

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/279/B/WZ/2018-RA | 280

Date of Issue : ~~01.2023~~

06.02.2023

ORDER No. 138/2023-CUS (WZ)/ASRA/MUMBAI DATED.31.01.2023
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 : Mr. Rahul Premchandani

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-273/2018-19 dated 20.07.2018 [Date of
issue: 02.08.2018] [F.No. S/49/352/2016-17/AP/D]
passed by the Commissioner of Customs (Appeals),
Mumbai Zone-III.

ORDER

This revision application has been filed by the Mr. Rahul Premchandani, (herein referred to as Applicant) against the Order-In-Appeal No. MUM-CUSTM-PAX-APP-273/2018-19 dated 20.07.2018 [Date of issue: 02.08.2018] [F.No. S/49/352/2016-17/AP/D] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2.01. Brief facts of the case are that the Applicant who was departing from Mumbai to Dubai by Emirates Flight No EK-07 on 11.08.2015 was intercepted by custom officers after he had cleared the immigration at the Chattrapati Shivaji International Airport, Mumbai. The Applicant was asked whether he was carrying any contraband, Foreign/Indian currency either in his baggage or on his person to which he replied in the negative and told that he was carrying personal effect items only. On conducting the personal search of the Applicant and the hand bag and checked-in baggage of the Applicant 10 bundles of Indian currency and 01 bundle of foreign currency was recovered from a brown coloured checked-in bag of '1 Gold Star' make and the same are detailed as under

TABLE NO. 01

S.No.	Type of currency	Denomination	Nos of notes	Total value	Ex. Rate	Total Amount in INR
1	USD	100	31	3,100	63.30	1,96,230
8	Indian Rupee	1000	1000	10,00,000	-	10,00,000
			Aggregate value of FC & INR in INR =			11,96,930/-

2.02. The officers took over and seized the Indian currency amounting to Rs. 10,00,000/- and USD 3,100 totally amounting to Rs. 11,96,930/- under the reasonable belief that the same were attempted to be smuggled out of India and hence liable for confiscation under the provisions of the Customs Act, 1962 read with F.E.M.A 1999 and Indian Exchange Management (Export and Import

Currency) Regulation, 2000. The said currency was deposited in the State Bank of India on 11.08.2015

2.03. The Applicant had admitted that the currency belonged to him and that he was carrying the currency to repay one Mr Darshan Sachdev and that he did not have any legal documents for the foreign and admitted knowledge, possession, concealment, carriage, non declaration and recovery of the seized Indian currency and that he was not aware that it was an offence to carry Indian currency beyond permissible limits.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Additional Commissioner of Customs, CSI Airport, Mumbai vide Order-in-Original No. ADC/RR/ADJN/082/2016-17 dated 10.06.2016 [S/14-6-33/2015-16 ADJN SD/INT/AIU/316/2015 AP'C], ordered for the confiscation of the seized foreign currency and Indian currency, totally valued at Rs. 11,96,850/- under Section 113(d), (e) and (h) of the Customs Act, 1962 and gave an option to the Applicant to redeem the Indian currency on payment of redemption fine of Rs. 1,00,000/- and imposed a penalty of Rs. 1,00,000/- on the Applicant under Section 114 of the Customs Act, 1962.

4. Pursuant to the Order-in-Original, the Applicant filed a refund claim and vide order No AC/REFUND-43R/2015-16 dated 29.09.2016, the Assistant commissioner of Customs (Refund), CSI Airport, Mumbai sanctioned an amount of Rs.9,96,850/- after reducing an amount of Rs. 1,00,000/- towards redemption fine and Rs. 1,00,000/- towards penalty under Section 114 of the Customs Act, 1962.

5. Aggrieved by the Order-in-Original dated 10.06.2016, the Respondent-Department filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide his order Order-In-Appeal No. MUM-CUSTM-PAX-APP-273/2018-19 dated 20.07.2018 [Date of issue: 02.08.2018] [F.No. S/49/352/2016-17/ AP/ D] modified the OIO to the extent

of absolutely confiscating the Indian currency and reducing the penalty to Rs. 75,000/-.

