

	GOVT. OF INDIA :OFFICE OF THE COMMISSIONER OF CUSTOMS: CUSTOM HOUSE: KANDLA. NEW CUSTOMS BLDG, NR. BALAJI TEMPLE KANDLA, KUTCH, GUJARAT PHONE : 02836-271468-469 FAX : 271467
---	--

DIN 20240971ML000000F0A4

A	F.No.	GEN/TECH/Misc/1371/2024-R and I-O/o Commr-Cus-Kandla
B	Order in Original No.	KDL/ADC/DPB/23/2024-25
C	Passed by	Dev Prakash Bamnavat, Additional Commissioer, Custom House, Kandla
D	Date of order	17-09-2024
E	Date of issue	17-09-2024
F	Show Cause Notice Nos. & Date	Nil
G	Noticee	MT Devashree (Through the Vessel agent M/s. Arise Marine, Plot No.38/40, Office No.18, FF, Swaminarayan Building, Gandhidham)

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6(1) of the Customs (Appeal) Rules, 1982 in quadruplicate in Form C.A. -3 to:

The Commissioner of Customs(Appeal), Kandla,
Having his office at 7th Floor, Mridul Tower, Behind
Times of India, Ashram Road, Ahmedabad-380009

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, Interest, fine or penalty demanded is Rs.5 lakh(Rupees Five lakh) or less Rs.5000/- in cases where duty, interest, fine or penalty, demanded is more than Rs.5 lakh(Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakh) and Rs.10000/- in cases where duty, interest fine penalty demanded is more than Rs. 50 lakhs (Ruppes Fifty lakhs). This fee shall be paid through bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/- under court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50(Fifty paisa only) as prescribed under Schedule-1, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs(Appeal)Rules, 1982 and the CESTAT(Procedure) Rules, 1982 should be adhered to in all respects.

1.BRIEF FACTS:

1.1 The vessel MT. Devashree arrived in indian Territorial waters 12.07.2024 and berthed on 13.07.2024 at Oil jetty-05, Deendayal Port, Kandla. They had not declared Thuraya Satellite Phone on arrival and the boarding officer completing the boarding formalities . After getting the Port Clearance No. 764 dtd. 14.07.2024 from Customs Kandla, the vessel sailed from the Deendayal Port, Kandla.

1.2 Input received that Thuraya Satellite transmission (from Thuraya Satellite Phone with IMEI No. 35887610-743356-8) intercepted from the vessel MT Devashree at position 23°03'13N, 068°18'52"E at 1135 hrs on 12/07/2024 and 22°48'28.80N, 068°47' 05.28"E at 1429 hrs on 12/07/2024

1.3 On receipt of the above information the vessel MT Devashree was boarded on 2142 hr of 13/07/2024 at Oil Jetty No.5, Kandla port by Customs alongwith other agencies viz; FO, Indian Coast Guard, Mundra, PSI, SOG, Gandhidham, IB, Gandhidham, CISF, Kandla, ASI, Kandla Marine Police Station and Constable, Kandla Marine Police Station along-with PO(R&I). The officers went to the Master and and the third officer and explained the purpose of visit. The Master of the vessel was asked about the possession/use of Thuraya Satellite phone, the Master informed that they are not in possession of Thuraya satellite phone. The team again asked the Master about the Thuraya Satellite phone, then the Master informed that they are in possession of Thuraya satellite and handed over the same to the investigation team. After that the investigation team switched on the Thuraya phone for the investigation at 2208 hrs of 13/07/2024 at Oil jetty no.5 of Kandla Port. On going through the Thuraya phone, it was found that the last call made from the Thuraya satellite phone was at 04:45pm of 20/04/2024 to 919561508170. The Thuraya satellite phone was switched off around 2214 hr of 13/07/2024 after checking the call logs and message logs. On further investigation, it was also found that the IMEI NO, of Thuraya Satellite phone available at the vessel 35887610-743356-8.

On checking the navigation system, it was found that at 113Shr of 12/07/2024 the vessel coordinates were N23°02.749' E068°19.669' and at 1429hrs of 12/07/2024 the vessel coordinates were N22°48.5 18' E068°47.365. On the basis of IMEI no of Thuraya present on the vessel and the coordinates of the vessel at the time of Thuraya transmission, the Indian Coast Guard are in view that the said Thuraya transmissions

were made from M.T. Devashree only.

1.4 The use of Thuraya is not freely allowed in India under Section 6 of the Indian Wireless Act and Section 20 of the Indian Telegraph Act. Further, as per DGS Order No. 02/2012 dated 16.05.2012 issued by Director General of Shipping. Satellite Phone can only be used after getting No Objection Certificate from the Department of Telecommunication.

