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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. 380/167/B/16-RA | 2453

Date of Issue 20/12/2018

ORDER NO. 1108/2018-CUS (SZ)/ASRA/MUMBAI DATED 03.12.2018 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 Jang Bahadur

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.
CUS-I No. 243/2016 dated 25.05.2016 passed by
the Commissioner of Customs (Appeals-I), 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. 243/2016 dated 25.05.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, was bound for Bangkok and was intercepted at the Anna International Airport on 14.12.2015. Examination of his hand baggage and person resulted in the recovery of Euros equivalent to Rs. 9,42,975/- and Indian currency of Rs. 10,00,000/- totally equivalent to Rs. 19,42,975/- (Rupees Nineteen lakhs Forty two thousand Nine hundred and Seventy Five). The currency was recovered from handbag and from the pockets of the pants worn by the Respondent.

3. After due process of the law vide Order-In-Original No. 460/2015 – 16 AIRPORT dated 30.01.2016 the Original Adjudicating Authority ordered absolute confiscation of the currency under Section 113 (d) (e) & (h) of the Customs Act,1962, 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. 243/2016 dated 25.05.2016 allowed the redemption of the foreign currency of Rs. 9,42,975/- on payment of redemption fine of Rs. 2,00,000/-, upheld the absolute confiscation of Indian currency of Rs. 10,00,000/- without interfering in the penalty imposed.

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 per FEMA Regulations general and special permission of RBI is required to send foreign currency out of India and therefore the Respondent has contravened section 3 of FEMA and section 11(2) (u) of the Customs Act, 1962, and in view of the same the foreign currency is liable for confiscation; As per section 2(22) (d) of the Customs Act,1962 goods include currency; It is on record that the Respondent did not declare the currency; The Respondent had concealed the currency in the hand bag and his pant pockets and thus rendered the said foreign currency liable for confiscation; Therefore the foreign currency should have been absolutely confiscated; The Respondent in his statement has also confessed that the currency was given to him by an unknown person to be delivered to a person in Bangkok. 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 in support of their case and prayed for quashing the order of the impugned Appellate authority or any such order as deemed fit.

5. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit. The Respondent through his Advocate, in his submissions received by this office on 05.07.2017 stated that the Respondent had submitted two bank statements showing the withdrawal of 9.5 lakhs on 26 th November; There is no finding in the order that any other person except the respondent claimed the ownership of the currency; The Commissioner (Appeals) in his discretionary powers allowed redemption of the foreign currency and therefore no question of law is involved; Foreign currency is not a prohibited item in the import/export policy and the lapse of the petitioner is technical; Absolute confiscation of the currency would be in special circumstances like illegal arms trade or drug trafficking terrorism etc. and in the absence of the same the revision application filed by the Applicants is without any basis and may kindly be rejected.

The Respondent also cited various other assorted judgments in support of their case and prayed for restoration of the order of the impugned Appellate authority and also release the Indian currency on redemption fine or any such order as deemed fit.

6. The Government has gone through the case records it is observed that the currency was recovered from the hand baggage and the pockets of the pants worn by the Respondent 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 no requirement to declare currency below \$10,000, and taking of currency abroad is restricted and not prohibited. The Respondent has not been involved in such offences earlier. Government notes that the currency was kept in his hand baggage and in the pockets of the pants worn by the Respondent, and therefore it cannot be termed as ingeniously concealed. Further, 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 Indian currency, pleaded for by the applicant is a very harsh option and cannot be justified. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the foreign currency on redemption fine and penalty. Government also notes that the Indian currency is also liable for redemption fine and penalty commensurate to



the offence committed so as to dissuade such acts in future. The impugned Order in Appeal therefore needs to be set aside.

8. The impugned Order in Appeal is set aside. The impugned currency totally valued at Rs. 19,42,975/- (Rupees Nineteen lakhs Forty two thousand Nine hundred and Seventy Five) is allowed to be redeemed on payment of Redemption fine of Rs. 12,00,000/- (Rupees Twelve 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. 1,00,000/- (Rupees One lakh) 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. The impugned Order in Appeal stands modified to that extent.

10. Revision application is dismissed on the above terms.

11. So, ordered.

Ashok Kumar Mehta

03.12.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 1108/2018-CUS (SZ) /ASRA/MUMBAI

DATED 03.12.2018

To,

1. The Principal Commissioner of Customs (Airport), Chennai.
New Custom House,
Menambakkam Road,
Chennai-27.
2. Shri Jang Bahadur
Moh Pahar Singh,
VPO Rahon,
DT Nawanshahr,
Punjab.

Copy to:

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

ATTESTED

S.R. Hirulkar
24/12/18

S.R. HIRULKAR

Assistant Commissioner (R.A.)

