

REGISTERED
SPEED POST



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/115 & 115A/B/16-RA

2681

Date of Issue

09.04.2021

ORDER NO. 102/2021- CUS (SZ)/ASRA/MUMBAI DATED 31.03.2021 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

Applicant : Commissioner of Customs, Chennai.

Respondent : Shri Murali C. K.

Smt. Mudunuri Jhansy

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.CUS-I
No. 583 & 584/2015 dated 28.09.2015 passed by the
Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by the Commissioner of Customs, Chennai. (herein referred to as Applicant department) against the order C. CUS-I No. 583 & 584/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Murali C. K. and his wife Smt. Mudunuri Jhansy, both Singapore nationals at the Anna International airport after their immigration. The respondents had not declared that they were carrying Rs. 4,00,000/- in Indian currency each which was recovered from their baggage.

3. After due process of the law vide Order-In-Original No. 368 & 369/AIU A dated 30.03.2015 the Original Adjudicating Authority confiscated the currency absolutely and imposed a penalty of Rs. 40,000/- each on both the respondents.

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order C. Cus-I No. 583 & 584/2015 dated 28.09.2015 set aside the absolute confiscation of the Original Adjudicating Authority and allowed redemption of the currency on payment of a redemption fine of Rs. 40,000/- on each of the respondents and reduced the penalty to Rs. 10,000/- on both the respondents.

5. Aggrieved with the above order the Applicant department has filed this revision application the passengers, Shri.C. K. Murali and Smt. Mudunuri Ihan, have contravened the Section 77 and 11 of Customs Act., 1962 read regulations 3 (1) of Foreign Exchange Management (Export and Import of Currency) Regulations 2000 and thereby liable for absolute confiscation under Section 113 (d), (e) & (h)(I) of the Customs Act., 1962. Whereas, the appellate authority, without considering the following aspects, given an option to redeem the Indian

currency of Rs. 8,00,000/- (Rs.4,00,000/- each) on payment of redemption fine of Rs.80,000/- (Rs.40,000/-each) and a reduced penalty of Rs.10,000/- each.

5.1 In exercise of the powers conferred by clause (g) of sub-section 6, sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999, the Reserve Bank of India has framed Foreign Exchange Management(Export and Import of currency) Regulations, 2000 vide Notification No. FEMA 6/RB-2000 dated 03.05.2000 Regulation 3 of the said Foreign Exchange Management (Export and import of currency) Regulations, 2000 deals with export and import of Indian currency and currency notes. As per Regulations 3, any person resident in India may take outside India up to an amount not exceeding Rs.25,000/- and any amount in excess thereof requires permission from the Reserve Bank of India and in the instant case the passenger has not obtained any such permission.

5.2 As the passenger has not obtained any permission from the Reserve Bank of India or any authority for export of Indian Currency in excess of Rs.25,000/- as required under the law, the goods under export are prohibited goods and accordingly are liable to absolute confiscation under the provisions of Section 113 (d) and (e) of the Customs Act, 1962.

5.3 The order of the Appellate Authority may have the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming offending goods even when caught by Customs which totally works against deterrence. Further, the quantum of fine and penalty levied by the appellate authority seems to be very low as the penalty in each case has been reduced and also the fine imposed is only Rs.40,000/- each.

5.4 The Revision Applicant cited case laws in support of their contention and prayed that the redemption of the currency be set aside or any such order as deem fit.

6. The Respondent meanwhile filed a Writ Petition No. 3837 to 3838 of 2017 before Hon'ble High Court of Madras praying for a Writ of Certiorari to quash the proceedings pending on the file of the first respondent (Revision authority) in file no. 380/115/B/16-RA dated 19.08.2016. The Hon'ble High Court of Madras interalia issued the following orders:-

".....this Court is of the view that the petitioners have to approach the first respondent (Revision authority) and file their objections by raising their contentions. Accordingly, these writ petitions are disposed of, by giving liberty to the petitioner to file their objections to the show cause notice before the first respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections, the first respondent shall dispose of the revision within a period of four weeks from the date of receipt of the objections raised by the petitioners. It is made clear that this Court is not expressing any views on the merits of the matter, as it is for the Revisional Authority to consider and decide. No cost. Consequently, connected miscellaneous petitions are closed. No costs."

