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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. 373/293/B/14-RA

Date of Issue: 04.04.2018

ORDER NO. 142/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.03.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Naina Mohamed.

Respondent: Commissioner of Customs, Anna International Airport,
Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus No. 1177/2014 dated 10.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Naina Mohamed (hereinafter referred to as the Applicant) against the Order-in-Appeal C.Cus. No. 1177/2014 dated 10.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Applicant was proceeding to Kuala Lumpur on 19.03.2014 from Chennai. The applicant was intercepted in the departure by the Customs Officers and examination of his baggage resulted in recovery of Malaysian Currency viz. Malaysian Ringgits (180 Nos. X 100 denominations) valued at Rs. 3,34,980.00. As the Applicant was carrying Foreign Currency above the permissible limit as per the FEMA instructions, after due process of law it was confiscated absolutely by the Original Adjudicating Authority, under Section 113 (d), (e), (h) of the Customs Act 1962 read with chapter 2.31 of the Export & Import Policy. A penalty of Rs. 33,500/- was imposed under Section 114(i) / 114 (iii) of the Customs Act. 1962.

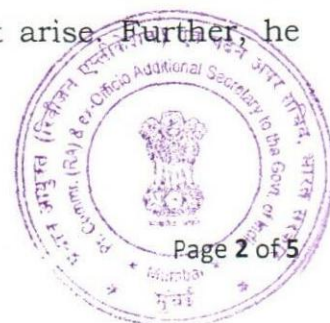
3. Aggrieved by the order of the Original Adjudicating Authority, the Applicant filed an appeal before the Commissioner of Customs (Appeals).

The Commissioner of Customs (Appeals) Chennai, rejected the Appeal on the grounds that the impugned currency was not declared to the Customs and thereby attempted to smuggle the same out of India.

4. Aggrieved by the order of the Commissioner (Appeals), the Applicant has filed the Revision Application on the following grounds that;

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

4.2 he had declared orally regarding the possession of foreign currency and hence question of declaration does not arise. Further, he was not aware of the procedure.



4.3 even assuming without admission, his act was only violation of the Reserve Bank rules,

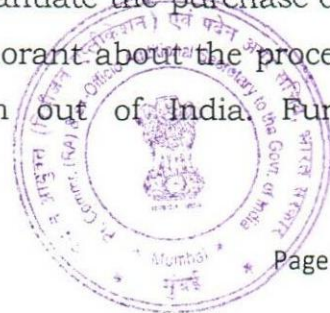
4.4 he gave statement with the Customs officer that the seized money belongs to him and the case detection was not in pursuant to any information. The discovery was on account of the fact that the appellant kept the foreign currency in the hand baggage and the officer also found the currency kept in the baggage and the appellant voluntary gave the currency to the officers.

4.6 There is no contumacious conduct on the part of the appellant but the conduct of a person who was ignorant of the law. Since he violated the provisions of Customs Act and FEMA Act the officers registered case against him under Customs Act and Fema ACT 999.

5. The Applicant has cited various assorted judgments in support of his case and prayed that the Hon'ble Revision Authority may please release the foreign currency sum of Rs. 3,34,980.00 on payment of redemption fine and reduce the personal penalty sum of Rs. 33,500.00 and thus render justice.

6. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the grounds of Appeal and pleaded that the Order in Appeal be set aside. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The Applicant had not produced any relevant documents to substantiate the purchase of the impugned foreign currency and pleaded he was ignorant about the procedure and unaware that monies could not be taken out of India. Further,



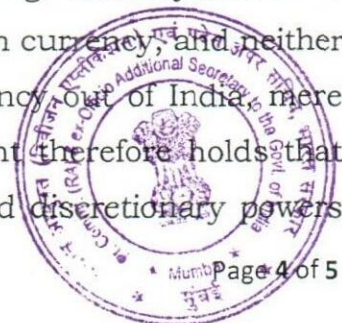
Government also notes that the Applicant is frequent visitor and previously also two offence case were booked against him.

8. The applicant has submitted various Judgements wherein the foreign currency attempted for export in contravention to Customs Law was released on payment of redemption fine and penalty was also reduced. However, Government finds that the case laws cited are distinguishable as being factually different in as much as that in present case, the applicant is frequent visitor and previously also two offence case are booked against him, which clearly shows that he is habitual offender.

9. Government also notes that there are catena of Judgements which align with the view that the discretionary powers vested with the lower authorities under section 125 (1) of the Customs Act, 1962 have to exercise. This aspect also find force from the Judgement in the case of Hargovind Das vs Collector of Customs 1992(61) ELT 172 (SC), wherein the Apex court has held that

"The Collector of Customs has passed an order for absolute confiscation of the imported goods without giving the appellants an option to redeem the same on payment of such fine as may be considered appropriate by him..... We are of the opinion that since the Additional Collector of Customs who passed the order for absolute confiscation had the discretion to give the option for redemption, it was but just, fair and proper that he addressed himself to this question. The order passed by the Additional Collector of Customs as confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal therefore requires to be modified only to this limited extent".

10. Government observes that in the instant case also the option for redemption was not exercised by the Original Adjudicating authority and there was no allegation of ingenious concealment of the foreign currency, and neither was there a concerted attempt at smuggling the currency out of India mere possession of currency is not an offence. Government therefore holds that absolute confiscation of the foreign currency harsh and discretionary powers



vested with the authorities under section 125 (1) of the Customs Act, 1962 have to be exercise.

11. Taking into consideration the foregoing discussion, Government, sets aside the absolute confiscation in the Order-in-Appeal No. C.Cus No. 1177/2014 passed by the Commissioner of Customs (Appeals) Chennai and allows redemption of the confiscated currency in lieu of fine. Hence, Government allows the impugned currency to the sum of Rs. 3,34,980.00 to be released on payment of redemption fine of Rs. 1,75,000/- (Rupees One lac Seventy Five thousand). Government, keeping in view the overall circumstances of the case, observes that the penalty imposed by the original Adjudicating Authority to be reasonable and hence upheld.

12. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

13. So, ordered.

Ashok Kumar Mehta
27.3.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-officio
Additional Secretary to Government of India

ORDER No. 42/2018-CUS (SZ)/ASRA/MUMBAI

DATED 27.03.2018

To,

Shri Naina Mohamed/
Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

True Copy Attested

Sankarsan Munda
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Chennai-I.
2. The Commissioner of Customs (Appeals-I), Chennai.
3. Shri S. Palinikumar, Advocate, No. 10, Sukurama Street, Second Floor, Chennai -600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.



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