

SPEED POST



F.No. 373/151/B/SZ/2020-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...01/10/24....

Order No. 206/24-Cus dated 01-10-2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal Airport. Cus. I. No. 36/2020 dated 24.01.2020, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Fazul Rahuman Hameed Mohideen, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

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ORDER

A Revision Application No. 373/151/B/SZ/2020-RA dated 24.07.2020 has been filed by Shri Fazul Rahuman Hameed Mohideen, Chennai (hereinafter referred to as the Applicant), against Order-in-Appeal Airport. Cus. I. No. 36/2020 dated 24.01.2020, passed by the Commissioner of Customs (Appeals-I), Chennai who has partially allowed the appeal of the Applicant against the Order-in-Original No. 41/2019-20-Commissionerate-I dated 02.05.2019 passed by the Joint Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, Chennai-I.

2. Brief facts of the case are that the Applicant, an Indian Passport holder, was scheduled to depart for Singapore from Anna International Airport, Chennai, on 18.10.2018. He was intercepted by the officers of Air Intelligence Unit (AIU) after he cleared Immigration and proceeded to the Security hold area of the Departure Terminal of Anna International Airport, Chennai, on reasonable suspicion that he might be carrying Indian/Foreign currency or contraband either in his baggage or in person. Search of the hand baggage and the checked-in baggage of the Applicant resulted in recovery of assorted foreign currency viz. Euro, US Dollars, Qatar Riyal and Singapore Dollars of different denominations equivalent to Rs. 18,41,230/- which were kept concealed in a wallet and among newspapers. Since the Applicant did not possess any valid document/permit as required under FEMA for export of foreign currency and as he had attempted to smuggle the same out of India by means of concealment and non-declaration to Customs, the aforesaid assorted foreign currency equivalent to Rs. 18,41,230/- was seized along with the material objects used for concealment, under a mahazar under Section 110 of the Customs Act, 1962 read with Foreign Exchange Management (Export and Import of currency) (Amendment) Regulations, 2015 for further action.

3. In his voluntary statement dated 18.10.2018 recorded under Section 108 of the Customs Act, 1962, the Applicant stated inter-alia that he was the proprietor of M/s Ztron Enterprises, No. 245, Angappa Naicken Street, Chennai; that he used to purchase cosmetics and electronic goods from Singapore and sell them in India, earning around Rs. 25,000/- per month; that he borrowed the foreign currency from the open market by paying interest; that he was trying to smuggle the said foreign currency out of India by way of concealment and non-declaration to Customs as he did not possess any valid

document/permit as required under FEMA for export of foreign currency to prove the licit origin and legal acquisition and that he knew that it was an offence.

4. Subsequently, the Applicant vide his letter dated 27.10.2018, submitted that the currency was not concealed by him; that the foreign currency in Euro, US Dollars and Qatar Riyals were given to him by his friend Mr. Syed Ahamed Salem Abu Mohamed Uduman who came to India earlier with his cousin brother; that his friend and his cousin brother gave him the currency just before returning to Singapore. As far as the Singapore Dollars were concerned, they had been in his possession as he had made visits to Singapore on a few occasions; that the money that was given to him by his friend and others was for the purpose of starting a business in India in association with him, and that they later changed their idea and requested him to bring back the foreign currency; that the currency was not purchased by him from the market and the same was given to him by his friends; that some statements found entered in the mahazar were not his statements and that he had not made any statement voluntarily. Further, the Applicant vide his subsequent letter dated 10.11.2018 forwarded the letters from his friends wherein they had stated that the foreign currency in Euro, US Dollars and Qatar Riyals were given by them to the Applicant during their visit to Chennai on 03.08.2018 and 03.10.2018 in order to start a business and requested the Applicant to bring back the money to Singapore.

4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 41/2019-20-Commissionerate-I dated 02.05.2019 adjudicated the case by absolutely confiscating the seized foreign currency equivalent to Rs. 18,41,230/- under Section 113(d), (e) & (h) along with material objects used to conceal the impugned currency viz. newspapers with adhesive tapes under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 2,00,000/- was also imposed on the Applicant under Section 114(i) of the Customs Act, 1962.

5. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai who has partially allowed the appeal and ordered for the release of impugned foreign currency notes on payment of fine of Rs. 4,00,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 and reduced the personal penalty

from Rs. 2,00,000/- to Rs. 1,00,000/- imposed on the Applicant under Section 114 of the Customs Act, 1962. Aggrieved by the O-I-A, the Applicant filed this Revision Application.