7. Both the Respondents in the case have filed written submissions as under,

7.1 The Petitioner herein suffered an order of absolute confiscation of INR Rs.400.000/- at the hands of the Respondent vide Order in Original O.S. No.368/2915 dated 31.03.2015 during her travel to Singapore along with her husband. The objections are being put forth pursuant to the orders dt.17.04.2017 of the High Court, Madras in W.P. No. 3838 of 2017 received on 23.05.2017.

7.2 The Appellate Commissioner was approached as provided for under the Customs Act, 1962 (the said Act) who vide Order in Appeal No.582/2015 dated 28.09.2015 imposed a penalty and gave an option of redeeming the confiscated Indian Currency by paying a Redemption Fine. The said order was dispatched from the Commissioner of Customs-Appeals on 12.10.2015 and the same was received by Petitioner on 13.10.2015. The orders passed were duly complied with and all payments of redemption fine of Rs.40,000/- and penalty of Rs. 10,000/- was made and proofs submitted to authorities concerned. Thereon the instant authority and the Respondents with much to the angst and dismay of the Petitioner, the Petitioner was informed that the Order had not been received and when they receive the order the same may be subject to review.

7.3 It is relevant to submit that a communication dated 19.08.2016 was received from the office of the instant authority viz Yourself, intimating about the under section 129DD of the said Act. It was submitted that in the said communication against the copy being marked to the Respondent, it has been specifically stated about a requisition being made to the Revision Applicant to furnish the application to condone the delay in filing the Revision Application. Thus the above facts only establishes the application under section 129DD has been made by the Respondent after considerable delay beyond the limitation period as prescribed under section 129 DD of the said Act.

7.4 By virtue of the above said facts the instant Revision Application in the file no.380/115/B/16-RA is liable to be set aside as being made beyond the limitation period prescribed under section 129DD of the said Act, as the same is having been made in gross abuse and arbitrary exercise of powers conferred on the Respondent vide section 129DD of the said Act.

7.5 The Revision Application if allowed to stand will cause great legal injury which according to the Honorable Courts is a fit case liable for being set aside. This especially when the Petitioner had pursuant to the said orders complied with the same the Respondent cannot now sit in a review over the said orders belatedly.

7.6 It is also submitted that on the aspect of the Revisional authority being of the same rank as the Appeal Commissioner and ought not to thus sit on appeal - the Punjab and Haryana High Court in NVR Forgings Vs. Union of India has held that the Joint Secretary who is the Revisional Authority being of the same rank as the Appeals Commissioner cannot sit in judgement of the same with a view to revising it for which reason also the revision application is liable to be set aside.

7.7 On the aspect of the limitation vide u/s 129DD under the Customs Act, 1962 as admitted by the instant authority herein relevance to the orders of the Bombay High Court - Pol India Agencies Ltd. V. Union Of India - 1994 ECR 440 Bombay, 1994 (74) ELT 523 Bom - <https://indiankanoon.org/doc/1691972/> which

clearly mentions where there is a delay beyond the period 3 + 3 months the same cannot be entertained.

7.8 Thus all proceedings in the Revision Application in file No.380/1 15/B/1 6-RA ought to be dismissed failing which the Petitioner will suffer legal injury, loss and hardship resulting in gross injustice at the hands of the Respondent. Thereon the instant authority should order immediate re- payment of the monies therein.

7.9 It is therefore prayed that the authority herein may be pleased to dismiss the revision proceedings pending in file No.380/115/B/16-RA and pass such further or other orders as may deem fit and proper in the facts and circumstances of the case and thus render justice.

8. Accordingly personal hearings in the case were scheduled on 28.08.2018, 25.09.2018 and 27.11.2018. Nobody attended the hearing on behalf of the Applicant department or Respondent. As there was a change in the Revisionary Authority a hearing in the case was again scheduled on 08.12.2020, 15.12.2020, 22.12.2020 and 25.02.2021. Again nobody attended the hearing on behalf of the Applicant department or Respondent. The case is therefore being decided on merits.

9. The Government observes that the Respondents have in their reply to the Revision Application have claimed that the Revision Application is barred by limitation. Government however, notes that the Revision Applicant has categorically claimed that the Order in Appeal was received by them on 01.06.2016, and accordingly the Revision Application has been filed on 30.06.2016. Be that as it may Government proceeds to decide the Revision Application on merits.

