

REGISTERED
SPEED POST



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 380/11/B/SZ/2020 / 2828

Date of Issue 28.05.2021

ORDER NO. 134 / CUS (SZ)/ASRA/MUMBAI DATED 27.05.2021 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 : Commissioner of Customs, Chennai

Respondent : Shri N. Senthilarasu

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal Cus.I No. 35/2020 dated 23.01.2020 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by the Commissioner of Customs, Chennai (herein referred to as Applicant department) against the order Cus.I No. 35/2020 dated 23.01.2020 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the on 11.10.2018 the Officers of DRI, CZU intercepted Shri N. Senthilarasu, bound for Hong Kong, at the Chennai International airport after he had cleared immigration. An examination of his checked in baggage resulted in the recovery of USD \$ 1,00,000/- equivalent to Rs. 72,00,000/- (Rupees Seventy two lakhs).

3. After due process of the law vide Order-In-Original No. 170/2019-20 dated 10.09.2019 the Original Adjudicating Authority confiscated the currency absolutely and imposed a penalty of Rs. 7,00,000/- (Rupees Seven lakhs) under section 114(i) of the Customs Act, 1962 on the Applicant.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order Cus.I No. 35/2020 dated 23.01.2020 allowed the Appeal and allowed the redemption of the currency on payment of the redemption fine of Rs. 15,00,000/- (Rupees Fifteen lakhs) without interfering with the penalty imposed.

5. Aggrieved with the above order the Applicant department has filed this revision application on the grounds that the Appellate order is neither legal nor proper for the following reasons:

5.1 As per Section 3 (3) of the Foreign Trade (Development & Regulation) Act, 1992 all goods to which any order under Sub-section 2 applies shall be deemed to be the goods the import or export of which has been prohibited under section 11 Of the Customs Act, and all the provisions of that act shall have effect accordingly. The passenger having not satisfied the requirement under Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, which requires general or special the Reserve Bank to export or to send out of India any Foreign currency and having thus contravened the provisions of

section 3 of the FEMA, thereby Section 11(2) (u) of the Customs Act, 1962. In view of this, the foreign currency under seizure has been rendered liable for confiscation under 113(d) of the Customs Act, 1962.

5.2 In terms of Section 2(22) (d) of the Customs Act, 1962 "goods" includes currency and negotiable instruments and thus in terms of para 2.7 of Foreign Trade Policy any goods, export or import of which is restricted under ITC (HS) can be exported or imported only in accordance with an authorization or in terms of a public notice in this regard. The passenger was not in possession of any valid documents/permission by the competent authorities for legal export of foreign currency.

5.3 Further it is on record that the passenger, Shri. Senthilarasu did not declare the foreign currency possessed by him as required under Section 77 of the Customs Act, 1962 and he attempted to smuggle the same out of India by way of concealment on his person and Checked in baggage and thus rendered the said foreign currency liable for confiscation. In such cases, the seized currency should invariably be confiscated absolutely and redemption option should not be given by the Appellate Authority.

5.4 Shri. N. Senthilarasu is a frequent flyer and the same has been given in his own statement and hence not knowing the provision of law for declaring the currency in his possession and claiming his innocence cannot be accepted.

5.5 The Appellant vide his voluntary statement dated 12.10.2018, under Section 100 of Customs Act, 1962 stated that the he was owner of the Foreign currency seized and said money was earned by him from his business and an amount of Rs.5,00,000/- to Rs.6,00,000/- was obtained on loan by pleading his wife's jewels and he had declared the same to the Income Tax Department; and paid only Rs.20,000/- as income tax and had not provide any documental proof of his source of income and he had acquired the foreign currency from grey market not form a registered foreign exchange in such a case the currency may not be redeemed as per section 125 of Customs Act, 1962. In such a case the, the order of Commissioner Appeals should have not given for redemption of the said foreign currency.

5.6 The order of Appellate authority may have 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.

5.7 The Applicant department submitted case laws in support of his case and prayed that the order of Appellate authority may be set aside or such an order be passed deemed fit.

