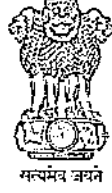


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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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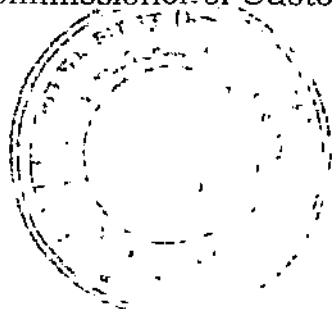
Date of Issue 20/12/2018

ORDER NO. ¹¹⁰⁵⁻1166/2018-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 : Shri Jayabal Shivakumar & Shri S. Jalaludeen

Respondent : Commissioner of Customs, Chennai-I(Airport)

Subject : Revision Applications filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. C. Cus.I
No. 348/2015 dated 29.06.2015 & Order-in-Appeal No.
C.Cus.I. No. 563 & 564/2015 dated 14.09.2015 passed by
the Commissioner of Customs(Appeals-I), Chennai.

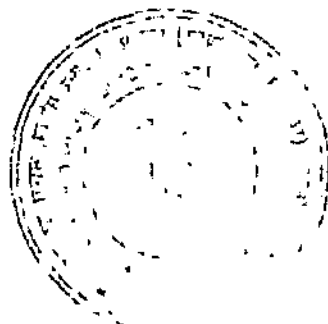


ORDER

These revision applications have been filed by Shri Jayabal Shivakumar (hereinafter referred to as the "First Applicant") against the Order-in-Appeal No. C. Cus.I No. 348/2015 dated 29.06.2015 passed by the Commissioner of Customs(Appeals-I), Chennai and Shri S. Jalaludeen(hereinafter referred to as the "Second Applicant") against the Order-in-Appeal No. C.Cus.I. No. 563 & 564/2015 dated 14.09.2015 passed by the Commissioner of Customs(Appeals-I), Chennai.

2. Briefly stated, the DRI, Chennai had received specific intelligence that the first applicant was departing to Kuala Lumpur, Malaysia from Chennai by Air Asia Flight No. AK012 at 17.50 hours on 23.06.2014 and was likely to smuggle huge quantity of Indian Currency out of India by concealing the same in his baggage. The Officers of DRI maintained surveillance at the departure hall of the International Airport and intercepted the first applicant. On personal search of the first applicant and his baggage, Indian Currency totaling to Rs. 40,40,000/- (Rupees Forty Lakhs Forty Thousand Only) was recovered.

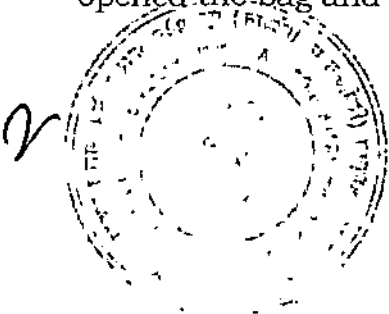
3. In adjudication, the Joint Commissioner vide Order-in-Original No. 58/2015 dated 30.04.2015 ordered confiscation of Indian Currency amounting to Rs. 40,40,000/- carried by the first applicant in an attempt to export the same in violation of the Customs Act, 1962 read with FEMA, 1999. The Joint Commissioner allowed the Indian Currency to be redeemed on payment of fine of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) and imposed personal penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on the first applicant under Section 114 of the Customs Act, 1962. Likewise, the adjudicating authority imposed personal penalty of Rs. 3,00,000/- on the second applicant under Section 114 of the Customs Act, 1962 for abetting the attempt to export Indian currency to the tune of Rs. 40,40,000/- by the first applicant.



