

SPEED POST



F. No. 373/422/B/2019-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..18/07/24

Order No. 139 /24-Cus dated 18-07-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. COC-CUSTOM-000-APP-27 to 29/2019-20 dated 28.06.2019 passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : Sh. Martin Puthumana Thomas, Payyannur

Respondent : The Commissioner of Customs, Cochin

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ORDER

A Revision Application No. 373/422/B/2019-RA dated 10.10.2019 has been filed by Sh. Martin Puthumana Thomas, Payyannur (hereinafter referred to as the Applicant), against the Order in Appeal No. COC-CUSTOM-000-APP-27 to 29/2019-20 dated 28.06.2019, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has upheld the Order-in-Original of the Additional Commissioner of Customs, Cochin International Airport bearing No. 126/2017 dated 16.11.2017, ordering absolute confiscation of seized foreign currency of USD 4150, AED 2090 and SR 3,12,000, equivalent to Indian Rs. 55,67,991/-, under Section 113(d) & (e) of the Customs Act, 1962. Besides this, a penalty of Rs. 1,00,000/- was imposed on the Applicant & penalties of Rs. 2,00,000/- & Rs. 1,00,000/- were also imposed on two other persons under Section 114 of the Act, *ibid* for their role in smuggling of foreign currency.

2. Brief facts of the case are that one Ajith Parakkattu Chalil was scheduled to depart for Sharjah from Cochin, on 08.01.2016. He was intercepted by the officers of Customs while he was proceeding towards the security check area after completion of check-in and emigration formalities. On verification it was found that he was a frequent traveller and could not give any explanation for his frequent travel abroad. Upon being questioned as to whether he had any contraband goods with him, he replied in the negative. The above-mentioned foreign currency notes were recovered from him, which were found concealed in his baggage. He could not produce any document to prove the licit acquisition/purchase, possession or import/export of the said foreign currency.

The Applicant in his statement dated 11.01.2016, recorded under Section 108 of the Customs Act, 1962, stated *inter-alia* that for the last 20 years he was running a shop by the name of Puthumana Gold at Payyannur which was owned by him; that in addition to that, he was running a shop by the name of Pavizham Jewellery in partnership with one K.P Madhusoodhanan; that Madhusoodhanan had only a name sake share in the said firm; that apart from that, he and his wife are partners in Puthumana Residency, a Hotel & Lodge; that the firm Puthumana purchased and sold gold ornaments; that he had got sales tax registration and other legal documents for the same; that apart from the above

said firms, he had establishments by the name of M/s. Anwin Steel Trading Co. and M/s. Puthumana Steel Trading Co., in Ajman Free Zone; that he himself and one Jeff Jose, a relative of his wife, were partners in M/s. Puthumana Steel Trading Co.; that he himself, Ravindran And Madhusoodhanan were partners in M/s. Anwin Steel Trading Co. When the Applicant was informed that Indian Currency of Rs. 55,67,991/- had been seized from Ajith Parakkattu Chalil, when he came to Cochin International Airport for proceeding onward to Sharjah and that he had given a statement that the said foreign currency was handed over to Ajith by Martin, he accepted that all the above said currency notes had been sent through Ajith by him only; that prior to this also he had sent 5000 Dirhams each through Ajith and that all these amounts were being sent to for the requirement of his companies there. When asked why he tried to send assorted foreign currency worth Rs. 55,67,991/- abroad through Ajith, he replied that all the above said foreign currencies were bought on payment of Indian currency from different persons who came from foreign countries to his home town; that it was this currency that he had sent through Ajith; that the said amount was sent to buy gold from Sharjah for the requirement of jewellery; that on earlier occasions also he had purchased gold sent through different persons on payment of duty through the airports at Mangalore and Calicut; that he had with him the documents relating to payment of Customs duty on the gold sent this way; that he was ready to submit these documents; that he had sent foreign currency abroad via the above stated method from India without required documents; that he knew this was a mistake but he did this for business purpose only; that in last one year he had sent Ajith abroad nearly 15 times at his expense and also sent foreign currency through Ajith during these visits. When the applicant was shown the Mahazar drawn after the seizure of foreign currency from Ajith P.C on 08.01.2016 and the statement given by Ajith P.C on 09.01.2016, he admitted that the facts mentioned about him in the said Mahazar and the facts stated in the said statement are true and correct and that he used to pay Rs. 10,000/- as remuneration to Ajith for taking currency abroad in this manner.

The applicant retracted his above statement given on 11.01.2016 in his letter dated 11.01.2016 stating that the above statement was given under torture, threat of arrest & humiliation and the facts stated in the said statement were not true.

Another statement of the applicant was recorded on 15.01.2016 under Section 108 of the Customs Act, 1962, in which he inter-alia stated that the facts stated in his statement dated 11.01.2016 were all true and correct; that he did not have any documents at all for having brought gold from abroad on payment of duty; that he had purchased gold brought by different persons from foreign countries without any documents; that the amount paid for these purchases were not reflected in any of his accounts.

The matter was adjudicated vide order dated 16.11.2017. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which has been rejected.

3. The revision application has been filed mainly on the grounds that the lower authorities extended no opportunity for cross examination of the investigating officer; that there is no admissible evidence to reach the finding that recovery of few cheque leaves of the applicant which was handed over by the applicant to one Ajith P.C while he was proceeding abroad belongs to the applicant. It is prayed that OIO & OIA be set aside with consequential relief.

