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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. 371/405/B/2019-RA / 193 : Date of Issue : 17.01.2023

ORDER No. 16/2023-CUS (WZ)/ASRA/MUMBAI DATED 16.01.2023.
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 : Shri. Ranjit Singh

Respondent : Pr. Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
AHD-CUSTM-000-APP-135-19-20 dated 21.06.2019
issued on 21.06.2019 through F.No. S/49-
47/CUS/AHD/18-19 passed by the Commissioner of
Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by the Shri. Ranjit Singh (herein referred to as 'Applicant') against the Order-in-Appeal No. AHD-CUSTOM-000-APP-135-19-20 dated 21.06.2019 issued on 21.06.2019 through F.No. S/49-47/CUS/AHD/18-19 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2.1. Brief facts of the case are that the Applicant, holding passport issued by the Department of State, USA arrived at Ahmedabad from USA by Air India Flight No 091 on 09.03.2017. The Applicant approached the Customs official and declared an amount of Rs. 11,95,500/- of demonetised currency. The Applicant sought to declare the currency in order to enable him to exchange the demonetised currency from the Reserve Bank of India. As there was a restriction of bringing more than Rs. 25,000/- into India at one time, the demonetised currency worth Rs. 11,95,500/- was placed under seizure on 09.03.2017 as there was a violation of the Baggage Rules, 2016, Customs Act, 1962 and the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and conditions of Notification No 2652 dated 08.11.2016 issued by the Reserve Bank of India.

2.2. The Applicant in his statement informed that he was a citizen of USA and had been living there since 2004 and that he had got Rs. 12,00,000/- from selling his shop in Vadodara, in which he was a partner and that he had taken the Rs. 12 lakhs to USA over a period of time and had brought back the demonetised currency to exchange the notes in India.

3. Pursuant to issue of show cause notice and following the process of law, the Original Adjudicating Authority (OAA) viz. Addl. Commissioner of Customs, Ahmedabad, vide Order-in-Original No. 34/ADC-MSV/SVPIA/O &

A/2017 dated 15.03.2018 (F.No. VIII/10-20/SVPIA/O &A/2017) ordered absolute confiscation of the specified bank notes (demonetised currency notes) having a face value of Rs. 11,95,500/-, under the provisions of Section 111(d) of the Customs Act, 1962 and imposed a penalty of Rs. 3,00,000/- under the provisions of Section 112(a) and (b) clause (i) of the Customs Act, 1962. Penalty of Rs.10,00,000/- was also imposed under Section 114(i) of the Customs Act, 1962. Also, the Indian currency notes worth Rs 12,00,000/- taken abroad was held liable for confiscation under the provisions of Section 113(d) of the Act but as the currency was not physically available for confiscation, no redemption fine was imposed.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz. Commissioner of Customs (Appeals), Ahmedabad, who vide his Order-in-Appeal No. AHD-CUSTOM-000-APP-135-19-20 dated 21.06.2019 issued on 21.06.2019 through F.No. S/49-47/CUS/AHD/18-19 upheld the order of the OAA and dismissed the appeal.

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

5.1 the order of the AA is erroneous, devoid of merit and bad in law as it has not taken into account intent of the Applicant

5.2. That the Applicant had no intent to violate any law and there was no justification for imposition of penalty of Rs. 3 lakh for bringing the currency in India for conversion.

5.3. That in the wake of demonetisation everyone was legally entitled to get the currency exchanged for new currency and it was widely publicised that persons staying abroad can come to India and present the currency to RBI for conversion.

5.4. That the penalty of Rs. 10 lakh has been imposed for an imagined offence of exporting the currency out of India, without any evidence and

imposition of penalty is based on conjecture without determining as to who exported the currency, in how many instalments and when.

5.5. That the Indian currency worth Rs. 12 lakh from India to USA was carried over a period of time and not on a single occasion by a single person and the customs authorities never found any of his relatives or the Applicant himself carrying currency in excess of Rs. 25,000/-. Also in his statement recorded on the day of his arrival, the Applicant had stated that the currency was taken out of India "over a period of time".

5.5. That the department has accepted the statement itself as an evidence, but has refused to accept the second part of the statement viz. "over a period of time".

5.6. That the authorities have erred in holding that the Applicant was required to prove that the currency was taken out of country over a period of time but the authorities never sought proof to the effect that he had taken the currency out of the country;

5.7. That the department cannot pick and choose portions of the statement selectively, neglecting other parts thereof, as has been done in the instant case;

5.8. That there is no legal presumption of guilt under Customs Law or under FEMA and a person who says that currency was taken out over a period of time, cannot be held guilty until he produces evidence to prove that every time it was taken out, it was within the permissible limit and that he himself did not take it out. Statement under Section 108 itself is a sufficient basis to support his claim.

