

REGISTERED 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. 371/141/B/2018-RA

2110

Date of Issue 22.11.2018

ORDER NO. ⁸⁶¹ /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 29.10.2018
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 Siddique Abdul Rehman

Respondent: Commissioner of Customs, Goa

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. GOA-
CUSTM-000-APP-116-2017-18 dated 22.11.2017 passed by
the Commissioner(Appeals), CGST & Customs, Goa

ORDER

This revision application has been filed by Shri Siddique Abdul-Rahman (hereinafter referred to as the "Applicant") against the Order in Appeal No. GOA-CUSTOM-000-APP-116-2017-18 dated 22.11.2017 passed by the Commissioner(Appeals), CGST & Customs, Goa.

2. Briefly stated, the facts of the case are that the officers of Air Intelligence Unit, Dabolim, Goa intercepted the applicant who is of Indian nationality and was departing to Sharjah by Air Arabia Flight No. G9-493 as they found something suspicious while screening his baggage. On scrutiny of the passport of the applicant, it was found that he was a frequent flyer and could not give a satisfactory reply on being queried about his frequent visits to Dubai. On a specific query as to whether he was carrying any currency, the applicant replied in the negative. On further being questioned, he admitted that he was carrying some amount of foreign currency concealed in his check-in stroller bag having tag no. 0514923831. On examination of the same, in the presence of two independent panchas, the AIU Officers found food stuff and clothes along with four bundles wrapped in newspaper concealed in the gap between the bottom of the bag and the inner part of the handle and above this concealment, there was a cloth lining with zip to cover the handle casing. On opening the said four bundles, they were found to contain foreign currency. As per Customs Notification No. 102/2016-Customs(NT) dated 21.07.2016, the value of the currency was ascertained as under :-

Sr. No.	Name of Currency	Total quantity of foreign currency	Customs Notfn. Rate of Exchange	Amount in Indian Currency
1	Euro	5000	72.95	3,64,750/-
2	Kuwaiti Dinar	445	215.20	95,764/-
3	British Pound	5150	86.90	4,47,535/-
4	US Dollar	3200	66.45	2,12,640/-

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5	Saudi Riyal	9680	17.35	1,67,948/-
6	Bahrain Dinar	515	172.25	88,709/-
7	Canadian Dollar	400	50.75	20,300/-
8	UAE Dirham	4800	17.75	85,200/-
9	Australian Dollar	1900	49.50	94,050/-
Total				15,76,896/-

The abovementioned foreign currency was seized under Section 110(1) of the CA, 1962 in the reasonable belief that the same is liable for confiscation under Section 113(d) of the CA, 1962. The purple colour stroller bearing marking "CETACEAN" was also seized under Section 110(3) of the CA, 1962.

3. The investigation carried out by the officers, the applicant revealed that he was carrying foreign currency to Dubai via Sharjah to buy clothes, footwear, perfumes etc. from Dubai for his shop in India and that he was to return back on 25.08.2016. He further stated that the purchased goods would be brought into India either by himself or through any of the agents, TR passenger or normal passenger either in cargo or in normal baggage to Mangalore; that he was going to take these goods to his shop Siddique Center at Bhatkal for retail sale; that the impugned foreign currency was partly his own and partly of his two brothers and that he had obtained all the foreign currencies by exchanging Indian currency from people in Bhatkal who were residing abroad. He also stated that he had visited Goa earlier and was involved in this kind of smuggling on earlier visit to cope with his family needs.

4. The adjudicating authority observed that the applicant had not produced any documents to show legal acquisition of the said foreign currency nor had he produced any authentic documents showing the source of the money used for acquiring the said foreign currency. Although he claimed that he had received

part of the money from his brothers, he failed to produce any valid documents to substantiate his claim. It was also observed that the applicant was a frequent flier and therefore it could be safely presumed that he was carrier of foreign currency on someones behalf. The foreign currency had been ingeniously concealed and the applicant was not eligible to export the same through baggage. In this view, the adjudicating authority vide Order-in-Original No. 03/2017-18-ADC(CUS) dated 31.07.2017 ordered absolute confiscation of the seized assorted foreign currencies under Section 113(d) of the CA, 1962 read with Section 9 of the FEMA, 1999 and Foreign Exchange Management(Possession and Retention of Foreign Currency) Regulations, 2015 notified vide Notification No. FEMA 11(R)/2015-RB dated 29.12.2015; ordered the absolute confiscation of the purple coloured bag bearing marking "CETACEAN" in which the assorted foreign currency had been concealed under Section 118 of the Act and imposed a penalty of Rs. 4,00,000/- under Section 114(i) of the CA, 1962.