4. Personal hearing in the matter was held on 01.04.2024. Sh. Baby M.A, Advocate appeared for the Applicant and submitted that the applicant is not connected with this case. He has a gold jewellery business in India as well as in Ajwan and though K.P Madhusoodhanan is his business partner, Ajith P Chalil is not known to him. He stated that the department has not adduced any hard evidence to prove that the impugned currency was his and that he did not give Ajith or Madhusoodhanan the said currency. He further stated that penalty under section 114 has been unjustly levied on him and it ought to be set aside as it is not applicable in this case.

5. The instant revision application has been filed with a delay of 3 days. It has been informed by the Advocate of the applicant vide his letter dated 09.04.2024 that the Revision Application was prepared in time but due to inadvertent mistake 3 days delay occurred for posting the application; that there is not willful default or negligence on the

side of the applicant or his counsel in filing the Revision Application within the statutory period. She has prayed for condonation of delay as there was no willful default on their part. The delay is condoned.

6. The Government has carefully examined the matter. It is not in dispute that the impugned foreign currency was recovered from Ajith P.C. Vide his statements dated 11.01.2016 & 15.01.2016 under Section 108 of the Customs Act, 1962, the applicant stated that the impugned currency had been sent through Sh. Ajith P.C by him only; that the said amount was sent to buy gold from Sharjah for the requirement of his jewellery; that on earlier occasions he had purchased gold and sent through different persons on payment of duty through the airports at Mangalore and Calicut; that he had sent foreign currency from India to abroad without required documents; that he knew this was a mistake but he has done this for business purpose only; that in last one year he had sent Sh. Ajith nearly 15 times abroad on his expense and sent foreign currency through Ajith during these visits; that he did not have any documents at all for having brought gold from abroad on payment of duty; that he had purchased gold brought by different persons from foreign countries without any documents; that amount paid for these purchases were not reflected in any of his accounts. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction.

7. As per Regulation 5 of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015, "*Except as otherwise provided in these regulations, no person shall, without the general or special permission of Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.*" Further, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of

Foreign Currency) Regulations, 2015, any person resident in India can retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate subject to the condition that such currency was acquired by that person as payment for services outside India or as honorarium, gift, etc. Furthermore, as per first proviso to Regulation 6 of Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 "*bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations*". In the present case, the Applicant has failed to show compliance with the Regulations, as above as he has admitted in his statement that he had sent foreign currency abroad from India without required documents; that he knew this was a mistake but he has done this for business purpose only; that in last one year he had sent Sh. Ajith abroad nearly 15 times on his expense and sent foreign currency through Ajith during these visits. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) were not fulfilled and that the impugned goods were sought to be carried out of the country in violation of FEMA.

8. It is contended that the lower authorities extended no opportunity to the applicant for cross examination of the investigating officer. In this regard I concur with the findings of original adjudicating authority at paras 29 to 30.2 of the OIO in which it is stated that it is an accepted legal provision that cross examination is not a matter of right in a quasi-judicial proceeding and the adjudicating authority is vested with discretion to decide whether the facts and circumstances of the case warrants cross examination as demanded by the accused on the ground that principles of natural justice are denied to them.

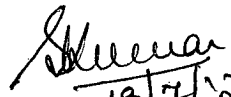
9. Another contention made by the applicant is that the ownership of foreign currency cannot be attributed to him solely on the basis of recovery of few cheque leaves from Ajith P.C from whom the foreign currency was recovered. In this connection, the original authority has clearly observed in para 33 of the OIO that the applicant had floated two companies at Ajman Free Trade Zone for the purpose of facilitating carriers of foreign

currency and to send funds to the account of Puthumana Gold, Payyannur owned by the applicant and no activities were carried out in the companies at Ajman Free Trade Zone since its inception. He also failed to produce any documents like balance sheets, statement of accounts etc. to prove legal earnings from abroad. Further, the statements of all the three persons including the applicant herein are corroborative of each other's testimony that they all were part of the smuggling nexus. Moreover, as noted by the original adjudicating authority that scrutiny of e-ticket booked for the journey of Ajith PC on 08.01.2016 from Cochin to Sharjah by Air India Flight IX 411 revealed that the said ticket was booked by the applicant herein. Further, both Ajith PC and Madhusoodhanan have admitted in their respective statements that their Visas were sponsored by the applicant. All of the above indicates that the applicant abetted the carrier in smuggling of foreign currency and thus violated the provisions of Section 114 of the Customs Act, 1962.

10. The case laws relied upon by the Applicant in support of his various contentions are not relevant/applicable in view of the facts of the case and the dictum of Hon'ble Supreme Court, therefore they do not come to his rescue.

11. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

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


18/7/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Martin Puthumana Thomas
S/o. Sh. Thomas
Puthumana House, Thayineri
Payyannur -670307.

Order No. 139 /24-Cus dated 18-07-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.

2. The Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.
3. Sh. Augustian P.A, Advocate, Faizal Chambers, Pulleppady Cross Road, Cochin-18.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

Shailendra
18/7/24
ATTESTED (शैलेन्द्र कुमार मीना)
(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