10. Appellate Authority while allowing release on redemption fine has observed

"4. I have gone through the facts of the case, order grounds of appeal and other connected papers. It is stated that appellants are PIOC holders

who came to Chennai from Bangalore on 30.03.2015. To meet the personal exigencies of his aged mother's medical expenses he has brought Rs. 8,00,000/- cash to hand over the said money to his brother. That the appellants aged mother, and brother Mr. C.K. Ramu are both residents of Mylapore, Chennai. His brother was supposed to return to Chennai from Trichy around 21.00 hrs to 22.00hrs on 30.03.2015 to meet the Appellant and collect the cash at the Airport enroute home. But the Vehicle in which he travelled broke down on the National Highway between Ulundurpet and Villupuram due to mechanical failure and he could not reach the Airport on time to collect the money. So the need for a specific declaration did not arise as it was not the intention of the appellant to take the money outside the country. The appellant orally declared the fact to the Customs Authorities and said that the money will be handed over to his relative on arrival at the Airport. The officers advised the appellant and his wife to wait at a particular place near the clearance area. They waited patiently and at 01.00hrs of 31.03.2015, the officers directed them to hand over the money and started taking inventory of the INR cash. That having recorded the inventory they were assured that the cash would be handed over to their relative on arrival. When their relative reached the Airport, around 01.30hrs on 31.03.2015, the appellant requested the officers to hand over the cash to him but the officers informed that the cash was detained and seized. They took the signatures in some unexplained forms. The appellants were informed that the cash of Rs. 8 lakhs has been absolutely confiscated apart from imposition of penalty Rs.40,000- on each of them. On account of this the appellant and his wife had to abandon their flight inspite of having confirmed tickets and were forced to stay back and they took another flight the following day.

5. *I find that the impugned order does not speak about the facts and circumstances under which the detention and seizure have been made. The appellant had informed the officials his intent of carrying the money to help his brother in Chennai who was supposed to meet him at the Airport. The impugned order states that the passenger was intercepted in the security area and baggage was examined. The appellant is a person of Indian Origin whose normal residence is abroad with few*

previous visits to India. They have no previous offence cases registered against them. The impugned order does not speak about the facts and circumstances of the case which has to be analysed before taking a decision. In view of the above, I feel absolute confiscation of the Indian currencies is unwarranted. Hence I set aside the order of the lower adjudicating authority and (1) Release the Indian Currencies of Rs.4,00,000/- confiscated from the Appellant Shri.C.K. Murali on payment of Redemption Fine of Rs. 40,000/- and I reduce the Penalty imposed on Shri.C.V. Murali from Rs.40,000/- to Rs.10,000/-. (2) Release the Indian Currencies of Rs.4,00,000/- confiscated from the Appellant Smt. Mudunuri Jhansy W/o. Shri.C.K. Murali on payment of Redemption Fine of Rs.40,000/- and I reduce the Penalty imposed on Smt. Mudunuri Jhansy from Rs.40,000/- to Rs.10,000/-."

11. Government does not find enough grounds to differ with the above findings of the Appellate authority. In this regard the Government relies on the conclusions drawn in the case of Raju Sharma V/s Union of India reported in 2020 (372) ELT 249 (Del.) wherein the Hon'ble High Court of Delhi states "*the actual grievance of the Revenue before the Revisionary Authority, was that the seized currency was "prohibited", redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated. This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, in such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of Rs. 50,000/-, no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). Exercise of discretion, by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motives [Mangalam Organics Ltd. v. UOI - (2017) 7 SCC 221 = 2017 (349) E.L.T. 369 (S.C.)]. No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine of 50,000/-."*

Therefore Revision Application does not survive on merits. Revision application is therefore liable to be dismissed.

12. Revision application is accordingly dismissed.

(Shrawan Kumar)
31/03/21
(SHRAWAN KUMAR)

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

ORDER No. 02/2021-CUS (SZ) /ASRA/

DATED 31.03.2021

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Murali C. K., 403 8th (B) 30th Cross, 4th Block, Jayanagar, Bangalore 560 041.
3. Smt. Mudunuri Jhansy, 403 8th (B) 30th Cross, 4th Block, Jayanagar, Bangalore 560 041.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.