SPEED POST

F. No. 373/100/B/2017-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 23/12/22

Order No. 399/22-Cus dated 23-12-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal AIRPORT. Cus. No. 82/2017 dated 27.04.2017, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Appas Yasin, Chennai.

Respondent : Pr. Commissioner of Customs, Chennai Airport, Chennai.

ORDER

A Revision Application No. 373/100/B/2017-RA dated 21.07.2017 has been filed by Sh. Appas Yasin, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal AIRPORT. Cus. No. 82/2017 dated 27.04.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Additional Commissioner of Customs, Chennai Airport, Chennai, bearing No. 200/2016 dated 31.12.2016, wherein, Ephedrine Hydrochloride, weighing 4915 gms, valued at Rs. 73,72,500/-, was confiscated absolutely under Sections 113(d), 113(e) & 113(h) of the Customs Act, 1962 read with Section 60 of the NDPS Act, 1985. Penalty of Rs. 8,00,000/- was imposed on the Applicant herein under Section 114 of the Act, ibid.

2. Brief facts of the case are that based on intelligence, Air Intelligence Officer of Customs identified and intercepted one lady passenger, namely, Smt. Devaraj Lakshmi bound for Kuantan, via Kuala Lumpur from Chennai airport, on 22.10.2015. She was enquired as to whether she was carrying any narcotic drugs or psychotropic substances either on her person or in her hand baggage or in her checked-in baggage to which she replied in negative. On examination of her one black and grey colour 'AOKING' zipper backpack bag, 03 black colour packets were recovered from specially stitched three portions on the back-rest of the said backpack bag. These three black colour packets were found to contain white crystal-like substance in stitched transparent polythene packets with net contents weighing 594 gms, 499 gms and 349 gms. A pinch of the said white coloured crystal-like substance of all the packets were tested with Field Narcotic Kit which tested positive for Methaqualone, a psychotropic substance under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 (as amended). Thereafter, on examination of her black colour 'LYCARO Polo' zipper stroller suitcase 04 black-coloured packets were recovered from the four inner side walls of the said suitcase. On opening, each of these four packets it was found to contain in them another black colour packet made of thinner material. On cutting open these four black colour packets white crystal-like substance was

found in stitched transparent polythene packets which was found to weight (net) 1000 gms, 983 gms, 745 gms and 745 gms. The crystal like substance again tested positive for Methaqualone with Field Narcotics Kit. Thereafter, the other bag and person of Smt. Devaraj Lakshmi was searched and nothing incriminating was found. When questioned as to whether she had any valid documents issued by the Competent Authority for legal possession of the said white colour substance believed to be Methaqualone, she replied in negative. When questioned further as to whether she was doing any import/export or trading/dealing in any manner with respect to the aforesaid white colour crystalline substance believed to be Methaqualone, she replied in negative. Further, a communication received from the Assistant Chemical Examiner, Custom House laboratory, Chennai, in Lab Test Report dated 27.10.2015, confirmed that each of the seven samples answered the tests for the presence of Ephedrine Hydrochloride. In her statement dated 22.10.2015, Smt. Devaraj Lakshmi, inter-alia, stated that she was into the business of Idli sales at Padianallur; that for more income, she used to carry textiles to Malaysia for sale; that in connection with the seized drugs, she got acquainted with one Sundar at Malaysia; that about two months earlier, Sundar introduced her to one Abbas who was a resident of Sharma Nagar, Vyasarpadi, Chennai having phone no. 7358214670; that on her trip to Kuantan via Kuala Lumpur, Abbas handed over the drugs concealed in two baggage to her outside the Departure hall of Anna International Airport, Chennai with instructions that the said two baggages had drugs concealed in them; that she was to carry the drug-concealed suitcase and backpack bag to Kuantan as checked-in baggage and hand over them to one unknown person outside the Kuantan airport; that for doing this she would be paid Rs. 20,000/- by Abbas on her return from Malaysia; that as she was in need of money, she had agreed to smuggle the drugs in the checked in baggage and completed her check-in formalities with the two bags given by Abbas. From the call records of phone no. 7358214670 frequent calls were made to mobile numbers viz. 8056124445 & 9952036070. The subscriber detail of phone no. 9952036070 was found to be of Sh. Khader Hussain and on enquiry from Sh. Khader Hussain it was gathered that 9952036070 no. was being used by his uncle Sh. Appas Yasin. Sh. Appas Yasin in his statement dated 11.02.2016, inter-alia, stated that he does cell phone business in Burma Bazar; that he knew Abbas

alias Durai Babu whose number was 7358214670 for the past seven months; that he came to know Durai Babu through buying and selling of mobile phones; that he lives in Mannady and does not know his correct address; that for the past 3-4 months he had no contact with him; that he had met Sh. Sundar at Mannady twice; that he knew Smt. Devaraj Lakshmi since August 2015 through Sh. Sundar of Mannady; that on 21.10.2015 as per Durai Babu's instructions he had handed over the two bags to Smt. Devaraj Lakshmi outside Anna International Airport, Chennai to be carried to Kuantan via Malaysia; that for identifying the person for this job he was offered Rs. 5000/- by Durai Babu. The original authority, vide the aforesaid Order-in-Original dated 31.12.2016, held Sh. Appas Yasin liable for penal action under Section 114 of the Customs Act, 1962 and imposed penalty as above. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The instant revision application has been filed, mainly, on the grounds that the Applicant retracted his first statement but the same was not considered; and that his earlier statement was taken forcible by the officers. It has been prayed to set aside the impugned order and personal penalty.

4. Personal hearing in the matter was fixed on 12.11.2018, 02.11.2021, 09.11.2021, 01.12.2021, 07.12.2021, 15.11.2022, 09.12.2022 and 22.12.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is evident that Ephedrine Hydrochloride was recovered from Ms. Devaraj Lakshmi which she was carrying in the bags handed over to her by Sh. Appas Yasin, i.e., the Applicant herein. In his statement dated 11.02.2016, the Applicant had admitted his role in the smuggling of Ephedrine Hydrochloride. The Commissioner (Appeals) has, in para 7 & 8 of the impugned OIA, also brought out that the contents of the statement dated 11.02.2016 of the Applicant herein are corroborated by other material on record. Therefore, the retraction filed by the

Applicant, vide letter dated 06.04.2016, is not credible. In the present case, the Applicant has admitted to his involvement in the case of smuggling due to lure of getting Rs. 5000/-. As such the culpability of the Applicant is well established.

6. In the facts and circumstances of the case, the penalty imposed by the original authority and upheld by the Commissioner (Appeals) is just and fair.

7. In view of the above, the revision application is rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

Sh. Appas Yasin
C/o O. Chembu Lingam Advocate
No. 19/5, Palliarasu Street
Anna Nagar (East)
Near Water Tank
Chennai-600102

Order No. 399/22-Cus dated 23-12-2022

Copy to:

1. The Pr. Commissioner of Customs, Chennai-I, New Custom House, Meenambakkam, Chennai-600027.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Sh. O. Chembu Lingam, Advocate, No. 19/5, Palliarasu Street, Anna Nagar (East), Near Water Tank, Chennai-600102.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board

ATTESTED

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