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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. 373/99/B/15-RA

| 2980

Date of Issue

02/06/21

ORDER NO. 131/2021-CUS (SZ)/ASRA/MUMBAI DATED 20.05.2021 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 : Shri Mangattu Ramesh

Respondent: Commissioner of Central Excise, Customs & Service Tax Calicut.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 112/2014-CUS dated 18.11.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

ORDER

This revision application has been filed by the Shri Mangattu Ramesh (herein referred to as Applicant) against the order No. 112/2014-CUS dated 18.11.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

2. Briefly stated facts of the case are that the on 29.09.2012 the Officers of Customs intercepted Shri Mangattu Ramesh at the Calicut International airport. He was intercepted at the exit gate after opting for the green channel. A personal examination resulted in the recovery of USD \$ 9100/- from his pant pockets valued at Rs. 4,98,225/- (Rupees Four lacs Ninety eight thousand Two hundred and Twenty five).

3. After due process of the law vide Order-In-Original No. 42/2012 dated 29.09.2012 the Original Adjudicating Authority confiscated the currency but allowed redemption on payment of Rs. 10,000/- (Rupees Ten thousand) and imposed a penalty of Rs. 30,000/- on the Applicant.

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order No. 112/2014-CUS dated 18.11.2014 holding that the redemption fine and penalty was too low increased the redemption fine and penalty both to Rs. 1,00,000/-.

5. Aggrieved with the above order the Applicant has filed this revision application on the grounds below;

5.1 The Commissioner (Appeals) failed to appreciate the basic facts about import of foreign currency. Import of foreign currency is neither prohibited

nor restricted by law. The importer has only to declare the quantum of currency brought by him, if the same exceeds the specified limit. As on today the specified limit is 10,000/- U.S. Dollars while at the time seizure of currency from the applicant while he came to India from Iran it was \$5,000/- U.S.Dollars. The Government of India periodically changes the permissible limit for importation of foreign currency without declaring it through a currency declaration form.

5.2 There was only an omission on the part of the applicant to file a currency declaration form indicating the currency carried by him. However, being illiterate on these regulations, the applicant was not able to defend his case properly before the adjudicating authority. Hence the adjudicating authority had passed Annexure I Order-in-Original exercising his jurisdiction. The adjudicating authority ought to have let off the applicant with a warning instead of confiscating and releasing it on redemption fine and by imposing penalty. The Order-in-Original is a reasoned order and the authority ought not have revised the order of the adjudicating authority and filed an appeal against the order in original.

5.3 There was no circumstance warranting modification of the said order-in-original and the Commissioner (Appeals) while considering the appeal ought to have considered that there was only a procedural lapse and rejected the appeal. The Commissioner (Appeals) grossly ignored the factual circumstances under which the applicant was constrained to carry foreign currency without filing a currency declaration form. The applicant is employed in Kish Island, Iran, and was being paid in US Dollar by his employer and the Island had no banking facilities to convert the foreign currency through normal banking instruments to be carried to India. Since the applicant had to leave for his native place in Kerala on emergency leave to attend to his sick wife, he had to leave his place of work in haste, this was the reason why he had to carry the entire money he had with him, Which was kept in the front pocket of his pants. He had no intentions of smuggling the foreign currency.

5.4 The adjudicating authority itself had not taken a lenient view of the matter and imposed redemption fine and penalty, which the applicant had

remitted promptly due to the urgent reason in which he was embroiled. As the violation was only procedural the Commissioner (Appeals) should have rejected the Appeal of the revenue.

5.5 The Commissioner (Appeals) ought to have appreciated that the applicant had not intentionally committed any offence of smuggling of any contraband goods. The only irregularity was non-declaration of the excess cash of US \$4,100/- which he was carrying with him. The imputation in the Order that the applicant was concealing the goods is a harsh undeserving insinuation made against the applicant. The Commissioner (Appeals) completely lost sight of the facts of the case, the relevant law and decided the one as if the foreign currency was smuggled. The frequent alterations made in the permissible limit of foreign currency that can be brought from outside India without making a currency declaration was lost sight of and the applicant is punished as if he is a hard-core smuggler. Hence the enhancement of redemption time and penalty, by the Commissioner (Appeals) is devoid of merit and need to be set aside in the interests of

5.6 It is therefore most respectfully prayed that the impugned Order-in-Appeal passed by the Commissioner (Appeals) may be set aside and justice rendered.

