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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. 373/260/B/2018-RA/1780

Date of Issue 11.05.2022

ORDER NO. \69/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 06.05.2022
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.

F.No. 373/260/B/2018-RA

Applicant : Smt. Russia

Respondent : Commissioner of Customs (Preventive), No. 1 Williams Road,
Cantonment, Tiruchirappalli - 620 001.

Subject : Revision Applications filed respectively, under Section 129DD
of the Customs Act, 1962 against Orders-in-Appeal No. TCP-
CUS-000-APP-164-18 dated 29.08.2018 [A.No. C24/95/2018-
TRY(CUS)] passed by the Commissioner of GST, Service Tax &
C.Ex (Appeals), Trichirappalli - Pin : 620 001.

ORDER

This revision application has been filed by Smt. Russia (hereinafter referred to as the Applicant) against the Order in Appeal Airport. No. TCP-CUS-000-APP-164-18 dated 29.08.2018 [A.No. C24/95/2018-TRY(CUS)] passed by the Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappalli – Pin : 620001.

2. Briefly stated facts of the case are that the on 28.11.2015, the Officers of the Air Intelligence Unit, Customs at Trichy Airport intercepted the applicant at the International Airport, Trichy. The applicant was bound for Singapore Tiger Air Flight No. TR-2665 after she had ID6019/25.04.2019 and had cleared from immigration. To the query whether she was carrying any Indian / foreign currency, the applicant had replied in the negative. Examination of her stroller bag led to the recovery of Indian currency and assorted foreign currency as enumerated below at Table No. 1 which had been kept concealed in between clothes in her stroller bag. Applicant was asked whether she possessed any legal document for the export of the foreign currency, to which she replied in the negative. Applicant was also asked whether she possessed any valid document / permit from RBI as required under FEMA for export of the aforesaid foreign currency, to which she replied in the negative. As the applicant had attempted to export the foreign currency by concealing the same and without any declaration, the said foreign currency and Indian currency amounting / equivalent to Rs. 25,91,268 was seized.

TABLE No. 1

Sr. No.	Currency	Denomination	Nos. of notes	Total value FCN / INR	Exch. Rate in INR.	Total Value in INR.
1.	US\$	100	183	18,300/-	66.76	12,21,708/-
2.	Singapore\$	100	6	600/-	47.32	69,560/-
3.	Singapore\$	50	14	700/-	47.32	
4.	Singapore\$	10	17	170/-	47.32	
5.	INR	1000	300	3,00,000/-	-----	13,00,000
6.	INR	500	2000	10,00,000/-	-----	
					TOTAL	25,91,268/-

3. The Original Adjudicating Authority (OAA) viz, i.e. Joint Commissioner of Customs, Trichy vide Order-In-Original No. TCP-CUS-PRV-JTC-093/16 dated 16.11.2016 issued through C.No. VIII/10/09/2016-Cus.Adjn. ordered the absolute confiscation of the seized currencies i.e foreign currency equivalent to Rs. 12,91,268/- alongwith the Indian currency of Rs. 13,00,000/-, under Section 113(d) & 113(e) of the Customs Act, 1962 read with Regulations 3(1)(a) and 7(1), (2)(ii) and (3) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 framed with clause (g) of sub-Section (3) of Section 6 and under sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 and imposed a penalty of Rs. 5,00,000/- on the applicant under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappalli – Pin : 620001. who vide Order-In-Appeal No. TCP-CUS-000-APP-164-18 dated 29.08.2018 [A.No. C24/95/2018-TRY(CUS)] upheld the Order passed by the OAA and rejected the appeal.

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

5.01. that the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; that the seized currency is not prohibited and the same is a restricted item;

5.02. that the AA has not exercised the option under section 125 of the Customs Act 1962 and straightaway proceeded to confiscate the goods without grant of opportunity to the appellant to pay fine in lieu of confiscation.

5.03. that the Indian and foreign currencies belongs to her.

5.04. the applicant has cited and relied on various case laws where release of the foreign currency and gold were allowed on payment of redemption fine and a few of these are as given below;

(i). V.P Hameed 1994(73) ELT 425-Tribunal where there is no legal requirement for currency upto US\$ 10,000/-.

- (ii). Peringatil Hamza Vs. Commissioner Of Customs, Mumbai reported in 2014 (309) E.L.T. 259 (Tri-Mumbai). in Final Order No, A/1228/2014-WZB/C-IV (SMB), dated 18.07.2014 in appeal no C/65/2008-Mum where ownership lies with the person from whom currency recovered.
- (iii). Revision Authority Order F.No. 373/43/B -Cus RA dated 16.04.2008 in the case of Bepari Saleem.
- (iv). Delhi High Court case in r/o. Mohd. Ayaz vs UOI reported in 2003 (151) ELT 39 (DN) where it was held that currency was not prohibited for export & redemption on payment of fine waa allowed.
- (v). CESTAT Order dated 13.04 2007, in the case of T Sundarajan vs. Commr. Of Customs, Chennai reported in 2008 (221) ELT 258 (Tri-Chennai),
- (vi). GOI Order No. 134/06 dated 26.04.2006 in the case of Shri. Gulam Kader Ahmed Sheriff.
- (vii). CESTAT SZB, Chennai's Order No. 325/09 dated 30.03.2009 in the case of Shri. Pandithurai vs. Commissioner of Customs, Chennai wherein foreign currency equivalent to Rs. 58, Lakhs was redeemed on payment of fine of Rs. 7,50,000 and penalty of 1,00,000/-.
- (viii). CESTAT WRB Mumbai Order No. A/242/WZB/2004-C.II in the case of Mr. Roach Patrick vs. CC, Mumbai
- (ix). Commissioner of Customs Vs Rajinder Nirula (S.C. Dharmadhikari and B.P. Colabawala, JJ dated - 27.10.2016), judgment reported in 2017 (346) ELT 9 Mumbai.
- (x). etc