5.9. That where the department challenges his statement, it is duty of the department to prove that his statement was incorrect and it is draconian interpretation of law to hold a person guilty simply on the ground that he has failed to prove his innocence.

5.10. That demonetisation being a special event and believing that the government would not deprive him of his money and would exchange the

same, the Applicant visited the country and declared the money to the authorities. This was a perfectly honest and bona fide act without a tinge of intent to violate any law. Applicant believed that demonetisation was a special circumstance and it was never meant to deprive people of their genuine money. Applicant believed bona fide, that being a special circumstance the government would not respect the amount of currency that could be brought in for exchange. The demonetisation forced him to bring in the entire amount on a single occasion.

5.11. That the Applicant had absolute vested right over the currency and was entitled to get an equivalent value in legal tender. Such substantial right could not be curtailed by creating a procedural hurdle.

5.12. That the Applicant never knew or believed that such a restriction of Rs. 25,000/- on each trip being allowed was brought in even during the event of demonetisation.

5.13. that the Applicant declared the currency voluntarily and on his own and had not even apprehended that he was in any legal error. Thus there was neither any justification for confiscation of the currency and absolutely no justification for imposition of penalty and has to be treated differently from a case where the person attempts to smuggle in the currency.

5.14. That the Applicant was ignorant of the prohibition and cannot be said that he knowingly attempted to violate the law.

5.15. That the quantum of penalty of Rs. 10 lakh and Rs. 3 lakh was harsh and disproportionate as even while ignorance of law may not be an excuse for the purpose of ensuring compliance, yet there was no presumption that every violation of law is deliberate. The Applicant's conduct of bringing the currency to the notice of the customs officers clearly indicates that he believed that he was doing a perfectly legal act. Therefore there was no justification to impose such a high amount of penalty.

Under the circumstances the Applicant prayed to set aside the impugned Order-in-Appeal, drop the proceedings initiated vide the impugned Show Cause Notice and grant such other or further relief as the Central Government may deem fit & proper in the interest of justice and equity.

6. Personal hearing through the online video conferencing mode was scheduled for 10.08.2022 or 24.08.2022. Shri. Sanjay Dwivedi, Advocate for the Applicant appeared online for personal hearing and submitted that the Applicant was an American national and had brought Indian currency accumulated abroad and declared the same to Customs. He submitted that since it was a bonafide case, value of currency was zero, hence no penalty should have been imposed. He requested to allow four days time to make additional submissions.

7. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the Applicant had declared that he was carrying demonetised Indian currency notes and sought to declare the same to enable him to exchange the demonetized currency notes with the Reserve Bank of India. The officers of customs had issued currency declaration in respect of the demonetized currency notes upto the permissible limit of Rs. 25,000/-. In terms of the extant provisions of the Baggage Rules and the Customs Act, 1962 import and export of Indian currency in excess of Rs. 25,000/- is not permitted, the demonetized currency notes were seized as the same were imported into India in violation of the provisions of the Baggage Rules, Customs Act, 1962 and the provisions of Regulation 3 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29th December, 2015 (Notification No. FEMA 6 (R)/2015-RB). Therefore, the confiscation of the demonetized Indian currency was justified

8.1. As regards the import of Indian currency into the country under the liberalized economy of the country is concerned, it is relevant to reproduce here, the Regulation no. 3 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29th December, 2015.

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 up to an amount not exceeding Rs.25000/- (Rupees Twenty Five Thousand Only) per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time;

(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 up to an amount not exceeding Rs. 25,000/- per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time.

(2) Save as otherwise provided in these regulations, any person resident outside India, not being a citizen of Pakistan or Bangladesh, and visiting India,

(a) may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

(b) may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

8.2. Regulation 3(1)(c) and 3(2)(b) pertain to import of Indian currency into the country and stipulates that an amount not exceeding Rs. 25,000/- per person or such other amount and subject to conditions as notified by RBI can only be brought into the country.

8.3.. From the above, it is clear that the import of Indian currency exceeding Rs. 25,000/- is prohibited and can be brought in only subject to permission from RBI. These regulations also indicates that the person going abroad can take upto Rs. 25,000/- which he can then bring back to the country. In this case, the Applicant had not obtained permission from RBI to bring in demonetized Indian currency notes in excess of Rs. 25,000/-.