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

- 6.01. that the A.A ought to have appreciated that the impugned order passed by the OAA was well reasoned order and the justification rationale for permitting redemption of impugned goods to the Applicant was well founded and was based on solid grounds and sound principles of law.
- 6.02. that the AA ought to have appreciated that there was only contravention of Section 77 of the Customs Act, 1962, by the Applicant. It is submitted that due to the reason of contravention of Section 77 of the Customs Act, 1962, the OAA had imposed fine and penalty on the Applicant.
- 6.03. that the AA ought to have appreciated that the Applicant was the owner of the Indian currency and had given full details of the acquisition of Indian currency
- 6.04. that the OAA had clearly and rightly expressed the reason for granting the option of redemption of Indian currency to the Applicant.
- 6.05. that the OAA had correctly recorded the judgments relied upon by the Applicant and the Grounds & Judgments mentioned in the Appeal filed by the Department were inapplicable to this case, since the facts of the said cases were entirely different from the facts of the present case.
- 6.06. that in the matter of Panchbhaya Ismail Suleman vs Commissioner Of Customs., Airport, Mumbai, cited by the respondent, the only differentiation is that the Appellant is a carrier, whereas here in this case the Applicant was a owner of the said Indian currencies. Also, it was a case before 2010.
- 6.07. that in the matter of Salim M. Mamdani vs. Commissioner of Customs (Airport), Mumbai, cited by the respondent, the only differentiation is that the Appellant is a carrier, whereas here in this case, the Applicant was an owner of the said Indian currencies. That this case is of 2005.
- 6.08. that in the matter of Harish Muljimal Gandhi vs. Commissioner of Customs, ACC, Mumbai, relied upon by the respondent, it is an old case of year 2007, the only differentiation is that the Appellant is a carrier and the same was sent by post, whereas here in this case the Applicant was an owner of the said Indian currencies.
- 6.09. that the OAA had passed reasoned order; that there are judgements of various forums including the Apex Court where goods have be ordered to be released to the carriers also.; The list is as under;
 - (a). that CESTAT, in the case of Shri Ivan Leslie Anthony Pinto wherein vide Order No A/94645/16/SMB dated 24.08.2016, and which is direct on the subject Appeal involving absolute confiscation of INR Rs. 49,73,000/- carried by the said Appellant, the Bench set aside the Order of absolute confiscation and directed the release of the INR currency on payment of

RF and Penalty. In doing so and while interpreting the provisions relating to release of currency, it was observed that Currency was not prohibited goods and, therefore, the adjudicating authority is bound to allow redemption to the person from whom it was seized and option to redeem the goods had been allowed.

- (b). that CESTAT vide Order No A/85021/17/SD dated 08.11.2016, set aside the Order of absolute confiscation of INR Rs. 21,00,000/- and foreign currency of Rs.47,00,000/- from the Appellant, Shri Sanjay Agarwal was released.

6.10. The Applicant has relied upon the following case laws;

- (i). Hargovind Das K. Joshi vis. Collector of Customs Civil Appeals Nos. 139-143 of 1985, decided on 6-1-1987; Absolute Confiscation of Goods by Collector without considering question of redemption on payment of fine although having discretion to do so - Matter remanded to Collector for consideration of exercise of discretion for imposition of redemption fine - Section 125 of Customs Act, 1962.
- (ii). Alfred Menezes v/s. Commissioner of Cus..(C.S.I.) Airport, Mumbai. Final Order Nos. A/613-614/2008-WBZ/C-II/(SMB) and Stay Order Nos. S/298 299/2008-WBZ/C-II(SMB), dated 1-8-2008 in Application Nos. C/Stay/862 and 1063/2008 in Appeal Nos. C/531-532/2008 ; Power of adjudicating authority under provisions of Customs Act, 1952 to offer redemption fine in lieu of confiscation of prohibited / restricted goods confiscated-Section125(1) Ibid clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods.
- (iii). Commissioner of Customs, Kandla v/s. Deluxe Exports : Order Nos. 2065-2076/2000-WBZ/C-II, dated 25-7-2000 in Appeals Nos. C/368, 554 to 564/2000-Mum.
- (iv). R.Mohandas v/s. Commissioner of Customs, Cochin : W.P. (C) Nos. 24074 and 39096 of 2015 (H), decided on 29-2-2016 ; Department cannot plead that they will not release goods to person who is not owner- Petitions Allowed.
- (v). Yakub Ibrahim Yusuf vis. Commissioner of Customs, Mumbai : Final Order No. A/362/2010-WBZ/C-II/(CSTB), dated 28-10-2010 in Appeal No. C/51/1996-Mum; prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation - It does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health.
- (vi). Union of India v/s. Dhanak M. Ramji : Writ Petition Nos. 1397 with 1022 of 2009, decided on 4-8-2009 ; Confiscated goods Redemption of Ownership Tribunal order assailed on the ground that goods could not

be released to non-owner- Finding by Tribunal that application for release of goods maintainable Goods not prohibited but became prohibited due to violation of law - Discretion properly exercised by Tribunal in ordering release of confiscated goods on payment of redemption fine

- 6.11. that in similar situations / cases, Customs have permitted the redemption of Indian currency under Section 125 of the Customs Act, 1962 and therefore the impugned goods in the present case also ought to have been released under Section 125 of Customs Act, 1962.; that these orders had been accepted by the department and the Department ought to have observed Judicial Discipline as held by the Apex Court and other Judicial Authorities, while dealing with the cases having similar facts and situations,
- (a). that they rely on the case of Birla Corporation Ltd. V/s. Commissioner of Central Excise reported in 2005 (186) ELT 266 (S.C.) passed by the Apex Court on judicial discipline.
 - (b) Judgment of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nasik Vis Jain Vanguard Polybutlene Ltd. Reported in 2010 (256) ELT 523 (Bom) on judicial discipline.
 - c) Judgement of Hon'ble CESTAT in the case of Commissioner of Central Excise, Vapi V/S Trinity Industries reported in 2010 (254) E.L.T.119 (Tri-Ahmd.) on judicial discipline

Under the circumstance of the case, the Applicant has prayed to the Revision Authority to set aside the OIA passed by the AA and to uphold the OIO passed by the OAA, alternately, to remand the case back to the AA for passing orders on merit or for passing any such orders as deemed fit.