1.5 It, prima facie appears, that provisions of Section 111D) of the Customs Act, 1962 was violated as the coordinate position of vessel. Therefore the above mentioned Thuraya Satellite phone was seized under Seizure. Memo dated 14.07.2024 under Section 110 of the Customs Act, 1962. It also appeared that Section 6 of the Indian Wireless Act, Section 20 of the Indian Telegraph Act and DGS Order No. 02 of 2012 dated 16.05.2012

2. FINDINGS:

2.1 I have carefully gone through the facts of the case, and the documents available on record. I proceed to decide the case accordingly: The master of the vessel MT Devashree (Through the Vessel agent M/s. Arise Marine, Gandhidham) has requested for wavier of SCN in the case, and requested to issue a speaking order and decide the case on merit which is taken on record.

2.2. The issue involved in the present case is regarding use of Thuraya Satellite Phone in Indian waters on 12.07.2024 which is banned/prohibited in India/ Indian Waters.

2.3 The statement of the master of the vessel has been recorded and the master agreed regarding the availability of the Thuraya Satellite Phone. It is a fact that THURAYA Transmission had been activated on the vessel M.T. Devashree and the satellite signals were intercepted by various government agencies which lead to this investigation as directed by various Authorities.

2.4 I find that as per master's statement the Thuraya Satellite Phone was not used by the master. The SIM placed in Satellite phone was last valid till 15th June 2024. He had not declared Thuraya Satellite Phone on the vessel in Customs documents and Pans. But there was a satellite phone available on the vessel and informed the same to the authorities.

2.5: On checking the navigation system, it was found that at 1135hr of 12/07/2024 the vessel coordinates were N23°02.749' E068°19.669' and at 1429hrs of 12/07/2024 the vessel coordinates were N22°48.5 18' E068°47.365. On the basis of IMEI no of Thuraya present on the vessel and the coordinates of the vessel at the time of Thuraya transmission, the Indian Coast Guard are in view that the said Thuraya transmissions were made from M.T. Devashree only.

2.6 I find that the master of the vessel vide his letter dtd. 14.07.2024 authorized to M/s. Arise Marine, Gandhidham for handling the payment

of penalty whatever ordered by customs Kandla and any further procedure and M/s. Arise Marine vide their letter dated 14.07.2024 and undertaking a Bond has agreed to make payment of any penalty charges imposed on the vessel or on the master.

2.7 I find that the voluntary statement of the master of vessel given on 13.07.2024 in presence of various other agencies and statement dtd. 13.07.2024 under Section 108 of Customs Act, 1962, but no antinational activity or mala fide intention was noticed. Hence, after taking undertaking from Shipping agents M/s. Arise Marine, and not noticing anything to the contrary, the Port Clearance was given to the vessel.

2.8 - I find, that the use of Thuraya Satellite Phone violates the provision of section 111 (D) of Customs Act, 1962 and Section 6 of the Indian Wireless Act, Section 20 of the Indian Telegraph Act and DGS Order No.06 of 2012 dated 16.05.2012. I therefore, find the subject Thuraya Satellite Phone is liable for absolute confiscation for violating Section 111(D) of the Customs Act, 1962.

2.9 I find that the master of the vessel is liable to pay penalty under section 112(a) of the Customs Act, 1962 for violating Section 111(D) of the Customs Act, 1962.

3. In view of the above, I pass the following order:-

ORDER

(a) I order for absolute confiscation of the Thuraya Satellite phone, MNB-01 BDU, IMEI No-35887610-743356-8, alongwith SIM Card, which was seized on board from the vessel M.T. Devashree at OJ-5 of Deendayal Port, Kanda under Seizure Memo dated: 13.07.2024 for violating Section 111(D) of the Customs Act, 1962.

(b) I impose penalty of Indian Rs. 50,000/- (Rupees Fifty Thousand only) under section 112(a) of the Customs Act, 1962 on MD ABDULLAH AL MAMUN, Master of Vessel M.T. Devashree (Through the Vessel agent M/s. Arise Marine, Plot No.38/40, Office No.18, FF, Swaminarayan Building, Gandhidham).

This order is passed without prejudice to the any other action which may be contemplated against the Master/Managers/ Owners or any other person in terms of any provision of the Customs Act, 1962 and any other law for the time being in force.

Signed by
Devprakash Bamanavat
Date: 17-09-2024 15:21:00

Yours faithfully,

(Dev Prakash Bamanavat)
Additional Commissioner
Custom House, Kandla

To,
MD ABDULLAH AL MAMUN, Master of Vessel of M.T. Devashree (Through the Vessel agent M/s. Arise Marine, Plot No.38/40, Office No.18, FF, Swaminarayan Building, Gandhidham).

Copy to:

1. The Commissioner of Customs, Custom House, Kandla
2. The Assistant Commissioner(RRA), Custom House, Kandla
3. The Assistant Commissioner(TRC), Custom House, Kandla
4. The Superintendent(EDI), Custom House, Kandla for uploading the same on Kandla Commissionerate website.
5. The Assistant Commandant, Indian Coast Guard, Mundra.
6. The ACIO-I, Central Intelligence Bureau, Gandhidham.
7. The Police Inspector, marine Police, Kandla.
8. The Police Inspector, Special Operations Group, Gandhidham.
9. The Inspector, Central Special Bureau, Gandhidham.
10. Guard File.

Received on Behat of ARIES MARINE
Relge
ARJUN Alhurya
7698001446