

REGISTERED
SPEED POST



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 373/120/B/13-RA/1010

Date of Issue :31.01.2018

ORDER NO.05/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.01.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. Sanjivakumar Korivi.

Respondent : Commissioner of Customs, Chennai.

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus No. 1558/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Sanjivakumar Korivi (hereinafter referred to as the Applicant) against the order no 1558/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the appellant was proceeding to Singapore on 17.10.2012 from Chennai. The officers attached to the Air Intelligence Unit, Chennai Customs recovered foreign currencies equivalent to Indian Rupees Rs. 2,64,527/- from the appellant. As the Applicant could not produce any document to substantiate the purchase of the impugned foreign currencies from an authorized foreign exchange dealer. The Original Adjudicating Authority confiscated the foreign currencies absolutely, under Section 113 (d)) of the Customs Act 1962 read with FEMA 1999 a penalty of Rs.5,000/- was imposed under Section 114(a) of the Customs Act. 1962.

3. Aggrieved by the order of the Original Adjudicating Authority, the Applicant filed an appeal before the Commissioner of Customs(Appeals). In the grounds of appeal the appellant contended that he had purchased the US dollars from Shirdisai's Fortune Forex Pvt. Ltd., Guntur on 16.10.2012 who is an authorised money exchange dealer and the said money exchanger had issued a cash memo dated 16.10.2012; that though the applicant informed the officers of customs at the time of his interception that he had purchased the dollars from the authorized money changers and also that he would produce memo for the said currencies the officers did not listen, and registered a case as if he had purchased them in the grey market; that the appellant had also purchased \$ 1500 from the State Bank of India. Guntur and the said bank had issued a receipt dated 18.10.2012 for the purchase, but the same was not considered.

3. The Commissioner of Customs (Appeals) Chennai, rejected the Appeal on the grounds that the Applicant had not produced the relevant documents before the Original Adjudicating Authority at the relevant time and producing the documents at the Appellate stage appears to be an after thought.



DM

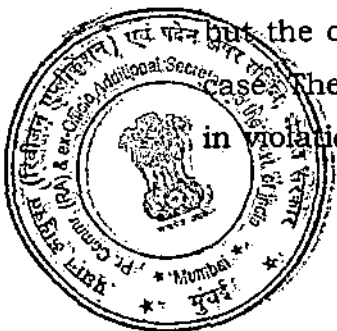
4. Aggrieved by the order of the Commissioner (Appeals), the Applicant has filed the Revision Application on the following grounds;

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

4.2 That he had purchased the US \$ 3000 Rs.1,62,764/- from SHIRDISAI'S FORTUNE FOREX PVT LTD, Guntur-522007 on 16.10.2012 who is an authorized money changer under RBI and the said money changer has issued a cash memo on 16.10.2012. Though the appellant informed the officer of customs at the time of his interception that he has purchased the US \$ from the authorized money changer and also undertake to produce the cash memo for the said currency, they did not hear his words and registered a case as if he purchased in the grey market.

4.3 The appellant further submits that he had also purchased the US \$ 1500 from the State Bank of India, Guntur branch, Kannavarithota, Guntur 522004. Further the State Bank of India, Guntur has issued a certificate on 24.09.2012 as he purchased the US \$ dollar sum of 1500 from their bank. Further the appellant went to Singapore where he exchanged the US \$ dollar in to Singapore dollar from ANNESHAI TRADING, NO. 75, High street No.1-01, Wismasugnomal, Singapore 179435 who is an authorized money changer in Singapore and also obtained cash receipt M. No 004037 dated 27. 09.2012.

4.4 The appellant further submits that though he had possessed the valid documents for the legal acquisition of the said seized foreign currency, and asked the officers of customs to give him an opportunity to produce the documents relating to legal acquirement of foreign currency, but the officers forced him to sign in the hearing sheet also registered a case. The adjudication authority also hurriedly passed an order which is in violation of natural justice and an abuse of process of law. Since the



[Handwritten signature]

appellant is native of Andhra Pradesh and he did not know Tamil and he was unable to express his difficulties with them.

4.5 The case detection was not in pursuant to any information. The discovery was on account of the fact that the appellant kept the foreign currency in the hand baggage and the officer also found the currency kept in the baggage and the appellant voluntary gave the currency to the officers.

4.6 There is no contumacious conduct on the part of the appellant but the conduct of a person who was ignorant of the law. Since he violated the provisions of Customs Act, 1962 and FEMA 1999.