6. Accordingly personal hearings in the case were scheduled on 09.03.2021. Nobody attended the hearing on behalf of the Respondents. Ms. Manju Rajan, Advocate, attended the hearing on behalf of the Applicant. She reiterated her earlier submissions and submitted that the person came to India in an emergency and was carrying his salary and therefore increase in the redemption fine and penalty is unjustified. The Applicant is in grave financial problems and the currency was not secreted. Considering all other aspects , original adjudicating authority had imposed appropriate redemption fine and penalty. In her written submissions it was submitted that;

6.1 The applicant, who was stationed outside India, was not aware of the proceedings before the Commissioner (Appeals), though the notice of the hearing of the appeal was served on his illiterate, aged parents. His aged parents did not know the importance or implication of the notice received

by them on behalf of the applicant in his absence and did not intimate this fact to the applicant. Thus the applicant was not able to make proper representation before the Commissioner (Appeals). The Commissioner (Appeals) therefore passed an ex parte order on 18.11.2014 modifying the Order-in-Original enhancing the Redemption Fee and the Penalty under Sec.112(a) & (b) to Rs.1 lakh each. Since the applicant was not aware of the appeal proceedings before the learned Commissioner Appeals), he could not produce Annexures 6 and 7 before the said authority.

6.2 It is respectfully submitted that the only unintentional omission on the part of the applicant was to file a currency declaration form indicating the currency carried by him. However, being illiterate about these regulations the applicant was not able to defend his case properly even before the adjudicating authority. Import of foreign currency is neither prohibited nor restricted by law. The importer is only required to declare the quantum of currency brought by him if the same exceeds the specified limit. As on today the specified limit is 10,000/-U.S. Dollars while at the time seizure of currency from the applicant while he came to India from Iran it was 5,000/. U.S.Dollars. The Government of India periodically changes the permissible limit for importation of foreign currency.

6.3 There were no circumstances warranting Order-in-Original and the commissioner (Appeals) while considering the appeal ought to have considered that there was only a procedural lapse. The Commissioner (Appeals) ignored the factual circumstances under which the applicant was constrained to carry foreign currency without filing a currency declaration form. The applicant was employed in Kish Island, Iran, used to be paid in US Dollar by his employer and the Island had no banking facilities to convert the foreign currency to normal banking instruments to be carried to India. Since the applicant had to leave for his native place in Kerala on emergency leave to attend to his sick wife, he had to leave his place of work in haste, without spending further time in the mainland. This was the reason why he had to carry the entire money he had with him, i.e. US\$9,100/-, which was kept in a paper envelope in the front pocket of his pants. The money was not concealed elsewhere in any baggage. The applicant is only a matriculate. who did not know the legal implications of

carrying foreign currency above U.S\$.5000/- to India without declaration. He had no intention of smuggling any foreign currency into India as is imputed against him in the Order-in-Review and Order-in-Appeal and hence he had no oblique motive of making economic gains by bringing the currency with him. The applicant had not on any earlier occasion brought such amounts in foreign currency while coming on leave and had not knowingly or unknowingly committed any such irregularity. He happened to carry cash in foreign currency beyond the permissible limit only due to compelling circumstances and his ignorance, as explained above.

6.4 The Commissioner (Appeals) ought to have appreciated that the applicant had not intentionally committed any offence of smuggling of any contraband goods. The only irregularity was non-declaration of the excess cash of US \$ 4100/- which he was carrying with him. The imputation in the order that the applicant was concealing the goods is a harsh undeserving insinuation made against the applicant. The frequent alterations made in the permissible limit of foreign currency that can be brought from outside India without making a currency declaration was lost sight of and the applicant has been punished as if he is a hard-core smuggler. The Order-in-Appeal came to be passed without hearing the applicant while he was employed outside India. after serving the notice of hearing on his illiterate, aged parents and is therefore also one passed in violation of the principles of natural justice.