Under the above circumstances of the case, the applicant has prayed to Revision Authority to release the foreign currency on payment of redemption fine and reduce the personal penalty and to render justice.

6(a). Personal hearing through the online video conferencing mode was scheduled for 23.03.2022 and 30.03.2022. Smt. Kamalamalar Palanikumar, Advocate for the applicant appeared for physical hearing and submitted a written submission. She requested to allow the application.

6(b). In the written submission dated 30.03.2022 handed over on 30.03.2022 during the personal hearing, Smt. Kamalamalar Palanikumar reiterated the submissions made in the grounds of appeals and relied upon some more case laws given below, to buttress their case.

(i). GYANCHAND JAIN Vs Commissioner of Customs (Airport), Mumbai, judgment reported in 2017 (325) ELT 53 (Tri Mumbai) -Final Order No. A/85865/2017-WZB- dated 14.02.2017 in appeal no C/56/2007- Mum
(ii). Commissioner of Customs Vs Rajinder Nirula (S.C. Dharmadhikari and B.P. Colabawala, JJ dated - 27.10.2016), judgment reported in 2017 (346) ELT 9 Mumbai.

12. Government has gone through the facts of the case. Government finds that there is no dispute that the seized foreign currency was not declared by the Applicant to the Customs at the point of departure. Further, in her statement the applicant had admitted the possession, carriage, concealment, non-declaration and recovery of the foreign currency. The applicant was unable to give the source of how she came in possession of the foreign currency. The applicant had changed her version many times. Applicant was unable to show that the impugned foreign currency in her possession was procured from authorized persons as specified under FEMA. Source of currency had remained unaccounted. Thus, it has been rightly held by the lower adjudicating authority that in the absence of any valid document for the possession of the foreign currency, the same had been procured from persons other than authorized persons as specified under FEMA, which 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. Therefore, the absolute confiscation of the foreign currency was justified as the applicant had been carrying foreign currency in excess of the permitted limit and no declaration as required under section 77 of the Customs Act, 1962 was filed. Infact, the applicant was unable to explain the source of the Indian currency.

13. The Government finds that the Applicant had not taken any general or special permission of the RBI to carry the foreign currency / Indian currency as stipulated under Regulations 3(1)(a) and 7(1), (2)(ii) and (3) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 framed with clause (g) of sub-Section (3) of Section 6 and under sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 and had attempted to take it out of the country without declaring the same to Customs at the point of departure. The Government notes that admittedly the applicant is a frequent traveller having travelled abroad nearly 20 times in a year. She had knowingly attempted to export foreign and Indian currency worth Rs. 25,91,268/-. Hence, the Government finds that the conclusions arrived at by the lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 has been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Government finds that the lower adjudicating authority had applied the ratio of the judgement of the Apex Court in the case of Sheikh Mohd. Umar v/s. Commissioner of Customs, Calcutta [1983(13) ELT 1439 (SC)] wherein it is held that non-fulfilment of the restrictions imposed would bring the goods with the scope of "prohibited goods".

14. Government finds that the case of Commissioner of Customs v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad)] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

10. On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.

11. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the

Reserve Bank of India. Regulation 7 deals with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :

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.

7. Export of foreign exchange and currency notes. -

(1) An authorized 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 authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder

.....
12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

15. 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.

16, Government finds that considering that such huge amount of foreign / Indian currency was being carried in the baggage, currency remained unaccountable, none of differing versions of sourcing currency were found true, thus discretion used by OAA to absolutely confiscate the currencies is appropriate and judicious. Facts and circumstances of the case warrants absolute confiscation of foreign currency as held by the adjudicating authority and confirmed by the appellate authority. The penalty of Rs. 5,00,000/- is reasonable and judicious and would be a deterrent to others harbouring such plans. Government therefore finds no reason to interfere in the Order passed by the OAA and upheld by the AA.

17. Accordingly, the revision application is dismissed.


(SHRAWAN KUMAR)

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

ORDER NO. 169/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 06.05.2022

To,

1. Smt. Russia, D/o Shri. Murugaiyan, No. 1A, Karikkadu, Pattukkattai Post, Thanjavur Dt., Tamil Nadu - 614 601.
2. Smt. Russia, D/o Shri. Murugaiyan, No. 27B, Krambayamkilakku, Karambayam, Thanjavur Dist. Tamil Nadu - 614 626.
3. Commissioner of Customs (Preventive), No. 1 Williams Road, Cantonment, Tiruchirappalli - 620 001.

Copy To,

1. Smt. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai - 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3. File Copy.~~
4. Notice Board.