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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 380/96/B/16-RA | 2421 Date of Issue 19|12|2018

ORDER NO. 1061/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.11.2018 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 : Commissioner of Customs (Airport), Chennai

Respondent : Shri Abdul Rahim Sahabudeen

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 11 & 12/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Commissioner of Customs (Airport), Chennai (herein referred to as Applicant) against the order No. C. CUS-I No. 11 & 12/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, was bound for Singapore and was intercepted at the Anna International Airport on 01.02.2015. Examination of his baggage and person resulted in the recovery of 3800 numbers of INR 500/- each totally equivalent to Rs. 19,00,000/- (Rupees Nineteen lakhs). The currency was recovered from the stroller hand baggage carried by the Respondent.

3. After due process of the law vide Order-In-Original No. 78/2015 - AIU dated 11.09.2015 the Original Adjudicating Authority ordered confiscation of the currency under Section 113 (d) (e) & (h) of the Customs Act,1962, but allowed redemption of the same on payment of redemption fine of Rs. 7,50,000/- and imposed a penalty of Rs. 1,00,000/- under Section 114 (i) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant and the respondent both filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. CUS-I No. 11 & 12/2016 dated 29.01.2016 reduced the redemption fine to Rs. 5,00,000/- and also reduced the penalty to Rs. 75,000/- and rejected the Appeal of the applicant.

4. Aggrieved with the above order the Applicant department has filed this revision application interalia on the grounds that;

4.1 the order of the Commissioner (Appeals) as well as the Original adjudication order are neither legal nor proper; As the passenger was not in possession of any valid document for legal export of currency the same " prohibited goods"; The passenger has not satisfied the requirement of regulation 5 of the foreign exchange Management (Export & Import of Currency) regulations 2000 has thus contravened the provisions of section 3 of FEMA,1999 and section 1.1(2) of the Customs Act, 1962; The passenger has admitted that he knew that it was an offence to smuggle currency;

without declaration and without special permission from RBI as required under FEMA; Therefore the currency should have been confiscated absolutely; The orders of the lower authorities has the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming the offending goods even when caught by the customs which totally works against deterrence; at lower redemption fine.

4.2 The Revision Applicant cited various other assorted judgments and boards policies in support of thier case and prayed for quashing the impugned Appellate authority or any such order as deemed fit.

5. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled held on 24.08.2018 and 12.09.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided exparte on merits

6. The Government has gone through the case records it is observed that the Applicant had concealed the currency in in his hand baggage carried by him and it was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the currency is justified.

7. However, the facts of the case state that There is also no requirement to declare currency below $10,000, and taking of currency abroad is restricted and not prohibited. The Applicant has not been involved in such offences earlier. Government notes that the currency was kept in his hand baggage and it was not ingeniously concealed. Absolute confiscation pleaded for by the applicant in such circumstances is therefore a harsh option, and unjustifiable. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that absolute confiscation of the currency is a very harsh option and cannot be justified. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the currency on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The currency though not ingeniously

concealed, was required to be declared as per section 77 of the Customs, Act, 1962 and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified.

8. The impugned Order in Appeal is set aside. The redemption fine of Rs. 5,00,000/- (Rupees Five lakhs) is increased to Rs.8,00,000/- (Rupees Eight lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify an increase in the penalty imposed. The penalty of Rs. 75,000/- (Rupees Seventy five thousand) imposed on the Respondent is increased to Rs. 2,00,000/- (Rupees Two lakhs) under section 112(a) of the Customs Act,1962. The same is upheld.

9. Revision application is partly allowed on above terms.

10. So, ordered.

30.11.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 1067 /2018-CUS (SZ) /ASRA/MUMBAI DATED 30.11.2018

To,

1. The Principal Commissioner of Customs (Airport),
New Custom House,
Menambakkam Road,
Chennai-27.

2. Shri Abdul Rahim Sahabudeen
C/o Shri Akbar Ali
3/10, Anew Street,
Therizhandur,
Nagal District 609 808.

Copy to:

1. The Commissioner of Customs (Appeals), Chennai
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.