6.5 The applicant lost his overseas employment following an accidental fall in April 2018, sustaining serious injuries to his back and leg and he is unable to do strenuous work and is hence unemployed for the last three years and is virtually at the mercy of his brother and other relatives. He is living in penurious conditions and is not in a position to remit any amount as ordered by the learned Commissioner (Appeals). The applicant therefore appeals to this Honble Revisional Authority to appreciate that the violation was merely procedural arising out of ignorance, without any intention to make any unjust gain, and allow this Revision Application, considering the fact that the applicant had already paid a sum of Rs.40,000/- as initially ordered by the Assistant Commissioner.

7. Government has gone through the facts of the case. The Applicant has brought US Dollar \$ 9,100/- on his arrival and the same was carried in his pant pocket. He neither made a declaration u/s 77 of Customs Act, 1962 nor filed currency declaration form (CDF) in proper format on his arrival about the possession of USD -\$ 9100/- . In his submissions before the original adjudicating authority he submitted that he lives in 'KISH' island and only two banks namely 'Lary Exchange and 'Sadehi' are available for financial activities but they are not converting the money from one currency to another. He could go to main land at Iran as he was residing in an island but because of his wife illness he had to reach India immediately. So he had come to India taking his salary in Dollar form. The Adjudicating Authority going by his averments and considering his educational qualification, other backgrounds and his pleadings using his discretionary powers, in the case and allowed the redemption of the foreign currency valued at Rs. 4,98,225/- on payment of Rs. 10,000/- (Rupees Ten thousand) as redemption fine and imposed a penalty of Rs. 30,000/- on the Applicant. The Appellate authority however has concluded that the imposition of such low amount of redemption fine and penalty is not legal or proper and has raised the redemption fine to 1,00,000/-(Rupees One lakh) and penalty to Rs. 1,00,000/-(Rupees One lakh).

8. The facts of the case reveal that the Applicant was carrying foreign currency of US\$ 9,100/- totally valued at Rs. 4,98,225/-. The Baggage rules expressly points out that foreign currency in excess of US\$ 5000/- is supposed to have been declared as per section 77 of the Customs Act, 1962. In view of the above the Applicant was carrying an excess of USD \$4100/- proportionately valued at Rs. 2,24,475/- approximately at the time of his arrival into India. Government observes that the case appears to be more of a non declaration due to ignorance rather than an attempt at smuggling. The foreign currency was the applicants salary which he was carrying on return to India. The redemption fine of Rs. 1,00,000/-(Rupees One lakh) and penalty to Rs. 1,00,000/-(Rupees One lakh) on the excess amount of USD \$4100/- proportionately valued at Rs. 2,24,475/- is therefore excessive and unjustified. The redemption fine and penalty almost equals the excess amount of the currency carried by the applicant in the case.

9. In the case of *Peringatil Hamza vs Commissioner of Customs, Mumbai 2014* (309) E.L.T. 259(Tri- Mumbai) in the seizure of Rs. 24 lakhs of currency the

redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate. In the case of Umabalaraswathi v/s Collector of Customs, 1988(37)ELT 106 Tribunal states " *The non-declaration which entails confiscation under section 111 (1) should be conscious and intentional non-declaration and would not take within its ambit more unintentional omission.....*". The Government therefore is inclined to modify the Appellate order and release the currency on suitable redemption fine and penalty.

10. Keeping the facts of the case in mind, and the circumstantial reasons for which the misdemeanour has happened, Government opines that a reasonable view in the case is desirable. The redemption fine of Rs. 1,00,000/- (Rupees one Lakh) is reduced to Rs. 25,000/- (Rupees Twenty Five thousand). The penalty of Rs. 1,00,000/- (Rupees one Lakh) is also reduced to Rs. 25,000/- (Rupees Twenty Five thousand).

11. The order of the Appellate authority is modified as above.

12. Revision application is disposed off accordingly.

Shrawan
20/5/21
(SHRAWAN KUMAR)

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

ORDER No. 31/2021-CUS (SZ) /ASRA/

DATED 20.05.2021

To,

1. Shri Mangattu Ramesh.S/o Aramukhan, Mangattu House, P.O. Valluvambram, Mallappuram- 673651.
2. Commissioner of Central Excise, Customs & Service Tax, Mananchira, Calicut.

Copy to:

1. Smt. Manju Rajan, Advocate, Chamber No. 835, Golden Jubilee Chamber Complex, High Court of Kerala, Ernakulam, Kochi - 682 031.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.