6. Accordingly personal hearings in the case were scheduled on 09.03.2021 06.04.2021 and 22.04.2021. However no one appeared on behalf of the department. On 06.04.2021 Shri B. Satish Sundar, Advocate, attended the hearing on behalf of the Applicant. He reiterated her earlier submissions and submitted that case laws in addition to the case laws mentioned in the order of the Commissioner (Appeals). In his written submissions he stated that;

6.1 The facts leading to the filing of the revision are not set out in extention as the same has been delineated in the grounds of revision. The short issue which arises for consideration is whether the order of the appellate authority above referred allowing redemption of the seized / confiscated foreign currencies in terms of , 125 of the Customs Act, 1962 to the respondent is proper or not.

6.2 Admittedly, the currencies were not ingeniously concealed but only recovered from the checked in baggage. The respondent claimed ownership of the currencies in question and finding of the appellate authority is that he was not a carrier. No incriminating documents were seized from the search of the respondent's residence and business premises. Applying the ratios of the orders of the revisionary authority, Tribunal, the Hon'ble Bombay High Court, Delhi High Court as also the Hon'ble Supreme Court, option of redemption in terms of section 125 has to be extended which is also taken note of by the appellate authority in extending the option of redemption to the respondent. The factum of claim of ownership by the respondent of the currencies is also relevant.

6.3 The respondent submits that the option of redemption of the seized / confiscated foreign currencies extended by the appellate authority is well reasoned and does not call for interference at the hands of this respected revisionary authority.

7. Government has gone through the facts of the case. The confiscation of the US dollars was justified as the respondent was carrying foreign currency in excess of the permitted limit and no declaration as required under section 77 of the Customs Act, 1962 was filed by the Respondent. The order of the Appellate authority in allowing redemption and justifying the Appellants request for release of the foreign currency, has relied on the

case of Commissioner of Customs V/s Atul Automations wherein the Honble Supreme Court has upheld redemption under section 125 of the Customs Act, 1962, interalia stating that


“Section 125 of the Customs Act, 1962 vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the foreign Trade Act and Section 125 of the Customs Act, will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of market value. There will exist a fundamental distinction between what is prohibited and what is restricted.”

8. The Appellate authority in its order states that there is no evidence placed on record to show that declaration is necessary for carrying of foreign currency by a departing passenger. Quoting the ratio of the Tribunal -Mumbai case reported in 2017(352) ELT 53 (Tri-Mumbai) of Gyanchand Jain Vs Commissioner of Customs (Airport), Mumbai, which states *“5. I find that there is no dispute that the appellant had indeed carried the said foreign currency. No evidence has been placed on record to show that declaration was necessary for carrying of foreign currency by a departing passenger or that his inability to explain the source of foreign currency would render it liable to confiscation under Customs Act, 1962. The finding in the impugned order of illegal purpose is not tenable as action in relation to illegal purpose, if any, is vested with the appropriate authority under the appropriate statutes other than Customs Act, 1962.”* .

8. Government does not find enough grounds to differ with the above findings of the Appellate authority. In this regard the Government relies on the conclusions drawn in the case of Raju Sharma V/s Union of India reported in 2020 (372) ELT 249 (Del.) wherein the Hon'ble High Court of Delhi states *“the actual grievance of the Revenue before the Revisionary Authority, was that the seized currency was “prohibited”, redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated. This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, in such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of Rs. 50,000/- , no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). Exercise of discretion, by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motives [Mangalam Organics Ltd. v. UOI - (2017) 7 SCC 221 = 2017 (349)*

E.L.T. 369 (S.C.). No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine of 50,000/- .” The Government therefore concludes that Appellate authority has rightly used his discretion in allowing the release of foreign currency on payment of suitable redemption fine. The Revision Application does not survive on merits, and is therefore liable to be dismissed.

9. Revision application is accordingly dismissed.


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

ORDER No. 134/2021-CUS (SZ) /ASRA/

DATED 27. 05.2021

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri N. Senthilarasu, S/o Shri Natrajan, No. 23/11, Loganathan Colony, Mylapore Chennai 600004.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.