9. Section 2(33) of the Customs Act, 1962 pertaining to definitions, 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;

10. Government notes that the Applicant upon arrival into India had declared that he was carrying demonetised Indian currency notes of Rs. 1,000/- and Rs. 500/- totalling to Rs. 11,95,500/-but had not obtained requisite permission from RBI for the amount in excess of Rs. 25,000/- and thus the currency declaration was issued in respect of demonetised currency notes upto the permissible limit of Rs. 25,000/-

11. Government observes that since the instant case pertains to the import of demonetized Indian currency notes it is essential to reproduce the relevant provisions of the Act and procedures pertaining to the issue to analyse the same. The relevant provisions of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 and of the letter No RBI/2016-17/205/DCM (Plg) No 2170/10.27.00/2016-17 dated 31.12.2016 are as under

THE SPECIFIED BANK NOTES (CESSATION OF LIABILITIES) ACT, 2017 NO.
2 OF 2017 [27th February, 2017]

3. *On and from the appointed day, notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O. 3407(E), dated the 8th November, 2016, issued under sub-section (2) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act. 4. (1) Notwithstanding anything contained in section 3, the following persons holding specified bank notes on or before the 8th day of November, 2016 shall be entitled to tender within the grace period with such declarations or statements, at such offices of the Reserve Bank or in such other manner as may be specified by it, namely:—*

(i) a citizen of India who makes a declaration that he was outside India between the 9th November, 2016 to 30th December, 2016, subject to such conditions as may be specified, by notification, by the Central Government; or

(ii) such class of persons and for such reasons as may be specified by notification, by the Central Government.

(2) The Reserve Bank may, if satisfied, after making such verifications as it may consider necessary that the reasons for failure to deposit the notes within the period specified in the notification referred to in section 3, are genuine, credit the value of the notes in his Know Your Customer compliant bank account in such manner as may be specified by it.

(3) Any person, aggrieved by the refusal of the Reserve Bank to credit the value of the notes under sub-section (2), may make a representation to the Central Board of the Reserve Bank within fourteen days of the communication of such refusal to him.

.....

11.2 Further the Reserve Bank of India vide letter No RBI/2016-17/205/DCM (Plg) No 2170/10.27.00/2016-17 dated 31.12.2016 detailed the provisions for the exchange of demonetised currency notes as under

“Facility for exchange of Specified Bank Notes (SBNs) during Grace Period

In terms of Section 4 (1) of the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 of the Government of India dated December 30, 2016 and their Notification S.O. 4251(E) dated December 30, 2016 thereunder, the captioned facility has been formulated by the Reserve Bank to afford an opportunity to those Indian citizens who could not avail facilities of exchange of SBNs under the earlier facility, as they were not present in the country during November 9, 2016 to December 30, 2016. The provisions of the facility are as under:

2. Places of Exchange.

This facility will be made available through five of the offices of the Reserve Bank viz. the Reserve Bank offices at Mumbai, New Delhi, Chennai, Kolkata, and Nagpur.

3. Eligible persons.

3.1 The facility can be availed only by Indian citizens in their individual capacity and only on one occasion during the period. No third party tender is permissible under the facility.

3.2 Among Indian citizens, two categories of individuals, holding SBNs, can avail of the facility:

i. Resident Indians who were abroad during the period from November 9 to December 30, 2016, and

ii. Non Resident Indians (NRIs) who were not in India during the period from November 9 to December 30, 2016

3.3 This facility will not be available for Indian citizens resident in Nepal, Bhutan, Pakistan and Bangladesh.

3.4 The terms/ conditions and modalities of the facility for the two eligible categories defined above are as under:

a. Resident Indians

i. Only those residents who were abroad during the period from November 9, 2016 to December 30, 2016 will be eligible to avail this facility only once during the tenure of the facility.

ii. There will be no monetary limit for submission of SBNs in the tender.

iii. Tenders should be submitted in a Tender Form as per Annex 1 with necessary documentary evidence to prove they were abroad during the said period.

iv. A copy of Passport with immigration stamp as proof of the individual's absence from the country during the period November 9, 2016 to December 30, 2016 should be submitted. Passport in original should be presented at the RBI counter for verification.

v. Copies of all bank account statements evidencing that no SBNs were deposited during November 10, 2016 to December 30, 2016.

vi. Tender should be accompanied by Valid ID Proof and Aadhaar number along with Applicant's KYC compliant bank account details.

vii. Requisite document as per provisions of Section 114B of IT Rules, 1962 will be required

viii. An acknowledgment of receipt will be issued to the tenderers pending credit of admissible amount.

ix. On ascertaining that the tenderer was abroad during the period from November 9, 2016 and December 30, 2016, the account is KYC compliant, fulfilment of other conditions and the genuineness of the notes tendered, admissible amount will be credited to the account under advice to the tenderer.

b. Non Resident Indians (NRIs)

i. Only those NRIs who were not present in India during the period from November 9, 2016 to December 30, 2016 will be eligible to avail this facility once during the tenure of the facility.

ii. Tenders should be submitted along with a Tender Form as per Annex 2.

