

**SPEED POST**



F. No. 373/452/B/2019-RA  
F. No. 380/81/B/SZ/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue. 04/07/24

Order No. 125-126/24-Cus dated 04-07-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129DD of the Customs Act, 1962, against the Order-in-Appeal No. 102-103/2019 dated 19.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Shihabuddeen Moideenkunhi, Kasaragod  
The Commissioner of Customs, Mangaluru

Respondent : The Commissioner of Customs, Mangaluru  
Sh. Shihabuddeen Moideenkunhi, Kasaragod

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**ORDER**

Revision Application Nos. 373/452/B/2019-RA dated 07.11.2019 & 380/81/B/SZ/2019-RA dated 26.09.2019 have been filed by Sh. Shihabuddeen Moideenkunhi, Kasaragod (hereinafter referred to as the Applicant) and the Commissioner of Customs, Mangaluru, (hereinafter referred to as the department), against the Order-in-Appeal No. 102-103/2019 dated 19.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 10/2019 DC AP dated 14.01.2019, passed by the Deputy Commissioner of Customs, Mangaluru International Airport, Mangaluru. Vide the aforementioned Order-in-Original, assorted foreign currency notes equivalent to Indian Rs. 7,48,408/- recovered from the Applicant were absolutely confiscated under Section 113 (d), (e) & (h) of the Customs Act, 1962. Besides, a penalty of Rs. 2,50,000/- was also imposed upon the Applicant under Section 114 of the Act, *ibid*.

2. Brief facts of the case are that the Applicant who was travelling to Dubai from Mangaluru on 27.03.2018 was intercepted by Customs officers as he was proceeding towards security check after completing his immigration formalities. Upon being asked about the purpose of his visit to Dubai and as to whether he had anything to declare to Customs, the Applicant replied that he had nothing to declare to Customs and that he was proceeding to Dubai as he was working as Manager in Sealand Group of Restaurant, UAE, Dubai. Upon being specifically asked as to whether he was carrying any contraband goods or Indian/Foreign currency, he replied that he was neither carrying Indian currency nor any foreign currency with him, either in his baggage or on his person. On enquiry about the contents of the baggage, he informed that it contained only personal effects and it did not contain any contraband or valuable goods. Upon thorough examination of his hand baggage, foreign currency notes of various denominations concealed in purple coloured shirt, affixed with transparent coloured tape were found secreted in the bottom of his blue coloured hand baggage. The foreign currency notes were found to be equivalent to Rs. 7,48,408/- as per the prevalent exchange rate Notification No. 19/2018-Cus. (N.T) dated 15.03.2018.

In his statement dated 27.03.2018 recorded under Section 108 of the Customs Act, 1962, the Applicant, stated inter-alia that the said foreign currency notes were given to him by one of his friends named Faisal at Kasaragod, to be handed over to his contact person in Dubai who would approach him after reaching Dubai; that Faisal promised to pay the air ticket expenses i.e. Rs. 15000/- and due to lure of money he accepted his proposal; that since he did not give any valid documents for having purchased the foreign currency, Faisal asked him to conceal the foreign currency notes in the hand baggage and accordingly, he attempted to smuggle out the said foreign currency; and that he was

aware that carrying foreign currency while going abroad without valid documents is illegal and punishable under the provisions of the Customs Act and RBI guidelines.

The matter was adjudicated vide aforesaid order dated 14.01.2019. Aggrieved, the Applicant and the department both filed appeals before the Commissioner (A) who rejected their appeals and upheld the OIO as mentioned above.

3. The Revision Application has been filed by the Applicant mainly on the grounds that the order absolutely confiscating the impugned foreign currency is not justified without giving the applicant an option to redeem the seized currency on payment of redemption fine under Section 125 of the Customs Act, 1962; that he was returning to Dubai carrying back his unspent foreign currency; that the allegation that he attempted to improperly export the impugned foreign currency by way of concealment is false and baseless as the said currency admittedly was in his hand bag; that his statement was obtained under duress; that he has retracted his statement belatedly is not correct; and that the penalty imposed upon him under Section 114 is harsh.

4. The Department has filed revision application on the ground that the penalty under Section 114 is inadequate and not appropriate considering the nature of the offence and that there is a need to impose higher penalty under that section.

