

SPEED POST



F. No. 373/31/B/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 26/04/24

Order No. 97/24-Cus dated 25-04-2024 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-CUSTM-000-APP-27 to 29/2019-20 dated 28.06.2019 passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : Sh. K. P Madhusoodhanan, Payyannur

Respondent : The Commissioner of Customs, Cochin

ORDER

A Revision Application No. 373/31/B/2020-RA dated 27.01.2020 has been filed by K.P Madhusoodhanan, 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 a penalty of Rs. 1,00,000/- was imposed on the Applicant & penalties of Rs. 2,00,000/- & 1,00,000/- were also imposed on two other persons under Section 114 of the Act, *ibid*.

2.(i) 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 also found that he was a frequent traveller and could not give any explanation/reason for his frequent travel abroad. Upon being questioned as to whether he had any contraband goods with him, to which he replied in the negative. The above-mentioned foreign currencies were recovered from him which were found concealed in his baggage and checked-in baggage. He could not produce any document to prove the licit purchase, possession or import/export of the said foreign currency.

(ii) Ajith Parakkattu Chalil in his statement dated 09.01.2016 & 19.01.2016, recorded under Section 108 of the Customs Act, 1962, stated inter-alia that he had a lot of financial problems and in 2014, seeing his financial problems, his first cousin K.P Madhusoodhanan, i.e. the applicant told him that he would get Rs. 5000/- plus free flight tickets, if he took foreign currency abroad and he agreed to it due to his financial difficulties since his father had met with an accident and was under treatment; then the Applicant introduced him to a person named Martin Puthumana Thomas of Payyannur, Kannur, the owner of M/s.

Puthumana Gold, M/s. Puthumana Residency and partner of M/s. Pavizham Jewellery; that the Applicant also told him that all arrangements for travelling including visa, food and accommodation at Sharjah would be arranged by the said Martin Puthumana Thomas; that he met Martin Puthumana Thomas along with the applicant at a room upstairs of his jewellery shop at Payyannur; that Martin Puthumana Thomas confirmed all the conditions that the applicant had told him and he agreed to it; that he along with Martin left from Calicut to Sharjah on 12.01.2015 and on arrival at Sharjah he was taken to a studio apartment at Rola, Sharjah in possession of Sh. Martin and was introduced to a person by name Tony, who was a Malayalee; that he was not told any further details about him; they came back on the next day through Mangalore Airport and made two more visits to Sharjah on visiting visa and ticket provided by Sh. Martin; that during these visits Martin handed over him bags with bundles of foreign currency kept among clothes/dresses at his home or at the room above his jewellery shop; that he was told to hand over the currency to Sh. Tony at Sharjah; that Sh. Tony used to come to the studio apartment and collect the currency from him; that he did not know the purpose for which the money was taken abroad; that he did not bring anything on his return; that on return he received the agreed amount of Rs. 5000/- as remuneration; that in May, 2015 he got a resident visa under the sponsorship of 'Anwin Trading', Ajman Free Zone Authority; that after obtaining the resident visa he had made eleven more trips abroad during June, 2015 to December, 2015 with foreign currency given to him by Martin and handed over to Tony; that he did not know the amount of currency contained in the bundle; and that during these trips he was given remuneration of Rs. 10,000/- each on his return.

(iii) The Applicant in his statement dated 11.01.2016, recorded under Section 108 of the Customs Act, 1962, stated inter-alia that he was working with Martin Thomas Puthumana as his associate for the last 4 years; that he was Puthumana Martin's partner in M/s. Pavizham Jewellery at Payyannur but did not have any substantial investment in it; that the seized foreign currency had been entrusted to Ajith by Martin and it was he who introduced Martin to Ajith; that Ajith is the son of his father's younger brother; that as per the direction of Martin, he had visited Martin's Flat at Rola in Sharjah with foreign

currency about ten times from India; that he normally handed over the same to a person named Tony there; that he had travelled to Sharjah on Martin's expense; that Martin paid him Rs. 15,000/- as the remuneration for each such trip abroad carrying currency; that he did not know the purpose for which foreign currency was taken like this abroad or the exact amount carried; that he normally used to return immediately after handing over the amount there; and that he had told Ajith about the remuneration received for carrying currency abroad, Ajith expressed his interest in it, so he introduced Ajith to Martin and Ajith volunteered for carrying currency abroad. The matter was adjudicated vide order dated 16.11.2017. Aggrieved, the applicant filed 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 the applicant was involved in illegal export of currency even if he made visits abroad frequently; and that the adjudicating authority and the appellate authority failed to appreciate that the applicant had not done or omitted to do any act pertaining to the currency seized, which warranted the imposition of penalty on the applicant under Section 114 of the Customs Act, 1962.

