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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. 373/107/B/17-RA / 3175

Date of Issue 29.06.2021

ORDER NO. 139/2021-CUS (SZ)/ASRA/MUMBAI DATED 07.06.2021 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 Mohammed Ashfaq Mohammed Qasim

Respondent : Pr. Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-In-Appeal C.Cus No. 120/17 dated 07.07.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by the Shri Mohammed Ashfaq Mohammed Qasim (herein referred to as Applicant) against the order C.Cus No. 120/17 dated 07.07.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs, on the basis of specific information, intercepted Shri Mohammed Ashfaq Mohammed Qasim, at the Anna International airport as he was to depart for Bangkok after completing immigration formalities. The examination of his baggage resulted in the recovery of 250 nos of USD 100 equivalent to INR Rs. 16,45,000/- (Rupees Sixteen lakhs forty five thousand only). The Applicant had not declared the currency and did not possess any document /permit from RBI as required under FEMA for export of the foreign currency.

3. After due process of the law vide Order-In-Original No. 255/2016-17-AIRPORT dated 31.01.2017 the Original Adjudicating Authority confiscated the currency absolutely and imposed a penalty of Rs. 1,60,000/- (Rupees One lakh Sixty thousand) on the Applicant under section 114(i) of the Customs Act, 1962.

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order C.Cus No. 120/17 dated 07.07.2017 rejected the Appeal.

5. Aggrieved with the above order the Applicant denied his role as a carrier and vide letter dated 07.11.2016 gave reasons for carrying the foreign currency.

5.1 Appellant was found with Foreign currencies equivalent to Indian Rupees 16,45,000/-.

5.2 However both Lower authorities irrespective of relying upon similar cases of carriers where option of redemption is granted, absolute confiscated the currencies.

5.3 Applicant craves to refer and rely upon similar orders and after he retracted his statement no investigation was done to falsify the claim of appellant by the Lower authorities.

5.4 The Applicants prays for

(a) absolute confiscation to be set aside.

(b) personal penalty to be reduced.

c) Any such reliefs this Hon'ble court may deem fit and proper.

6. Personal hearings in the case was scheduled on 29.01.20021, 18.03.2021, 25.03.2021 and 06.04.2021 Shri Prakash Shingrani, Advocate attended the hearing on 06.04.2021 on behalf of the Applicant and reiterated the submissions already made on behalf of the Applicant. He further submitted that the currency needs to be released on redemption fine as held by the high Courts, mentioning the judgement of Raju Sharma Vs UOI of Delhi High Court. Nobody attended the hearing on behalf of the department.

7. Government has gone through the facts of the case, the Applicant was going to Bangkok and was intercepted and was found in possession of currency in form of USD of 25000\$. The foreign currency notes in his possession is more than foreign currency permitted to be sold by authorised dealer, without RBI approval. The passenger also could not produce any valid receipt for purchase of currency from authorised dealer. It is therefore established that the currency notes have not been purchased from an authorised dealer and were not declared to the Customs authorities. Therefore confiscation of the currency is justified.

8. Government notes that the Passenger has submitted before investigation authorities that he owns the currency. The department alleges that the passenger is not the owner of the foreign currency. The Appellate authority relying on cases upholding absolute confiscation has finally concluded that "*the appellant was only a carrier of such currency and it did not belong to him. Giving option of redemption would be a windfall gain to him for indulging in smuggling activity as he has never revealed the whereabouts of actual owners of such currency and helped them to escape the rigours of law.*" The allegation that the Applicant is not the owner of the currency, is based on the initial statement of the Applicant. This statement has been retracted by the Applicant. The original adjudicating authority has however held that a mere retraction of a statement does not absolve the Applicant of whatever prejudicial activity he has under taken and that the Applicant has only retracted his statement to escape the clutches of the law. Government however notes that the statement of the Applicant has not been corroborated by any investigative facts. The Supreme Court in the case of

K.I. Pavunny Vs Asst. Collector of Central Excise in 1977 has held that " *Confessional statement of the accused can form the sole basis for conviction -if retracted, Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthfull - if found to be voluntary and truthful inculpatory portion of retracted confession could be relied upon to base conviction – However prudence and practice require that the court should seek assurance by way of corroboration from other evidences adduced by prosecution*" In this case no such corroboration from other investigations have been adduced through investigation, inspite of the fact that he has revealed the name of the person who has given him the currency. The Appellate authority has also resorted to the Applicants statement to reject the Applicants Appeal.

9. As regards the request for release of the seized Currency on redemption fine under section 125 (1) of the Customs Act, 1962, the Appellate authority while upholding absolute confiscation has erred in not considering redemption stating in par. 7.1 "The section 125 of the Customs Act, 1962 provides that option to pay fine in lieu of confiscation is to be given in respect of other than prohibited goods and leaves it to the discretion of the adjudicating authority in respect of prohibited goods". In the case Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.). The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Government also relies on the judgement in case of Peringatil Hamza Vs CC (Airport), Mumbai 2014 (309) ELT 259 (Tri-Mumbai) wherein it has been held that " *The general principle is that on whose possession the goods are found then that person is to be the owner of the goods. In this case, the currency has been recovered from the possession of the appellant and the appellant claims the owner of the goods and the adjudicating authority is holding that he is not the owner of the goods. Therefore, the onus lies on the adjudicating authority to find out who is the owner of the goods. As he has not arrived at a decision as who is the actual owner' of the goods, therefore, in all probability the appellant is the owner of the goods*".

10. Further, in the case of Raju Sharma V/s Union of India in 2020 (372) ELT 249 (Del.) wherein the Hon'ble High Court of Delhi has noted " *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.)].

11. In view of the above, the impugned orders of the Appellate authority is liable to be set aside, the impugned foreign currency of 16,45,000/- (Rupees Sixteen lakhs forty five thousand is allowed redemption on payment of Rs. 3,50,000/- (Rupees Three lakhs Fifty thousand) . The penalty of Rs. 1,60,000/- (Rupees One lakh Sixty thousand) is appropriate.

12. Revision application is disposed of on above terms.

Shrawan
7/6/21

(SHRAWAN KUMAR)

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

ORDER No. 39/2021-CUS (SZ) /ASRA/

DATED 07.06.2021

To,

1. Shri Mohammed Ashfaq Mohammed Qasim, S/o Shri Mohammed Qasim Dawood, 401/402, 4th Floor Khwaja Mahal, Moulana Azad (Duncun) Road, Mumbai- 400 008.
2. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
3. Shri Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (E), Mumbai-400 051.

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