6.1. Personal hearing in the case was scheduled for 02.08.2022. Shri N.J. Heera, Advocate appeared for the personal hearing on behalf of the Applicant. He stated that he would be submitting additional written submissions in two weeks from the personal hearing.

6.2. In the additional submissions filed online on 19.09.2022, the Applicant has reiterated the contents of the Revision Application.

7. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that during the search of the baggage of the Applicant, foreign currency and Indian currency being carried by the

Applicant were recovered and had not been declared by the Applicant to the Customs at the time of departure from India. The Applicant could not produce any legal document for purchase of the foreign currency and the source of currency remained unaccounted. As regards the Indian currency, the Applicant had claimed ownership of the same and stated that part of the Indian currency was his savings and part of it was borrowed from a travel agent.

8. For a better understanding, the relevant provisions of the regulations of the Foreign Exchange Management (Export and import of currency) Regulations, 2000 dated 03rd May 2000 (Notification No. FEMA 6 /RB-2000 dated 3rd May 2000) are reproduced as under:

(i) Regulation 5 states as under

“5. Prohibition on export and import of foreign currency:-

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.”

(ii) Regulation 3 states as under:

“3. Export and Import of Indian currency and currency notes :-

(1) Save as otherwise provided in these regulations, any person resident in India,

(a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs.5,000/- per person;

(b) may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation :

‘Commemorative Coin’ includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.

c) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal

and Bhutan), currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs.5,000/- per person.”

(iii) Regulation 7 states as under:

7. Export of foreign exchange and currency notes :-

(1) An authorised person may send out of India foreign currency acquired in normal course of business,

(2) any person may take or send out of India, -

(i) Cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;

(ii) foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder ;

(iii) currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank ;

(3) any person may take out of India, -

(i) foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 ;

(ii) unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 ;

(4) any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

9. 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. The foreign currency was procured from persons other than authorized persons as specified under FEMA, makes the goods liable for confiscation in view of the prohibition imposed in Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. As regards the seized Indian currency, Government finds that there is no dispute that the Indian 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, concealment, non-declaration and recovery of the Indian currency. The export of Indian currency outside the country in excess of Rs. 25,000/- was proscribed in terms Regulation 3 of the Foreign Exchange Management (Export and import of currency) Regulations, 2000 dated 03rd May 2000 (Notification No. FEMA 6 /RB-2000 dated 3rd May 2000) and amended by RBI vide Notification No. 39/2014-RB dated 04.06.2014. Government observes that the conclusions arrived at by the lower authorities noting 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 Indian currency ordered, is justified.

10. Section 2(33) of the Customs Act, 1962 and Section 125 of the Customs Act, 1962, reads as under:

2(33) "*prohibited goods*" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

Section 125 of Customs Act, 1962

"Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under

sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”

11. 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.

12. The OAA has also observed that the Applicant was carrying Indian currency which was acquired by him from his own resources and had claimed ownership of the same. Concealment was not ingenious, past record of the Applicant does not indicate anything adverse. In the circumstances, Government finds that the absolute confiscation of the currency by the AA is harsh and unreasonable. The OAA had used his discretion in allowing the Indian currency to be redeemed on payment of a fine of Rs. 1,00,000/-. Government finds the

same to be legal and proper and is inclined to restore the OIO passed by the Original Adjudicating Authority.

13. The Government finds that the personal penalty of Rs. 1,00,000/- imposed by the Original Adjudicating Authority on the Applicant under Section 114 of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

13. In view of the above, the Government sets aside the Order-in-Appeal No. MUM-CUSTM-PAX-APP-273/2018-19 dated 20.07.2018 [Date of issue: 02.08.2018] [F.No. S/49/352/2016-17/AP/D] passed by the Appellate Authority and hereby restores the Order-in-Original No. ADC/RR/ADJN/082/2016-17 dated 10.06.2016 [S/14-6-33/2015-16 ADJN SD/INT/AIU/316/2015 AP'C'] passed by the Original Adjudicating Authority.

14. Accordingly, the Revision Application is allowed on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 38/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2023.

To,

1. Mr. Rahul Premchandani, Flat No E-34, 3rd Floor, armors Township, Sugat nagar, Jaripakta, Nagpur, Maharashtra 440 014.
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.

Copy to:

1. Shri N.J. Heera, Advocate, Nulwala Building, Ground Floor, 41, Mumt Road, Opp G.P.O, Fort, Mumbai 400 001.
2. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

3. Sr. P.S. to AS (RA), Mumbai.
4. File copy.
5. Notice Board.