6. The instant revision application has been filed mainly on the grounds that the order of the lower authority is against law, weight of evidence, and probabilities of the case; that the Commissioner Appeals erred in imposing penalty and confiscating the foreign currencies with an option to release under Section 125 of the Customs Act, 1962 on payment of heavy Redemption fine of Rs. 4,00,000/-; that the foreign currency seized from the Applicant is for his personal use. The confiscation of foreign currency with redemption fine has put the Applicant to irreparable loss, hardship and monetary loss. The Customs may be directed to return the penalty amount of Rs. 1,00,000/- and redemption fine of Rs. 4,00,000/- paid by him while taking back the foreign currency. The Appellate Authority ought to have taken a lenient view in respect of the redemption fine and penalty while exercising discretion to release the foreign currency in lieu of absolute confiscation contemplated under Section 125 of the Customs Act. It is prayed to set aside the O-I-A dated 24.01.2020 and requested to return the amount paid by Applicant for redeeming the foreign currency and pass such further order as deem fit and proper.

7. Personal hearings in the matter were fixed on 05.07.2024, 22.07.2024 and 09.08.2024. But, none appeared either from the Applicant's side or from the Respondent's side. However, Shri S. Ramesh, Assistant Commissioner of Customs (Legal & Review), Chennai-I vide letter dated 27.06.2024 submitted that the Applicant did not declare the impugned currency; that the goods have become prohibited since the conditions prescribed for import or export of goods have not been complied with, and that the imposition of redemption fine & penalty is just and fair.

8. The Government observes that the instant revision application has been filed with a delay of around 84 days after the expiry of three months from the date of receipt of O-I-A. In terms of sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. As per proviso to sub-section (2) of the Section 129DD of the Customs Act, 1962 provides discretion to the Government to allow an application to be presented within a further period of three months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of three months.

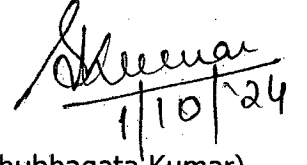
Further, the Hon'ble Supreme Court vide its order dated 10.01.2022, has excluded the period from 15.03.2020 till 28.02.2022 in computing the period of limitation during the COVID/lockdown period. Therefore, the delay is condoned.

9. The Government has examined the matter. It is not disputed that the impugned foreign currency was recovered from the Applicant's baggage. It is also on record that the Applicant had not made any declaration in respect of the currency carried by him. The Applicant's contention in the RA that the currency was for his personal use is contradictory to the statements given by him under Section 108 of the Customs Act, 1962. As far as the said retraction is concerned, it has been discussed in detail by the Appellate Authority in para (10) of the said O-I-A where he has found that it is not admissible, since there was no evidence of any coercion brought to bear upon the Applicant while recording the statement. Accordingly, the Government holds that the statement was voluntary. In this context, reliance is placed on the judgement of Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}. Thus, it is evident that the Applicant did not make a correct declaration regarding the currency being carried by him as required under Section 77 of the Customs Act, 1962, and also did not have any documents or evidence showing lawful possession of the currency.

10. 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."* Furthermore, 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 him by way of payment for services outside India or as honorarium, gift, etc. In the present case, the Applicant has failed to show compliance with the Regulations, as above. Thus, it is clear that the conditions in respect of possession and export of and foreign currency (seized from the Applicant) were not fulfilled. Therefore, the impugned currency notes were liable for confiscation and the Applicant is liable for penalty. However, keeping in view of the direction of the Hon'ble High Court of Madras in the case of Commissioner of Customs (Air), Chennai-I vs. P. Sinnasamy reported in 2016(344) ELT 1154(Mad) and submission made by the Applicant,

the Appellate Authority, taking a lenient view as explained in para (12), (13) & (14) of the said O-I-A, exercised the discretionary powers vested under Section 125 of the Customs Act, 1962 by allowing release of the impugned currency with redemption fine under Section 125 and also reduced the personal penalty to Rs. 1,00,000/-. The Government finds that the decision of the Appellate Authority appears to be just & fair and requires no interference.

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


1/10/24

(Shubhagata Kumar)

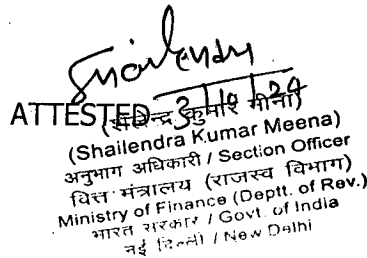
Additional Secretary to the Government of India

Shri Fazul Rahuman Hameed Mohideen,
S/o Shri Hameed Mohideen,
No. 48/20, Hussain Maistry Street,
Royapuram, Chennai – 600 103.

Order No. 206/24-Cus dated 01-10-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. Abdul Nazeer & N. Vinoth Kannan, Advocate, No. 65, Baracah Road, Varadhamma Garden Street, Kilpauk, Chennai – 600 010.
4. PPS to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board


ATTESTED 3/10/24
(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