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

F.No. 373/102/B/2018-RA

2146

Date of Issue

29.11.2018

ORDER NO. 877/2018-CUS (SZ)/ASRA/MUMBAI DATED 24.10.2018 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 Usman Mohamed Shafiullah

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. 45/2018 dated 27.03.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Usman Mohamed Shafiullah (herein referred to as Applicant) against the order C. Cus I No. 45/2018 dated 27.03.2018 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, was bound for Bangkok and was intercepted at the Chennai Airport on 15.09.2016. Examination of his baggage and person resulted in the recovery of US dollars and Euros totally equivalent to Rs. 35,30,500/- (Rupees Thirty Five lakhs Thirty thousand Five hundred only). Foreign currency equivalent to Rs. 5,51,500/-was concealed in the socks worn by him and the rest of the Currency was recovered from the side upper portion of the trolley bag carried by the Applicant.

3. After due process of the law vide Order-In-Original No. 42/2017-18- AIRPORT dated 30.10.2017 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. 3,50,000/- under Section 114 (i) 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. 45/2018 dated 27.03.2018 rejected the Appeal of the applicant.

4. Aggrieved with the above order the Applicant has filed this revision application inter alia 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; Goods must be prohibited before import or export simply because of non declarations goods cannot become prohibited; The Adjudication authority has not exercised his option under Section 125 of the Customs Act,1962; The Applicant states that the Impugned currency belongs to him and he was carrying the same for business purposes; He had carried the foreign currency for starting a business in Bangkok and since he did not know the procedure he carried the Currency with him; There is no contumacious conduct on part of the Applicant but a conduct of a person who is ignorant of the law; 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 averments that he received currency from some unknown sources is based on non existent material and also amounts to extraneous consideration; Even assuming without admitting the act

of the Applicant is only a violation of the Reserve Bank rules; There is no requirement under the said Act to declare currency less than \$10,000/- and the seized currency is in permissible limits; 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 confiscated currency ingeniously and part of the currency was concealed in the socks worn by him; The concealment was ingeniously planned so as to avoid detection by the Customs officers and with an attempt to smuggle the currency out of India. Government also notes that in his statements the Applicant has revealed that he has indulged in the same offence earlier along with another person and after taking currency abroad they had come back with gold, which was cleared through the Customs by the other person. It is thus clear that the Applicant is involved in a smuggling racket and has willingly succumbed to its ill-gotten lucre; The aspect of allowing the currency on redemption fine and penalty can be considered when the currency is not ingeniously concealed. In this case the Applicant was fully aware that the currency is required to be declared and has therefore concealed it and has avoided declaration and has blatantly tried to smuggle the currency out of India in contravention of the provisions of the Customs Act, 1962 by ingeniously concealing it. Further, the foreign currency was also 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 confiscated currency out of India in contravention of the Customs Act, 1962.

8. The above acts/omissions by the Applicant have therefore rendered the Applicant liable for penal action under the Customs Act, 1962. The case laws cited by the Applicant are not applicable to this case and have been provided on different set of facts and

circumstances. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the foreign currency absolutely and imposed a penalty of Rs. 2,50,000/- (Rupees Two lacs Fifty thousand). 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. 45/2018 dated 27.03.2018 passed by the Commissioner of Customs (Appeals-I), Chennai is upheld as legal and proper.

9. Revision Application is dismissed. -

10. So, ordered.



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

ORDER No. ⁸⁷⁷2018-CUS (SZ) /ASRA/ MUMBAI DATED 24.10.2018

To,

Shri Usman Mohamed Shafiullah
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.