

SPEED POST



F.No. 373/451/B/SZ/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. 23/09/24

Order No. 197 /24-Cus dated 23-09-2024 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. 202/2019 dated 12.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Syed Darbudeen, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

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ORDER

A Revision Application No.373/451/B/SZ/2019-RA dated 06.11.2019 has been filed by Shri Syed Darbudeen, Chennai (hereinafter referred to as the Applicant/passenger/pax), against the Order-in-Appeal Airport. Cus. I. No. 202/2019 dated 12.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai who has upheld the Order-in-Original No. 286/2018-19-Commissionerate-I dated 12.03.2019 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 Dubai from Anna International Airport, Chennai, on 18.03.2018. He was intercepted by the officers of Air Intelligence Unit (AIU) after clearing Immigration and proceeding to the Security hold area of the Departure Terminal of Anna International Airport, Chennai on suspicion that he might be carrying Indian/Foreign currency or contraband either in his baggage or in person. On examination of his checked-in baggage, 22 bundles of assorted foreign currency notes viz. Saudi Arabian Riyals, Omani Riyals, Qatar Riyals, Bahrain Dinars, Kuwait Dinars and UAE Dirhams kept inside a polythene cover concealed inside a copper bottom stainless steel vessel (with its lid glued) were recovered. As the Applicant did not possess any valid document/permit from RBI as required under FEMA for export of the recovered foreign currency and as he attempted to smuggle them out of India by concealing them in his checked-in baggage and not declaring them to the Customs, the recovered foreign currency notes equivalent to Rs. 1,33,85,628/- were seized in presence of independent witnesses under a mahazar under Section 110 of the Customs Act, 1962 read with Foreign Exchange Management (Export and Import of currency) (Amendment) Regulations, 2015 read with FEMA, 1999 for further action.

3. In his voluntary statement dated 18.03.2018 recorded under Section 108 of the Customs Act, 1962, the Applicant inter-alia stated that the seized foreign currency was handed over to him by a person named 'Ravi' outside Chennai airport who had instructed him to hand over the same to a person named 'Riyaz' who would collect it from him at Dubai airport, for a consideration of Rs. 8,000/-. Subsequently, a show cause notice was

issued to the Applicant who neither replied to same nor did he appear for the personal hearing scheduled before the adjudicating authority.

4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 286/2018-19-Commissionerate-I dated 12.03.2019 adjudicated the case by absolutely confiscating the seized foreign currency equivalent to Rs. 1,33,85,628/- under Section 113(d), (e) & (h) alongwith material objects used to conceal the impugned currency viz. copper bottom stainless steel vessel, stainless steel lid and two black colour polythene covers under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 10,00,000/- was also imposed on the Applicant under Section 114(i) of the Customs Act, 1962. Aggrieved, the Applicant filed appeal before the Commissioner of Customs (Appeals-I), Chennai who has rejected the appeal and upheld the OIO. Aggrieved by OIA, the Applicant filed this Revision Application.

5. 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 Applicant had undertaken to take the baggage for handing over at Dubai without any suspicion; that the Applicant denied the averments that he had knowledge of concealment of foreign currency in his baggage; that he has not made any claim for the seized foreign currency and the Applicant had not intentionally involved in smuggling and hence penalty imposed deserves to be set aside; that he prayed to set aside/reduce the penalty imposed and render justice.

6. Personal hearings in the matter were fixed on 01.04.2024, 08.05.2024, 21.06.2024 and 12.08.2024. But, none appeared either from the Applicant's side or from the Respondent's side. Since, sufficient opportunities have been granted, the matter is taken up for decision based on the available records.

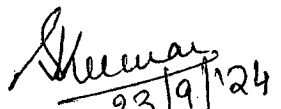
7. The Government has examined the matter. It is not disputed that the ingeniously concealed foreign currency was recovered from the Applicant. It is also on record that the Applicant had not made any declaration in respect of the currency carried by him and that he was promised a remuneration of Rs. 8,000/- for the same. 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. The act of smuggling for monetary benefit is thus established beyond doubt.

8. As regards the contention of the Applicant that he had no knowledge of concealment of foreign currency in his baggage, the Appellate Authority in para (5) of the said O-I-A has recorded that the appellant has given three voluntary statements under Section 108 of the Customs Act, 1962 stating inter-alia that the foreign currency was handed over to him by a person named 'Ravi' outside Chennai airport for handing it over to one 'Riyaz' at Dubai airport, for a consideration of Rs. 8,000/-. No retraction was made by the Applicant till the issue of the show cause notice, as observed by the Appellate Authority. It is also noticed that neither the Applicant nor his representative appeared for any of the personal hearings granted, either before the Appellate Authority or the Revisionary Authority. Therefore, above contention of the Applicant appears to be an afterthought to escape penalty. Further, 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)}, wherein Hon'ble Supreme Court 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.*" In the present case, the Applicant has admitted his involvement in the case of smuggling due to the lure of earning easy money. The Government therefore concurs with the decision made by the Appellate Authority and upholds the Order-in-Appeal.

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

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


23/9/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Syed Darbudeen,
S/o Shri Syed Abuthahir,
No.7, Bearer Street,
Mannady, Chennai – 600 001.

Order No. 197 /24-Cus dated 23-09-2024

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. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board

Shailendra
23/10/24
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