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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. 373/292/B/14-RA / 66

Date of Issue: 10.04.2018

ORDER NO. 159/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.07.2018 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. Aboobucker Sitheek.

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. 1271/2014 dated 28.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Aboobucker Sitheek (hereinafter referred to as the Applicant) against the Order-in-Appeal C. Cus. No. 1271/2014 dated 28.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Applicant, a Sri Lankan National, was proceeding to Colombo on 15.02.2014 from Chennai. The applicant was intercepted in the departure by the Customs Officers and examination of his hand baggage resulted in recovery of Foreign currency equivalent to Rs. 7,26,502/- (Seven Lacs Twenty six thousand Five hundred and two). 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 chapter 2.31 of the Export & Import Policy. A penalty of Rs. 75,000/- 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, vide Order in Appeal C.Cti No. 1271/2014 dated 28.07.2014 rejected the Appeal.

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 circumstances and probabilities of the case; He was not aware that the monies could not be taken out of India; The Applicant had orally declared the currency to the officers and having seen the same the question of declaration does not arise; he comes to India occasionally



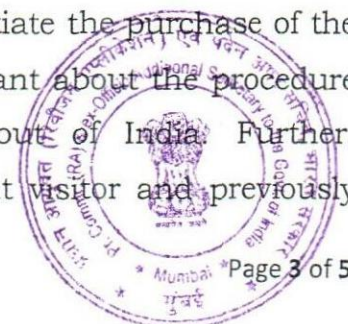
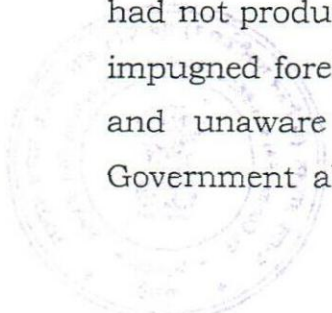
and is not aware of the procedures and hence the currency could have been released without fine off penalty; There was no contumacious conduct on part of him but the conduct of a person ignorant of the law; the authority cannot take a stand that he is not the owner of the goods and simultaneously state that he had not declared the currency; even assuming without admission, his act was only a technical violation and could have been pardoned more so because the Applicant is a foreigner.

4.2 The Applicant further pleaded that discretionary powers available under section 125 of the Customs Act should have been exercised and the currency should have been handed over; Mere possession of the foreign currency is not an offence as there was no mis-declaration of the Applicant; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; That absolute confiscation is very harsh and unjustified;

4.3 Under the circumstances 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 on payment of redemption fine and reduce the personal penalty sum of Rs. 75,000/- and thus render justice.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. 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 three offence case have been registered against him. Under the circumstances confiscation of the currency is justified.

7. The applicant has submitted various judgements wherein the foreign currency attempting export in contravention to Customs Law has been released on payment of redemption fine with reduced penalty. The Applicant claims the seized currency and it is observed that there is no allegation of ingenious concealment of the currency.

8. Government therefore holds that absolute confiscation of the foreign currency is harsh and not commensurate with the facts and circumstances of the case the applicant can be treated with a lenient view. Further, 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”.

8. Taking into consideration the foregoing discussion, Government sets aside the absolute confiscation in the Order-in-Appeal and allows redemption of the confiscated currency in lieu of fine. Government allows the impugned



Foreign currency equivalent to Rs. Rs. 7,26,502/- (Seven Lacs Twenty six thousand Five hundred and two). To be released on payment of redemption fine of Rs. 3,50,000/- (Rupees Three lacs Fifty thousand). Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 75,000/- (Rupees Seventy Five thousand) to Rs 50,000/- (Rupees Fifty thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

(Handwritten Signature)
28/03/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 159/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 28.03.2018

To,

True Copy Attested

Shri Aboobucker Sitheek
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

(Handwritten Signature)
27/3/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Airport, Chennai.
2. Commissioner of Customs (Appeals) Chennai
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
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