

REGISTERED SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No.373/109/B/17-RA | 2/3 Date of Issue 30.11.2018

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ORDER NO. 948/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 19.11.2018 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.

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Applicant : Shri Joseph Jobi, Kottayam - 686 533.

Respondent : Commissioner of Customs, Cochin.

Subject : Revision Application filed under Section 129DD(1) of the Customs Act, 1962 against the Order-in-Appeal No. 15/2017 (F. No. C27/180/DEPT/2016/AU CUS) dated 28.04.2017 passed by the Commissioner (Appeals), Customs, Cochin.



ORDER

This revision application has been filed by Shri Joseph Jobi (hereinafter referred to as the "Applicant") against the Order in Appeal No. 15/2017 (F. No. C27/180/DEPT/2016/AU CUS) dated 28.04.2017 passed by the Commissioner (Appeals), Customs, Cochin.

2. Briefly stated, the facts of the case are that the officers of Air Intelligence Unit (AIU), Customs, Cochin International Airport, Nedumbassery intercepted a lady passenger by name Smt. Anu James who is of Indian nationality and was departing to Dubai by Emirates Flight No. EK533 on 21.01.2016. The officers questioned her as to whether she had any contraband goods / foreign currency in her possession, she replied that she had 30,500/- UAE Dirham in her possession and the same was handed over to her by the applicant at the departure hall. The officers identified the applicant with the help of Smt. Anu James. The applicant admitted that he had handed over 30,500/- UAE Dirham to Smt. Anu James whom he met at the departure hall. The applicant stated that he had collected 30,500/- UAE Dirham from different persons in his native place and do not have any documents to prove the licit possession of the said foreign currency. The officers seized the said foreign currency of 30,500/- UAE Dirham worth Rs. 5,38,020/- (Rupees Five Lakh Thirty Eight Thousand Twenty Only) on reasonable belief that the same was liable for confiscation under the Customs Act, 1962 read with Foreign Exchange Management Act, 1999. The applicant stated that he took this currency to Dubai to buy a car at Dubai and further requested to pardon for his ignorance and action.

3. 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 collected the said foreign currency from different persons at his native place, he failed to produce any valid documents to substantiate his claim. In this view, the adjudicating authority vide Order-in-Original No. 286/2016 dated 29.09.2016 ordered absolute confiscation of the seized assorted foreign currencies under



Section 113(d) of the CA, 1962 read with Section 13(2) of the FEMA, 1999 and allow redemption of foreign currency of 30,500/- UAE Dirham worth Rs. 5,38,020/- on payment of fine of Rs. 75,000/-. The Adjudicating Authority also imposed a penalty of Rs. 10,000/- on Smt. Anu James and Rs. 25,000/- on the applicant under Section 114 of the Customs Act, 1962 read with Section 13(1) of the FEMA, 1999.

4 Aggrieved by the order of the adjudicating authority, the applicant filed appeal before the Commissioner (Appeals). The appellate authority 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.

5.2 The Commissioner (Appeals) vide Order-in-Appeal No. 15/2017 (F. No. C27/180/DEPT/2016/AU CUS) dated 28.04.2017 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 and ordered that the redemption fine of Rs. 75,000/- paid by the applicant be refunded.

6. Aggrieved by the Order-in-Appeal, the applicant filed a revision application. The grounds on which the revision application has been filed are as detailed herein below.

- (i) The appellate authority ought to have considered that even the officers of Customs do not have a case that Indian Currency used by the applicant is acquired illegally.
- (ii) The applicant is first offender and he has not concealed any facts from the officers when questioned.
- (iii) The illegal money was acquired by the applicant using his hard earned money which he acquired legally.



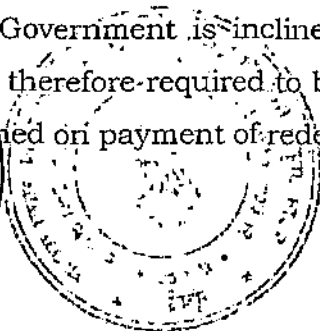
- (iv) The applicant requested to set aside the impugned order in appeal and restore the order in original.

7. The applicant was granted a personal hearing in the matter on 12.11.2018. Shri R. Padmaraj, Advocate appeared for the same on behalf of the applicant. He reiterated the submissions and requested to set aside the order in appeal.

8. The Government has gone through the case records. It is observed that the applicant in order to avoid legal issues for carrying huge amount he had handed over 30,500/- UAE Dirham to Smt. Anu James who acquainted with him at the departure hall of the Airport and requested her to return the same to him at Dubai Airport. 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 his native place and that the purpose was to buy car in Dubai. The Government finds that the findings of the appellate authority that the applicant is a carrier are not supported by any Concrete evidence on record. 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 absolute confiscation of the impugned foreign currency as ordered by the appellate authority is therefore harsh and unjustified. Government therefore sets aside the Order in Appeal No. 15/2017 (F. No. C27/180/DEPT/2016/AU CUS) dated 28.04.2017 passed by the Commissioner (Appeals), Customs, Cochin. The Order in Original No. 286/2016 dated 29.09.2016 by the Original Adjudicating Authority is upheld as legal and proper.

12. Revision Application is allowed accordingly.

13. So ordered.

*(Signature)*  
19.11.18

(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>948</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 19.11.2018

To,  
Shri Joseph Jobi,  
Vangamattom House, Kuzhimattam P.O.,  
Kottayam- 686 533

**ATTESTED**

*(Signature)*  
30.11.18

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

Copy to:

1. The Commissioner of Customs, Cochin
2. The Commissioner of Customs(Appeals), Cochin.
3. Shri R. Padmaraj, Advocate, Morning Star Building, Kacheripady Ernakulam, Kochi - 682 018.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard File
6. Spare Copy