4. Personal hearing in the matter was held on 01.04.2024. Ms. Linda Rajeeve, Advocate appeared for the applicant and submitted that Ajith Parakkattu Chalil was intercepted while carrying out of India, foreign currency worth Rs. 55 lakhs approximately. She stated that this money was declared verbally to Customs but was not on record. When asked how Ajith Parakkattu Chalil came by this foreign exchange, she stated that one K.P, the Applicant, was the business partner of P. Thomas Martin and also had his own silver and gold jewellery business which he ran with his cousin's help. She submitted that the entire money is from their business earnings, though they do not have any documents for the same, nor do they have any reason for not declaring this currency except to say that this was brought by them on their previous visits abroad and did not declare the same due

to oversight. Sh. Roy Verghese, Assistant Commissioner, appeared for the Respondent and submitted that this money did not belong to them as admitted in their own statements and that their tickets were booked by P. Thomas Martin, who is the business partner of the Applicant and who is the mastermind behind the attempt to smuggle out foreign exchange as stated by Ajith Parakkattu Chalil in his statements to Customs. Ms. Linda reiterated that the applicant travelled frequently due to business interests; that the money belonged to them and also that Customs has fabricated the incident of smuggling by not taking Ajith Parakkattu Chalil's verbal declaration on record. She prayed for a lenient view to be taken and for reduction of penalty.

5. The Government has carefully examined the matter. As per records, the Order-in-Appeal was despatched on 04.07.2019 and was not returned undelivered. It is further recorded that as per the All India Delivery (Transit) Norms for speed post, a speed post article is usually delivered within 4-6 days from the date of booking. Section 153 of the Customs Act, 1962, which provides for mode for service of notice, orders, etc., as it stood at the relevant time, read as under:

"153. Service of order, decision, etc. – Any order or decision passed or any summons or notice issued under this Act, shall be served, -

(a) By tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) If the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."

Further, Section 27 of the General Clauses Act, 1897 provides as under:

"27. Meaning of service by post. – Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

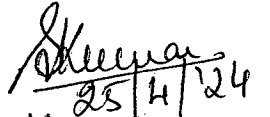
Thus, on a combined reading of the two provisions extracted above, it is apparent that the service of the Order is deemed to have been effected at the time at which it would be delivered in the ordinary course of post, unless the contrary is proved. As regards the use of Speed Post, the Government finds that the Hon'ble Orissa High Court has, in the case of Jay Balaji Jyoti Steels Ltd. Vs. CESTAT, Kolkata {2015 (37) STR 673 (Ori.)}, held that "speed post" also has to be treated as "registered post", in view of Section 28 of the Indian Post Office Act, 1898 read with Rule 66B of Indian Post Office Rules, 1933. Thus, it can be safely presumed that the Order-in-Appeal was served on the Applicant herein, within 4-6 days of date of dispatch, i.e., 04.07.2019 by speed post and it cannot be faulted unless the Applicant proves to the contrary. The Applicant has attempted to do so by submitting that, as he did not receive the Order-in-Appeal, his counsel obtained it and pursuant to that he received a copy on 02.10.2019. However, the Government finds that the Applicant had participated in the proceedings before the appellate authority as his advocate attended the personal hearing and as such, was well aware of the appellate proceedings. Hence, his contention of not receiving the OIA and further obtaining the OIA through his counsel on 02.10.2019 is a facade to cover up the time lapsed for filing the appeal on time.

6. It is also observed that the OIA was dispatched on 04.07.2019 to three persons, one of whom is Ajith Parakkattu Chalil. However, Ajith P.C has in his revision application stated that he received the OIA on 10.07.2019. It is difficult to accept that an order dispatched at the same point in time was received late by only one person and others had received it in time when all three of them reside in Payyannur. There is not a shred of evidence to substantiate his claim that he received the order on 02.10.2019.

7. As per 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. However, proviso to said sub-section (2) provides discretion to the Government to allow

an application to be presented within a further period of 3 months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. No evidence has been produced by the applicant to establish that the order was received on 02.10.2019. The date of filing the revision application is 27.01.2020. Even if it is presumed that he received the OIA after 15 days' time from the date of dispatch i.e. on 19.07.2019, then too the revision application has been filed beyond the condonable period of 03 months. Hence, this delay is beyond the statutorily provided period under section 129DD of the Customs Act and cannot be condoned.

8. The revision application is therefore rejected as barred by limitation.


25/4/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

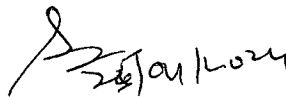
Sh. K.P Madhusoodhanan
S/o Sh. Narayanan
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Order No. 97/24-Cus dated 25-04-2024

Copy to:

1. The Commissioner of Customs, Custom House, Willingdon Island, Cochin-682009.
2. The Commissioner of Customs (Appeals), C.R Building, I.S Press Road, Cochin-18.
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.

ATTESTED



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