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F.No. 373/98/B/13-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.....3/8/14.....

Order No. 39/14-cus dated 05.03.2014 of the Government of India, passed by Shri D. P. Singh, Joint 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.  
322/2013-Air dated 28-02-2013 passed by the  
Commissioner of Customs (Appeals),  
Custom House, Chennai.

Applicant : Shri Shujahi,  
Thazvila House, Pallicakal,  
Kilimanoor, Kerala.

Respondent : Commissioner of Customs,  
Meenabakkam Airport, Chennai.

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ORDER

This revision application is filed by applicant Shri Shujahi, c/o Shri T. Chezhiyan, advocate, No. 8, Eldams Road, Alwarpet, Chennai against the Order-in-Appeal No. 322/2013-Air dated 28-02-2013 passed by the Commissioner of Customs (Appeals), Chennai, with respect to Order-in-Original No. 670/2012 Air dated 09-10-2012, Chennai passed by the Assistant Commissioner of Customs, Air Port, Chennai.

2. Brief facts of the case are that the applicant bound for Kuala Lumpur was found carrying assorted foreign currencies equivalent to Rs. 3,69,169/- without having valid documents for legal export of the same out of India. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. A penalty of Rs.10,000/- was also imposed on the said passenger under section 114 of Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the appeal.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The authorities below failed to consider that the foreign currencies were not concealed and it was taken openly in his purse. It is not concealed like the modus operandi of smugglers. Therefore the question of non declaration or concealment did not arise at all.

4.2 The adjudicating authority failed to note that section 113 (d) will not apply to the present case as export of currency is not prohibited under the Customs Act or any other law for the time being in force. Even if there is a prohibition for export, it will apply only if and when the export exceeds 10,000 USD.

4.3 The alleged attempt to export of foreign currencies could be what is legally able to export without any declaration. Hence the question of declaration will not also arise. Hence there is no violation of section 113 (h) of Customs Act.

4.4 The since there is no prohibition in respect of currency which is also not liable for confiscation. The imposition of penalty is wholly unsustainable.

4.5 The applicant must be wholly exonerated from imposing the penalty since there is no patent contravention of any of the provisions of Customs Act. There is no duty evasion or prohibition also. In this regard relies upon the judgment of the Supreme Court of India in Hindustan Steel case 1970 SC 253 wherein the Hon'ble Supreme Court of India has held that penalty ought not to be imposed merely because it is lawful to do so. Unless the conduct is considered as contumacious no penalty is imposable merely because there is in the opinion of the adjudicating authority a contravention of FEMA.

4.6 The authorities below failed to note that applicant, can bring up to 5000 US Dollars and he can take away the same while going abroad. The authority below also failed consider that there is no declaration called for up to 5000 US Dollars under Foreign Exchange Management (Export and import of Currency Rules) 2000, there is no declaration call for up to 5000 US Dollars are its equivalent. The amount seized from the purse of the applicant did not exceed 5000 US Dollars.

5. Personal hearing held on 17-02-2014 was attended by Shri T. Chezhiyan, Advocate on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. It is observed that the applicant while going abroad did not declare the said foreign currency to Customs as required Under Section 77 of Customs Act, 1962

and was carrying foreign currencies in excess of permissible limit of US \$ 2000 as permitted by RBI vide their Master circular dated 01-07-2003. The applicant attempted to take outside India the said foreign currency in violation of Regulation 3(a) & 5,7 of Foreign Exchange Management (Export & Import of currency) Regulation 2000 (Made under FEMA 1999) read with section 77 and 11 of Customs Act 1962. The adjudicating authority absolutely confiscated the impugned Foreign Currency under section 113 (d) (c) (h) of Customs Act, 1962. A penalty of Rs. 10,000 was also imposed on him under section 114 of Customs Act, 1962. In appeal, the Commissioner (Appeals) rejected the appeal. Now, in this revision application, the applicant has challenged the Order-in-Appeal passed by Commissioner (Appeals) and pleaded to release the impugned currency on payment of nominal redemption fine.

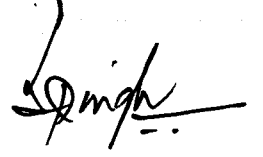
The applicant has contended that export of Foreign currency is not prohibited; that there is no declaration called for upto US \$ 5000 under foreign Exchange Management (Export and Import of Currency Rule) 2000 hence absolute confiscation of the same is not legal and proper and pleaded to release the foreign currencies. On payment of redemption fine and also requested to reduce personal penalty imposed in this case.

8. On perusal of records Government notes that applicant failed to produce valid documents for legal possession of said foreign currencies and also did not declare the same before customs being in excess of permissible limit. Therefore, applicant has violated the provisions mentioned above. As such order for confiscation of said currency and imposition of fine cannot be assailed.

9. Keeping in view the principles laid down in the above judgments the order for absolute confiscation of impugned currency is harsh. Government therefore allows redemption of equivalent amount in Indian Rupees of said foreign currency for home consumption on payment of redemption fine of Rs. 1,00,000/- in lieu of confiscation under section 125 of Customs Act, 1962. The personal penalty imposed by the adjudicating authority cannot be called harsh and therefore there is no reason to modify the same. The impugned Order-in-Appeal is modified to this extent.

10. The revision application is disposed off in above terms.

11. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Shri Shujahi,  
Thazvila House, Pallicakal,  
Kilimanoor, Kerala.

ATTESTED


(टी. आर. आर्य / T.R. ARYA)  
अधीक्षक, आर.ए / Superintendent RA  
वित्त मंत्रालय, राजस्व विभाग  
Ministry of Finance, (Deptt. of Revenue)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

Order No. 39 /14-Cus Dated 05.03.2014

Copy to:

1. The Commissioner of Customs, Custom House, Chennai-1
2. The Commissioner of Customs (Appeals), Custom House, 33 Rajaji Salai, Chennai-600001.
3. The Assistant Commissioner of Customs, Air Cargo Complex, Chennai-600001.
4. Shri T. Chezhiyan, advocate, No. 8, Eldams Road, Alwarpet, Chennai-18.
5. PS to JS(RA)
6. Guard File.
7. Spare Copy

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(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)