4. Aggrieved by the Order-in-Original No. 58/2015 dated 30.04.2015, the first applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide Order-in-Appeal No. C.Cus-I No. 348/2015 dated 29.06.2015 reduced the redemption fine from Rs. 12,00,000/- (Rupees Twelve Lakhs Only) to Rs. 7,00,000/- (Rupees Seven Lakhs Only) and also reduced the personal penalty imposed on the first applicant from Rs. 2,00,000/- (Rupees Two Lakhs Only) to Rs. 1,00,000/- (Rupees One Lakh Only). Similarly, the second applicant also filed appeal before the Commissioner(Appeals) against Order-in-Original No. 58/2015 dated 30.04.2015. Commissioner(Appeals) vide Order-in-Appeal No. C.Cus.I. No. 563 & 564/2015 dated 14.09.2015 rejected the appeal of the second applicant as devoid of merits.

5. Aggrieved by the Order-in-Appeal No. C.Cus-I No. 348/2015 dated 29.06.2015, the first applicant has filed revision application on the following grounds: -

- (i) The Commissioner(Appeals) has not taken their submissions at the time of hearing into consideration.
- (ii) The order passed by the Commissioner(Appeals) is arbitrary and in violation of the rights of the applicant.
- (iii) The first applicant had declared the entire currency and there was no misdeclaration or non-declaration.
- (iv) The penalty of Rs. 1,00,000/- imposed by the Commissioner(Appeals) was arbitrary and unreasonable.
- (v) Case laws were relied upon by the first applicant to contend that there was no mensrea and therefore no penalty was imposable.
- (vi) Commissioner(Appeals) failed to note that there was no evidence of deliberate defiance of laws by the applicant and hence no penalty was imposable.
- (vii) The first applicant had not concealed the currency and had voluntarily opened the bag and shown it to the authorities.



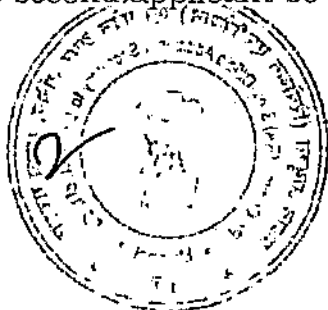
- (viii) The fact of possession of currency declaration form at the time of being intercepted has not been considered.
- (ix) No offence had been committed as the applicant had not crossed the customs area.
- (x) No reliance can be placed upon the statement recorded as it had been recorded under duress and was immediately retracted.
- (xi) The impugned order is lop-sided as only the submissions of the Department have been considered while passing the order.
- (xii) There is no margin of profit in the export of Indian currency and hence estimation of margin of profit is totally wrong.
- (xiii) The first applicant prayed that the Order-in-Appeal No. C.Cus-I No. 348/2015 dated 29.06.2015 be set aside and that the Indian Currency be released without redemption fine and imposing penalty.

6. Aggrieved by the Order-in-Appeal No. C.Cus-I No. 563 & 564/2015 dated 14.09.2015, the second applicant has filed revision application on the following grounds: -

- (i) He claimed that no offence had been committed and therefore no penalty was warranted.
- (ii) The penalty of Rs. 3,00,000/- imposed was arbitrary and unreasonable.
- (iii) He contended that there was no proof of the offence committed by him in the SCN or the order-in-original.
- (iv) He relied upon case laws to contend that abetment by the abettor would be established only if the abettor had intentionally abetted in the crime.
- (v) Case law was relied upon to contend that where there was no mensrea, there was no scope for imposition of penalty.
- (vi) Commissioner(Appeals) failed to note that there was no deliberate defiance of law or any action in conscious disregard of their obligations and hence no penalty could be imposed.



