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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. 373/33/B/17-RA / 2184

Date of Issue 29.11.2018

ORDER NO. 815/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.10.2018 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 Rizwan Rasool Khan

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. 180-181/2017 dated 28.09.2017 passed by the
Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Rizwan Rasool Khan (herein referred to as Applicant) against the order in appeal C. Cus I No. 180-181/2017 dated 28.09.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, was bound for Singapore and was intercepted at the Chennai Airport on 27.04.2017. Examination of his baggage and person resulted in the recovery of US dollars, Saudi Riyals and UAE dirhams totally equivalent to Rs. 3,86,400/- (Rupees Three lakhs Eighty six thousand Four hundred). The Foreign currency was concealed in the waist region of the jeans worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 285/2017-18-AIRPORT dated 26.07.2017 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. 40,000/- 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. 180-181/2017 dated 28.09.2017 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 Applicants statement was recorded by the authorities but the the statement was not provided for the Applicant to rely on; 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; 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; 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 had orally declared the amount to the officers and therefore the question of declaration does not arise; 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. Further the onus is on the Adjudicating Authority to find the owner if the owner is not found the person from whose possession the goods were recovered is the owner; The Hon'ble Supreme Court (full bench) in the case of *Om Prakash vs UOI* states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions; Section 111 (d) (l) (m) and (o) are not applicable in the case;

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 in the jeans worn by him and it was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

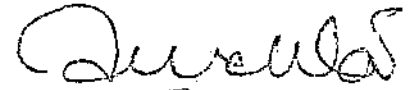
8. However, the facts of the case state that the Applicant has not been involved in such offences earlier. The currency was not indigenously concealed. There is also no requirement to declare currency below \$10,000, and taking of currency abroad is restricted and not prohibited. Absolute confiscation 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. The Applicant has pleaded

for release of the currency on redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the currency is liable to be allowed on payment of redemption fine and penalty.

8. In view of the above, Government allows redemption of the confiscated currency in lieu of fine. The impugned currency totally valued at totally equivalent to Rs. 3,86,400/- (Rupees Three lakhs Eighty six thousand Four hundred) is ordered to be redeemed on payment of redemption fine of Rs.1,50,000/- (Rupees One lakh Fifty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify the penalty of Rs. 40,000/- (Rupees Forty thousand) imposed on the Applicant under section 112(a) of the Customs Act, 1962. The penalty imposed is appropriate.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.



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(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 895/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30.10.2018

To,

Shri Rizwan Rasool Khan
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.