor prohibited; The Applicant has given documents and Income Tax returns and has claimed the currency; The suspicions that the currency does not belong to the Applicant is not backed by any cogent evidence and the Customs Act, 1962 does not make any distinction between the owner or the person carrying it; Goods must be prohibited before import or export simply because of non declarations goods cannot become prohibited; There is no requirement under the said Act to declare currency less than \$10,000/- and the seized currency is in permissible limits; The Applicant relies on the reported judgement 2012



(276) ELT 129 (GOI) in the case of Chellani Mukesh the Hon'ble Revisionary Authority had set aside absolute confiscation and allowed redemption of the of the same under section 125 of the Customs Act,1962; The Adjudication authority has not exercised his option under section 125 of the Customs Act,1962; 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.

5.3 The Revision Applicant cited various other assorted judgments and boards policies in support of his case and prayed for quashing the impugned order in Appeal with consequential benefits by means of redemption fine and reduce the personal penalty and thus render justice.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri S. Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and pleaded for release of the currency on reduced redemption fine and penalty. 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 currency ingeniously by concealing the currency in the pulling rods and various cavities of the trolley bag carried by the Applicant. The concealment was planned so as to avoid detection and evade Customs officers and smuggle the currency out of India. The aspect of allowing the currency on redemption fine and penalty can be considered when declarations have been made in a legal manner. In this case the Applicant was fully aware that the currency is required to be declared and has therefore concealed it ingeniously to avoid detection and has blatantly tried to smuggle the currency out of India in contravention of the provisions of the Customs Act,1962. Further, the foreign currency was beyond permissible limits. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the currency to the authorities and if he was not intercepted before the exit, the Applicant would have taken the currency out of India.



7. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the foreign currency absolutely and imposed a penalty of Rs. 1,60,000/-. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The impugned Appellate order No. C. Cus I No. 32-33/2018 dated 26.02.2018 passed by the Commissioner of Customs (Appeals-I), Chennai is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

*(Handwritten Signature)*  
28/10/18

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

ORDER No. 33/2018-CUS (SZ) /ASRA/

DATED 13.10.2018

To,

Shri Mohamed Ali Syed Abbas  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> 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**

*(Handwritten Signature)*  
19/11/18

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