- (vii) There was no indication in the SCN as to how the second applicant had abetted the passenger and therefore no penalty can be imposed.
- (viii) The second applicant submitted that even the Commissioner(Appeals) had accepted that there was no evidence of involvement of the second applicant in the act committed by the passenger.
- (ix) The second applicant contended that no show cause notice had been issued to him for imposition of penalty whereas the Joint Commissioner had gone on to impose penalty beyond the scope of the show cause notice.
- (x) The Commissioner(Appeals) had not recorded any finding against the second applicant for imposing penalty and hence the penalty should be set aside.
- (xi) Statements of the second applicant recorded by the DRI had already been retracted and it had clearly been stated that there was no involvement of the second applicant in the case of seizure of Indian currency and therefore imposition of penalty of Rs. 3,00,000/- was totally unwarranted.
- (xii) It was submitted that the second applicant had appeared before the DRI as per the order of the Hon'ble Division Bench of the High Court of Madras in the appeal filed by the Department. A statement of the second applicant was recorded in which he had clearly stated that he was in no way connected with the seizure of Indian currency and hence the order of the Commissioner(Appeals) that he had not appeared before the DRI to prove his innocence was totally false and incorrect.
- (xiii) The Commissioner(Appeals) had reduced the personal penalty on the passenger and therefore the penalty imposed on the second applicant should have been set aside.
- (xiv) It was prayed that the personal penalty of Rs. 3,00,000/- imposed on the second applicant be set aside.

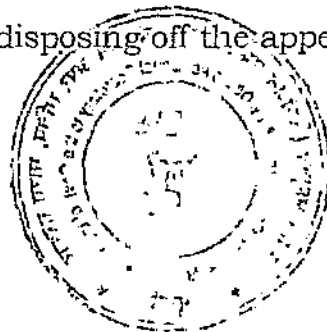


7. The applicants were granted a personal hearing in the matter. Shri A. K. Jayaraj, Advocate appeared on behalf of the applicants on 29.11.2018. He reiterated the submissions filed through the revision application and pleaded that the impugned Order-in-Appeal be set aside and the instant revision applications be allowed by reducing the redemption fine and penalty. The applicant also filed a written submission at the time of hearing. In addition to the grounds set out in the revision application, the first applicant also submitted that he had been taken to the DRI Office and that he had under threat given a statement to the effect that he was not the owner of the goods.

8. Government has carefully gone through the Revision Application, the order of the original authority, the order of the appellate authority, the submissions made by the applicants at the time of personal hearing and the case records.

9. The Government observes that on appeal by the Department, the Order-in-Appeal No. C.Cus-I No. 348/2015 dated 29.06.2015 has been set aside and the Order-in-Original No. 58/2015 dated 30.04.2015 passed by the Joint Commissioner has been restored by the Revisionary Authority vide Order No. 770-771/2018-CUS(SZ)/ASRA/MUMBAI dated 28.09.2018. It is further observed that the applicants had not appeared for personal hearing in those proceedings although they had been granted personal hearing on three different dates; viz. 16.07.2018, 20.08.2018 and 10.09.2018, none appeared on behalf of the applicant.

10. The Hon'ble Supreme Court was dealing with a matter involving a similar situation in a Special Leave Petition filed before it in the case of Commissioner of Customs vs. Vasant Maganlal Chokshi[2006(204)ELT 5(SC)]. In that case, the Department had contended that the Tribunal had committed a grave error in taking up and disposing off the appeals filed by the ~~petitioners~~ without at the same

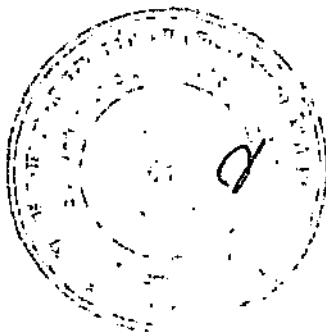


time disposing off the appeals filed by the Department. The observations of the Hon'ble Apex Court in this regard are reproduced below.

"11. Mr. Radhakrishnan urged that in the interest of justice the orders passed by the Tribunal in appeals preferred by the noticees were required to be set aside and the Tribunal should be directed to take up all the appeals, including the appeals filed by the Department, together, for disposal.