5.1 Aggrieved by the order of the adjudicating authority, the applicant filed appeal before the Commissioner(Appeals). He observed that the applicant did not have permission from the RBI to export foreign currency not did he declare the foreign currency in CDF. Therefore the currency under seizure was prohibited goods under the provisions of the Customs Act and therefore liable to confiscation. The Commissioner(Appeals) placed reliance on the case laws of Peringattil Hamza[2014(306)ELT 322(Trb)] and the judgment of the Hon'ble High Court of Madras in CC, Chennai vs. Savier Poonolly[2014-TIOL-1662-HC-MAD-CUS=2014(310)ELT 231(Mad)]. He observed that no evidence had been brought forth by the applicant to establish that the foreign exchange possessed by him had been obtained in accordance with Regulation 7(2)(ii) or any other provisions of the Act or Regulations. He averred that the facts read with the law and the fact that the currency was concealed in the checked-in purple colour big stroller bag marked "CETACEAN" pointed to a deliberate attempt to smuggle foreign currency for export. Reliance was also placed on the case laws of M K S Mohammed Rafi vs. Commissioner of Customs(Airport & ACC), Chennai[2014-TIOL-1681-CESTAT-MAD] and Joseph Sebastian Prekash vs. Commissioner of Central Excise, Customs and Service Tax[2014-TIOL-2457-CESTAT-BANG].

5.2 The Commissioner(Appeals) vide Order-in-Appeal No. GOA-CUSTM-000-APP-116-2017-2018 dated 22.11.2017 concluded that the applicant was taking foreign currency out of India in violation of the provisions of FEMA, 1999, without declaration to Customs and thus the illegal nature of the transactions was manifest and amounted to smuggling of foreign currency. He opined that consequently, the absolute confiscation of the seized foreign currency under Section 113(d) of the CA, 1962 was beyond any legal challenge. In so far as the penalty imposed on the applicant under Section 114(i) was concerned, the Commissioner(Appeals) observed that the act of smuggling was established by not only the statements recorded but also the series of facts, non-declaration, detection of foreign currency concealed in suitcase already checked-in, statement of the applicant under Section 108 of the CA, 1962. He further asserted that the case was also established under the law laid down in the FEMA Regulations. He therefore upheld the penalty imposed and upheld the order-in-original in its entirety and rejected the applicants appeal.

6. Aggrieved by the Order-in-Appeal, the applicant filed a revision application with an application for condonation of delay of 8 days in filing the same. The grounds on which the revision application has been filed are as detailed hereinbelow.

- (i) Foreign currencies are not prohibited goods under the CA, 1962 of Foreign Exchange Management Regulations. Therefore the currencies should not have been ordered to absolute confiscation.
- (ii) It was submitted that there was no ingenious concealment of the foreign currencies. It has been stated that the mode of carrying currency wrapped in newspaper and in the bottom cloth lining of the stroller bag was only for the purpose of safe carriage of the currency to Dubai.
- (iii) Ownership of the currency is not a criteria for ordering absolute confiscation. In this case, the adjudicating authority has failed to prove whom the currency belongs to other than the applicant from whose possession the currency has been seized.

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- (iv) The findings of the adjudicating authority that the currency does not belong to the applicant were not correct and absolute confiscation was not warranted.
- (v) The penalty imposed on the applicant was disproportionate to the value of the currency carried by him and therefore imposition of such high penalty was not sustainable.
- (vi) The applicant claimed ownership of the currencies and submitted that they had been procured from his relatives for the purpose of buying merchandise from Dubai. It was further pleaded that the foreign currencies were a restricted goods and consequently the person from whom it was recovered or the owner of the goods was entitled for release of the seized currencies under Section 125 of the CA, 1962.
- (vii) The applicant requested for release of the currencies on imposition of redemption fine.

