

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. 373/77/B/2018-RA / 2115

Date of Issue 28/11/2018

ORDER NO. 858/2018-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 Mohamed Fasran

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. 208/2017 dated 27.12.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohamed Fasran (herein referred to as Applicant) against the order C. Cus I No. 208/2017 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 Colombo and was intercepted at the Chennai Airport on 13.06.2017. Examination of his baggage and person resulted in the recovery of US dollars totally equivalent to Rs. 5,66,930/- (Rupees Five lakhs Sixty six thousand Nine hundred and thirty only ) kept in his hand bag.

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. 55,000/- under Section 114 of the Customs Act, 1962.

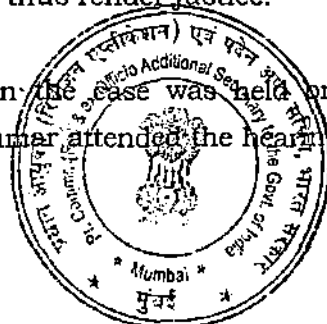
4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus I No. 208/2017 dated 27.12.2017 allowed redemption on payment of Rs. 1,20,000/- and partially allowed the Appeal of the applicant.

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 hand bag; Ownership of the currency is not disputed; The seized currency was brought from Sri Lanka for purchase of textiles and the remaining currency was being taken back; There is no requirement under the said Act to declare currency less than \$10,000/- and the seized currency is in permissible limits; Currency is considered as goods as under section 2(22) of the Customs Act, 1962 and the same is neither dutiable nor prohibited; ; Goods must be prohibited before import or export simply because of non declarations goods cannot become prohibited;

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 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, and therefore, is disinclined to interfere with the order of the Commissioner(Appeals). The Revision Application is therefore held liable to be dismissed.

10. The Revision Application is accordingly dismissed.

11. So, ordered.

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

ORDER No. <sup>858</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 26.10.2018

To,

Shri Mohamed Fasran  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

**ATTESTED**

*S.R. Hirulkar*  
28/11/18

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

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.
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