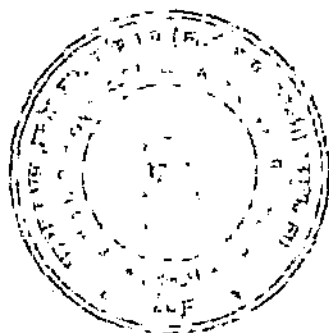
12. The aforesaid submissions were vehemently opposed on behalf of the noticees and it was pointed out that the High Court had dealt with this question in its order dated 7th July, 2005, passed in S.C.A. No. 13519/2005 and had held that it was not possible for the Tribunal on its own to link up two cross appeals unless the said fact was brought to the notice of the Tribunal by the concerned party. It was also observed that since the petitioner had failed in its duty in pointing out the fact that the Department's appeal was pending when the Tribunal took the assessee's appeal for hearing, it was no longer open to the petitioner to turn round and to point a finger at the Tribunal in these circumstances.

13. While we are able to appreciate the anxiety now being shown by the Department, we are unable to accept Mr. Radhakrishnan's submission that the decision of the Tribunal, as also of the High Court, should be set aside in order to accommodate the Department which had failed to point out to the Tribunal that the appeals preferred by the Department were also pending. Such an order would unsettle matters which have already been settled and would amount to giving premium to the negligence of the Department especially when the Commissioner of Customs, CESTAT and the High Court had all held in favour of the noticees and have directed return of all the 78 bars of gold to them. More than 8 years have passed since the gold bars were seized and there can be no justification for the matter to be dragged on further on account of the laches of the Department."



11. Their Lordships have taken note of the submissions of the noticees that the High Court had dealt with the issue of tagging cross appeals together in its order dated 7th July, 2005 and had held that it was not possible for the Tribunal on its own to link up two cross appeals unless the said fact was brought to the notice of the Tribunal by the concerned party. Thereafter, the Hon'ble Court has very categorically held that when the Tribunal took up the respondents case for hearing in that case, the Department had failed to point out that the appeals preferred by it were pending before the very same Tribunal. It was further opined that such order directing the Tribunal to take up all the appeals, including the appeals filed by the Department together for disposal would unsettle matters which have already been settled and would amount to giving a premium to the negligence of the Department.

12. Government observes that akin to the observation of the Hon'ble High Court in the case cited above, it was not possible for the Revisionary Authority to link up two cross revision applications on its own unless the said fact was brought to its notice by the concerned party. It is observed that inspite of being given sufficient opportunities the applicants had failed to attend personal hearing in that case. The applicants also did not file any written submission to bring it to the notice of the Revisionary Authority that they had filed Revision Application against Order-in-Appeal No. C. Cus.I No. 348/2015 dated 29.06.2015 and Order-in-Appeal No. C.Cus.I. No. 563 & 564/2015 dated 14.09.2015 passed by the Commissioner of Customs(Appeals-I), Chennai. It would be pertinent to mention that the Government had after careful consideration of the facts of the case passed orders on Revision Applications filed by the Department vide Order No. 770-771/2018-CUS(SZ)/ASRA/MUMBAI dated 28.09.2018 against the very same orders of Commissioner(Appeals) impugned in these proceedings.



2



13. Since the revision application filed by the Department against Order-in-Appeal No. C. Cus.I No. 348/2015 dated 29.06.2015 & Order-in-Appeal No. C.Cus.I. No. 563 & 564/2015 dated 14.09.2015 passed by the Commissioner of Customs(Appeals-I), Chennai has already been decided by way of restoring the Order-in-Original No. 58/2015 dated 30.04.2015 passed by the Joint Commissioner, the impugned revision applications do not merit consideration.

14. The Revision Applications are dismissed as infructuous.

15. So ordered.

Ashok Kumar Mehta
20.11.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio

Additional Secretary to Government of India

ORDER No. ¹¹⁰⁵⁻1106/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

- 1) Shri Jayabal Shivakumar
S/o Shri Jayabal
No. 9-31-A, North Street,
Paravakkottai, Mannarkudi Taluk,
Thiruvarur District - 614 015
- 2) Shri S. Jalaludeen
S/o Shri Shahul Hamid
Proprietor of M/s JKS Travels,
No. 59A, Akbar Sahib Street,
Triplicane, Chennai 600 005

ATTESTED

S.R. Hirulkar
24/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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

