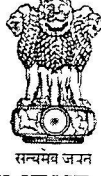


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/151/B/WZ/2022-RA /8AS: Date of Issue : 08.01.2024

ORDER No. 126 /2024-CUS (WZ)/ASRA/ DATED. 31 .01.2024
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.

F.No. 371/151/B/WZ/2022-RA

Applicant : Shri. Mahboob Alam

Respondent : Principal Commissioner of Customs, CSMI Airport,
Sahar, Andheri East, Mumbai - 400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-839/2021-22 dated
27.10.2021 issued on 28.10.2021 through F.No.
S/49-688/2020-21 passed by the Commissioner of
Customs (Appeals), Mumbai - III, Marol, Mumbai -
400 059.

ORDER

This revision application has been filed by the Shri. Mahboob Alam, (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-839/2021-22 dated 27.10.2021 issued on 28.10.2021 through F.No. S/49-688/2020-21 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059.

2. Brief facts of the case are that the applicant who was bound for Dubai by Jet Airways Flight no. 9W-525 was intercepted by Customs Officers on 15/16.03.2019 after he had cleared the Immigration and Security in the departure hall of CSMI Airport. His personal search resulted in the recovery of foreign currency of USD 15,000/- i.e. 150 notes in denomination of 100 which had been kept concealed in the waistline of the trouser worn by him. The seized foreign currency was deposited in the State Bank of India and an amount of Rs. 10,10,008/- was recovered.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSMI, Mumbai vide Order-In-Original No. ADC/SKR/ADJN/66/2019-20 dated 20.02.2020 issued on 28.02.2020, ordered for the absolute confiscation of the foreign currency viz, USD 15,000/- equivalent to Rs 10,10,008/- under Section 113 (d), (e) & (h) of the Customs Act, 1962. A penalty of Rs. 1,51,501/- was imposed on the applicant under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059, who vide his Order-in-Appeal No. MUM-CUSTM-PAX-APP-839/2021-22 dated 27.10.2021 issued on 28.10.2021 through F.No.

S/49-688/2020-21 upheld in to-to the order passed by the Original Adjudicating Authority.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant has preferred this revision application inter alia on the grounds that;

- 5.01. that foreign currency was not prohibited goods; that Regulation 7(2) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 did not prescribe a maximum amount to be exported by a person resident in India; that no limit was provided for export of foreign currency; that foreign currency was a restricted item and its release under Section 125 of the Customs Act, 1962 ought to have been considered; they rely on the case law of (i). Commr. of Customs (Prev), West Bengal vs. India Sales International reported in 2009(241) ELT 182-Cal., (ii). Chellani Mukesh reported in 2012-276-ELT-129(GOI), where option to release the foreign currency had been granted.
- 5.02. that the applicant was not aware that he was supposed to declare the foreign currency carried by him to Customs; that ignorance of law could be an excuse; that not everyone knows the law was held in Motilal Padampat Sugar Mills Co. Ltd vs. State of Uttar Pradesh and ors by the Apex Court;
- 5.03. that the penalty imposed on the applicant was disproportionate to the value of the currency allegedly attempted to be exported out of India; that imposition of the high penalty was not sustainable; that they have relied on numerous case laws on the issue that penalty should be proportionate to the offence committed;
- 5.04. that the applicant claims ownership of the currency and prays for redemption; that they have relied on numerous case laws on the issue where goods have been released on payment of a redemption fine in terms of Section 125 of the Customs Act, 1962.

Under the above circumstances of the case, the applicant has prayed to Revision Authority to set aside the impugned OIA passed by the AA and to release the foreign currency equivalent to Rs. 10,10,008/- on payment of reasonable fine and penalty and to drop further proceedings.

6. Applicant has filed an application for condonation of delay attributing the delay to Covid-19 pandemic and the restrictions imposed on travel etc

7. Personal hearing was scheduled for 18.10.2023, 25.10.2023. Shri. Prakash Shingrani, Advocate appeared on 18.10.2023 and submitted that applicant was carrying some foreign currency for personal purpose. He further submitted that applicant has accounted for the currency. He also submitted that applicant has no past history of any offence. He requested to allow redemption of currency on reasonable RF and penalty.