The Applicant has cited various assorted judgments in support of his case and prayed that the Hon'ble Revision Authority may please release the foreign currency sum of Rs. 2,64,527/- on payment of redemption fine and reduce the personal penalty sum of Ps. 5, 000/- and thus render justice.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the grounds of Appeal and pleaded that the Order in Appeal be set aside. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant had not produced relevant documents to substantiate that he had purchased the impugned foreign currency from an authorized foreign exchange dealer before the Original Adjudicating authority. However the same was produced before the Appellate authority. The genuinity of these evidences have been dismissed as an afterthought by the Appellate authority. The Government is of the opinion that these receipts should have been properly scrutinized before



being discarded as an afterthought and proceeding for absolute confiscation. On this fact alone the Order in Appeal needs to be set aside.

7. Further, the applicant has submitted a reported judgment in the case of Chellani Mukesh reported in 2012 (276) ELT 129 (GOI), wherein the Hon'ble Revisional Authority has held that "consequent to liberalisation and various decisions of CESTAT/GOI, Govt. feels that absolute confiscation is very harsh and an option for redemption can be given under Section 125 of the Customs Act, 1962. Accordingly, the confiscated Indian currency is allowed to be redeemed on payment of Redemption Fine in lieu of confiscation, under Section 125 of the Customs Act, 1962."

The ratio of the said judgement is squarely applicable to the facts of this case. In the case of Gyanchand Jain vs Commissioner of Customs 2017(325) ELT 53 (Tri Mumbai) it was held as follows;

"The original authority has held that the appellant had not declared that he was carrying foreign exchange, that his claim of accumulation of foreign currency over the years was not acceptable in the absence any evidence to support it and that the purpose for which the currency was carried was not in accordance with law.

I find that there is no dispute that the appellant had indeed carried the said foreign currency. No evidence has been placed on record to show that declaration was necessary for carrying of foreign currency by a departing passenger or that his inability to explain the source of foreign currency would render it liable to confiscation under Customs Act, 1962. The finding in the impugned order of illegal purpose is not tenable as action in relation to illegal purpose, if any, is vested with the appropriate authority under the appropriate statutes other than Customs Act, 1962.

Customs Act, 1962 is concerned with the illegal importation into India and exportation out of the country. In the absence of any prescription requiring



[Handwritten signature]

declaration of foreign currency taken out of the country I find no justification to sustain the impugned order"

that there is no provision requiring declaring foreign currency taken out of the country under the Customs Act, 1962 and absolute confiscation was set aside. by departing ation is necessary for carrying currency by departing passenger and that absolute confiscation for not explaining the source of said currency under the Customs Act, 1962.

8. In the case of Hargovind Das vs Collector of Customs 1992(61) ELT 172 (SC) the Apex court has held that *"The Collector of Customs has passed an order for absolute confiscation of the imported goods without giving the appellants an option to redeem the same on payment of such fine as may be considered appropriate by him.....We are of the opinion that since the Additional Collector of Customs who passed the order for absolute confiscation had the discretion to give the option for redemption, it was but just, fair and proper that he addressed himself to this question. The order passed by the Additional Collector of Customs as confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal therefore requires to be modified only to this limited extent"*. In the instant case also the option for redemption was not exercised by the Original Adjudicating authority.

9. Government also observes that the currency being taken abroad was within limits and was not in commercial quantity. There was no allegation of ingenious concealment of the foreign currency, and neither was there a concerted attempt at smuggling the currency out of India, mere possession of currency is not an offence. Government therefore holds that absolute confiscation of the foreign currency harsh and not commensurate with the facts and circumstances of the case the applicant can be treated with a lenient view.

7 Taking into consideration the foregoing discussion, Government, sets aside the absolute confiscation in the Order-in-Appeal No. C.Cus No.



1558/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals) Chennai and allows redemption of the confiscated currency in lieu of fine. Hence, Government allows the impugned currency to be released on payment of redemption fine of Rs. 50,000/- (Rupees fifty thousand). Government keeping in view the overall circumstances of the case, observes that the penalty imposed by the original Adjudicating Authority to be reasonable and hence upheld.

8. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

9. So, ordered.

(Signature)
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 05/2018-CUS (SZ)/ASRA/MUMBAI

DATED 31.01.2018

To,

True Copy Attested

Sanjiva Kumar Korivi,
Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

(Signature)
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Chennai-I.
2. The Commissioner of Customs (Appeals-I), Chennai.
3. Shri S. Palinikumar, Advocate, No. 10, Sukurama Street, Second Floor, Chennai -600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