5. Personal hearing was held on 15.03.2024. Sh. Raghavan, Deputy Commissioner appeared on behalf of the department and reiterated the grounds mentioned in the RA. He sought setting aside of the OIA and imposition of higher penalties on the applicant. No one appeared for the applicant. However, vide email dated 14.03.2024 the authorized representative requested for postponement of personal hearing, hence the same was rescheduled on the request of the authorized representative of the applicant. In the P.H held on 05.06.2024, Sh. Sameer Kashimji, Advocate appeared for the applicant and submitted that the applicant is an NRI who has been working in Dubai for the past 6 or 7 years and the impugned currency is his own earnings and that the applicant is not a habitual offender but a law-abiding citizen. He further submitted that applicant was not aware that he was required to declare the impugned currency; that it is his first offence hence harsh action is not justified; that foreign currency is not a prohibited item and should not be absolutely confiscated but allowed to be redeemed as per OIA and that penalty should be reduced. Sh. Aravinda Raja, Assistant Commissioner appeared for the department and submitted that currency could have legitimately been transferred vis banking channels but the applicant chose to carry cash without any valid documents and that the OIO is proper and should be upheld.

6. The Government has carefully examined the matter. It is observed that the OIA impugned herein was received by the Applicant on 27.06.2019 whereas subject revision application has been filed on 07.11.2019. As per sub-section (2) of Section 129DD, a revision application shall be made within a period of three months from the date of communication to the applicant of the order against which the application is being made. Further, in terms of proviso to said sub-section (2), the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months. In the subject case, the revision application has not been filed within the normal limitation period of 03 months. There is an inordinate delay of about 40 days. The Government observes that there are three other revision applications filed by the same advocate wherein all identically worded applications for condonation of delay have been filed and the delay has been sought to be explained in following terms:

- "1. That the applicant was out of station for his job-related commitment and was not able to contact his counsel to file revision application.*
- 2. That the applicant was not in a position to follow up the appeal immediately as he was unable to come to his home town because of his job commitment and was not aware about the time limit. Hence the delay.*
- 3. That the said delay caused for filing this appeal is neither intentional nor deliberate, but only for the reason stated above. However, the said revision application has been filed well within the condonable period."*

No documentary proof or substantiation of any kind has been placed on record to explain the delay. The statement that the "delay falls within the condonable period" does not constitute "sufficient cause" under Section 129DD of the Customs Act, 1962. It would, thus, appear that request for condonation of delay has been made in a mechanical and perfunctory manner, without any consideration for the factual position. In the conspectus of these facts and circumstances, the Government is constrained to hold that the request for condonation of delay cannot be accepted.

7. As far as the RA filed by the department is concerned, there has been delay of two days in filing revision application by the department. In their application for condonation of delay, they have stated oversight as the reason for the delay. The delay is condoned.

8. The only question that, therefore, arises for consideration is whether increase in penalty imposed upon the applicant under section 114 is merited in view of the facts and circumstances of the case, as prayed for by the department in their RA. The Government

observes that the amount of penalty imposed by the original authority is commensurate with the gravity of the offence and as such increase in penalty amount is not warranted.

9. In view of the above, both the revision applications i.e. RA No. 373/452/B/2019-RA filed by the applicant and RA No. 380/81/SZ/2019 filed by the department are rejected.

*Shubhagata Kumar*  
4/7/24

(Shubhagata Kumar),

Additional Secretary to the Government of India

1. Sh. Shihabuddeen Moideenkunhi  
S/o. Sh. Moideenkunhi, MAR House  
House No. 291, Munambam, Kumbalampara  
Kolathur P.O, Chengala Via  
Kasaragod District  
Kerala-671541
2. The Commissioner of Customs,  
New Customs House, Panambur,  
Mangaluru-575010.

Order No. 125-126/24-Cus dated 04-07-2024

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. Sh. Sameer Kashimji, Advocate, 22, Sweet Home Apartments, Britto Lane, Falnir, Mangaluru-575001.
3. PPS to AS(RA)
4. Guard file.
- ✓ 5. Spare Copy.
- ✓ 6. Notice board.

ATTESTED

*Shailendra Kumar Meena*  
04/07/24  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi