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SPEED POST

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

F.No. 373/78/B/2018-RA

21/14

Date of Issue

ORDER NO. ⁸⁵⁷2018-CUS (SZ)/ASRA/MUMBAI DATED 26.10.2018 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 Sakubarsathik Abdulgani

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. 207/2017 dated 27.12.2017 passed by the
Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Sakubarsathik Abdulgani (herein referred to as Applicant) against the order C. Cus I No. 207/2017 dated 27.12.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, was bound for Dubai and was intercepted at the Chennai Airport on 24.05.2017. Examination of his baggage and person resulted in the recovery of Saudi and Qatar Riyals totally equivalent to Rs. 12,36,650/- (Rupees Twelve lakhs Thirty six thousand Six hundred and Fifty only) concealed in his inner garments and clothes in his baggage.

3. After due process of the law vide Order-In-Original No. 139/2017-18-AIRPORT dated 28.10.2017 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. 1,25,000/- under Section 114 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 I No. 207/2017 dated 27.12.2017 allowed redemption on payment of Rs. 2,50,000/- and partially allowed the Appeal of the applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia 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 Applicant submits that the currency was not concealed but kept in his baggage; The currency was his own and was being taken to purchase electronics in Dubai; Currency is considered as goods as under section 2(22) of the Customs Act, 1962 and the same is neither dutiable nor prohibited; The seized currency is not prohibited and the same is restricted; His representation made before the adjudicating Authority was not addressed; that in a 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 Applicant further in the case of Keetheswari 373/46/B/11 04.05.2012 the hon'ble Revisional Authority has stated absolute confiscation is very harsh and granted the option to redeem the confiscated currency; There is no requirement under the said Act to declare currency less than \$10,000/- and the seized currency is in permissible limits; Goods must be prohibited before import or export simply because of non declarations goods cannot become prohibited; 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;

5.2 The Revision Applicant prayed for quashing the impugned order in Appeal with consequential benefits by means of reduced redemption fine and reduced 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.

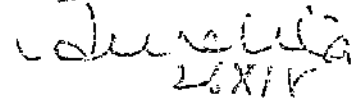
7. The Government has gone through the case records it is observed that the Applicant had kept the currency in his hand baggage and did not declare the same and therefore confiscation of the same is justified.

8. However, the facts of the case state that the Applicant has not been involved in such offences earlier. The currency was carried on his person and in the clothes carried in his checked in baggage and not indigenously concealed. There is also no requirement to declare currency below \$10,000. The 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. Government notes that the Appellate Authority has rightly exercised his discretion rightly under section 125 of the Customs Act, 1962 and set aside absolute confiscation of the currency and allowed redemption of the currency on payment of redemption fine.

9. The Applicant has pleaded for reduction of the redemption fine and Government observes that, the facts of the case justify the quantum of redemption fine and penalty imposed, as being adequate. Government therefore, is disinclined to interfere with the order of the Commissioner(Appeals). The Revision Application is therefore liable to be dismissed.

10. The Revision Application is accordingly dismissed.

11. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. 857/2018-CUS (SZ) /ASRA/MUMBAI

DATED 26.10.2018

To,

Shri Sakubarsathik Abdulgani
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd 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.