7. The applicant was granted a personal hearing in the matter on 10.10.2018. The condonation of delay application filed by the applicant for the delay in filing the revision application was allowed in the interest of justice. The applicant pleaded that in view of the submissions made in the revision application, the absolute confiscation of the foreign currency be allowed to be reduced on reasonable redemption fine and personal penalty.

8. The Government has gone through the case records. It is observed that the check-in bag of the applicant was found to contain foodstuffs and clothes alongwith four bundles wrapped in newspaper which were stored inside the gap between the bottom of the said strolley bag and the inner part of the handle of the said check-in bag. The submissions of the applicant in this regard are that the mode of carrying currency wrapped in newspaper in the bottom cloth lining of the strolley bag was only for the purpose of safe carriage of the currency. The applicant had further contended that given the social and economic circumstances, carrying huge currency was fraught with risk of losing the same and could also endanger the life of the person carrying it. Therefore, each passenger adopts different methods to carry currency and valuables in a concealed manner. The Government considers these contentions of the applicant

to be plausible. It is only natural for any person who is travelling to try to keep the precious items safe from persons who may pilfer from the baggage he/she is carrying. Precious items in a persons baggage are always kept in a place where any person who unauthorisedly opens the bag cannot lay his hands easily. Therefore, there is no case for ingenious concealment of the currencies.

9. The Government observes that foreign currencies are restricted goods in terms of the norms set by the RBI. As such, they are not prohibited goods. The import and export of foreign currency is subject to laws and rules and regulations issued by the competent authority. The applicant has submitted that he had collected the foreign currencies from people in Bhatkal who were residing abroad and that the purpose was to buy clothes, footwear, perfumes etc. from Dubai and bring them to India for being sold from his shop at Siddique Centre. Against these submissions, the finding that the applicant is a carrier is supported only by the mere fact that he was a frequent traveller. Concrete evidence to counter these claims of the applicant have not been brought on record by the investigation. There is no corroboration of the fact that the applicant was indulging in the activity of smuggling foreign currency per se. In the circumstances, absolute confiscation of the foreign currencies without the option of redeeming the same is admittedly harsh.

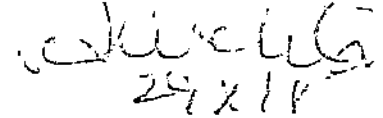
10. There are a catena of judgments which align with the view that the discretionary powers vested in the lower authorities under section 125(1) of the CA, 1962 must be exercised invariably. The applicant has pleaded for release of the currencies on imposition of redemption fine, reasonable personal penalty and the Government is inclined to accept the plea. The impugned Order-in-Appeal is therefore required to be modified and the currency could be allowed to be redeemed on payment of redemption fine and penalty.

11. In view of the above, the Government allows redemption of the assorted foreign currencies confiscated in lieu of fine. The impugned currency totally valued at Rs. 15,76,896/- (Rupees Fifteen Lakhs Seventy Six Thousand Eight Hundred Ninety Six Only) is ordered to be redeemed on payment of redemption fine of Rs. 6,00,000/- (Rupees Six Lakhs Only) under Section 125 of the Customs

Act, 1962. Government also observes that the penalty imposed is excessive. The penalty imposed the applicant is therefore reduced from Rs. 4,00,000/- (Rupees Four Lakhs Only) to Rs. 2,00,000/- (Rupees Two Lakhs Only) under Section 114(iii) of the Customs Act, 1962.

12. The impugned Order-in-Appeal is modified as detailed above. Revision Application is partly allowed in the above terms.

13. So ordered.


29/10/18

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

ORDER No. ⁸⁶¹/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.10.2018

To,
Shri Siddique Abdul Rahman
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Copy to:

1. Commissioner of Customs, Goa
2. Commissioner of Central Excise (Appeals), CGST & Customs, Goa
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard File
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