8. On the issue of condonation of delay, Government notes that the applicant had filed the revision application on 15.03.2022. In the Form CA-8 submitted by the applicant, the column pertaining to date of communication of the order has been left blank. Government notes that the impugned OIA dated 27.10.2021 was issued on 28.10.2021. Government notes that during the period when the impugned OIA had been issued, the Apex Court, considering the prevalent Covid situation had granted a moratorium for filing appeals etc from 15.03.2020 to 28.02.2022 [Misc Appln No. 21/2022]. Since, the applicant has filed the Revision Applications on 15.03.2022, considering the said moratorium period granted by the Apex Court, it is seen that there is no delay in filing the revision application.

9. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized foreign currency was not declared by the Applicant to the Customs at the point of departure. Further, in his statement the applicant had admitted the possession, carriage, non-declaration and recovery of the foreign currency. The applicant was unable to coherently give, the source of how he came in possession of the foreign currency. The fact remains that the

applicant had not disclosed the impugned foreign currency and the source of the foreign currency had remained unaccounted. Applicant was unable to show that the impugned foreign currency in his possession was procured from authorized persons as specified under FEMA. Thus, it has been rightly held by the lower adjudicating authority that in the absence of any valid document for the possession of the foreign currency, the same had been procured from persons other than authorized persons as specified under FEMA, which makes the goods liable for confiscation in view of the prohibition imposed in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the confiscation of the foreign currency was justified as the applicant could not account for the legal procurement of the currency and that no declaration as required under section 77 of the Customs Act, 1962 had been filed.

10. The Government finds that the applicant had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. Hence, the Government finds that the conclusions arrived at by the lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 have been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the lower adjudicating authority has applied the ratio of the judgement of the Madras High Court in the case of Apex Court in the case of Commissioner of Customs, Chennai v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad))] wherein it was held at para 13 as under;

.. We find, in the present case, the passenger has concealed the currency of 55,500 US dollars and other currencies, attempted to be taken out of India without a special or general permission of the Reserve Bank of India and this is in violation of the Rules. The fact that it was procured from persons other than authorized person as specified under the FEMA, makes the goods liable for confiscation in view of the above-said prohibition. Therefore, the Original Authority was justified in ordering absolute confiscation of the currency. The key word in Regulation 5 is prohibition of import and export of foreign currency. The exception is that special or general permission should be obtained from the Reserve Bank of India, which the passenger has not obtained and therefore, the order of absolute confiscation is justified in respect of goods prohibited for export, namely, foreign currency. . . .

11. Government finds that the ratio of the judgement of the Apex Court in the case of Sheikh Mohd. Umar v/s. Commissioner of Customs, Calcutta [1983(13) ELT 1439 (SC)] wherein it is held that non-fulfilment of the restrictions imposed would bring the goods within the scope of "prohibited goods" is applicable in this case.

12. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s. Raj Grow Impex has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice, and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper, and such discernment is the critical and cautious judgment of what is correct and

proper by differentiating between shadow and substance as also between equity and pretence A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion, such an exercise can never be according to the private opinion. 71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken

13. The Government finds that the amount involved in this case is not substantial. Also, the currency was found in the clothes worn by the applicant. A case that the concealment adopted by the applicant was ingenious had not been made out. Also, a case that the applicant was a habitual offender had not been made out. Government finds that under such circumstances, using the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 is excessive and unjustified. The order of the Appellate authority is therefore liable to be modified and the foreign currency is liable to be allowed redemption on suitable redemption fine and penalty.

14. The Government finds that the personal penalty of Rs. 151,501/- imposed on the applicant under Section 114(1) of the Customs Act, 1962 is a bit harsh and not commensurate with the omissions and commissions committed. Government is inclined to reduce the same.

15. In view of the above, the Government modifies the impugned order of the Appellate Authority. The foreign currency i.e. USD 15000/- consisting

of 150 notes of \$100 denomination, equivalent to INR. 10,10,008/- is allowed redemption on payment of a fine of Rs. 2,00,000/- (Rupees Two Lakhs Only). The penalty of Rs 1,50,501/- under section 114(i) of the Customs Act, 1962 imposed by the lower adjudicating authority and upheld by the appellate authority is reduced to Rs. 1,00,000/- (Rupees One Lakh only).

16. The Revision Application is disposed of on above terms.

Shrawan Kumar
31/1/24
(SHRAWAN KUMAR)

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

¹² ORDER No. /2024-CUS (WZ)/ASRA/MUMBAI DATED ³¹ .01.2024.

To,

1. Mr. Mahboob Alam, 140, Village and Post : Mali Mainaham, Siddharth Nagar, Uttar Pradesh - 272 189,
- 2 Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri East, Mumbai - 400 099.

Copy to

1. Shri. Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
- 5 Notice Board.