iii. Tenders will be restricted to a maximum of ₹ 25,000 per individual depending on when the notes were taken out of India as per relevant FEMA rules.

iv. A Copy of Passport with immigration stamp as proof of the individual's absence from the country during the period November 9, 2016 to December 30, 2016 should be submitted. Passport in original should be presented at the RBI counter for verification.

v. A certificate issued by Indian Customs on arrival through Red Channel after December 30, 2016 indicating the import of SBNs, with details and value thereof should also be submitted.

vi. Copies of statements of all bank accounts in India evidencing that no SBNs were deposited during November 10, 2016 to December 30, 2016.

vii. Requisite document as per provisions of Section 114B of IT Rules, 1962 are required to be submitted.

viii. An acknowledgment of receipt will be issued to the tenderers pending credit of admissible amount.

ix. On ascertaining that the tenderer was abroad during the period from November 9, 2016 and December 30, 2016, the account is KYC compliant, fulfilment of other conditions and the genuineness of the notes tendered, admissible amount will be credited to the account under advice to the tenderer.

4. Duration

The facility will remain open for residents from January 2, 2017 to March 31, 2017 and for NRIs from January 2, 2017 to June 30, 2017.

11.3 Government observes that from the above it is clear that the Applicant was eligible to exchange demonetised currency to a maximum of Rs. 25,000/- depending on when the notes were taken out of India as per relevant FEMA Rules.

12. Moreover, Regulation 3(1)(c) and 3(2)(b) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29.12.2015 pertain to import of Indian currency into the country and stipulates that an amount not exceeding Rs. 25,000/- per person or such other amount and subject to conditions as notified by RBI can only be brought into the country.

13. In respect of the Indian currency, Government notes that the Applicant was eligible to bring an amount of Rs. 25,000/- into the Country. However, for an amount exceeding Rs. 25,000/- i.e. Rs.11,70,500/-, the Applicant has not been able to produce any permission from RBI for the importation of the said Indian currency into India. Government notes that the absolute confiscation of Indian currency amounting to Rs. 11,70,500/- is appropriate and justified.

14. The Government notes that the demonetised currency, albeit in excess of the prescribed norms, was not concealed or recovered but was declared by the Applicant and that the Applicant had brought the demonetized currency on 09.03.2017, which was during the valid period to deposit the same in banks in India as held in RBI letter No RBI/2016-17/205/DCM (Plg) No 2170/10.27.00/2016-17 dated 31.12.2016 detailing the provisions for the exchange of demonetised currency notes. Therefore, the penalty of Rs. 3,00,000/- imposed on the Applicant under Section 112(a)& (b) of the Customs Act, 1962 is commensurate with the omission and commission committed by the Applicant.

15. As regards the penalty imposed under Section 114(i) of the Customs Act, 1962, Government further notes Regulations 3(1) (a) and 3(2) (a) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 permits any person who is resident in India, to take outside India (other than to Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India up to an amount not exceeding Rs. 25000/-. In the instant case, Government notes that there is no evidence adduced by the department that the quantum of currency taken out was in violation of the Foreign Exchange Management (Export and import of currency) Regulations, 2015, the Customs Act, 1962 and/or stipulations of the Reserve Bank of India. Government is thus inclined to set aside the imposition of penalty under Section 114(i) of the Customs Act, 1962.

16. In view of the above, the Government holds that

(a) the absolute confiscation of Rs. 11,95,500/- upheld by the Appellate Authority is modified to the extent that the currency amounting to Rs. 25,000/- being eligible as discussed supra is allowed to be released to the Applicant. The absolute confiscation of the remaining amount of Rs. 11,70,500/- upheld by the Authority is sustained.

(b) the penalty of Rs. 3,00,000/- imposed under Section 112(a) of the Customs Act, 1962 is appropriate.

(c) the penalty of Rs 10,00,000/- imposed under Section 114(i) of the Customs Act, 1962 is set aside.

17. The Revision Application is disposed of on the above terms.


7/6/23
(SHRAWAN KUMAR)

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

ORDER No. \6 /2023-CUS (WZ)ASRA/MUMBAI DATED\6.01.2023.

To,

1. Shri. Ranjit Singh, 1017, Yverdon Drive, Camp Hill, Pennsylvania-17011, USA.
Address No. 2: C/o Mrs Ketki Choksi, PA Holder for Ranjit Singh, 26, Parichay Park, Opp Sunshine Hospital, Diwalipura, Vadodara, Gujarat-390 007
2. The Principal Commissioner of Customs, Custom House, Navrangpura, Ahmedabad 380 009.
3. The Commissioner of Customs (Appeals), Ahmedabad, 7th Floor, Mrudul Tower, B/H Times of India, Ashram Road, Ahmedabad 380 009

Copy to:

1. M/s SRD Legal, 512 Ecstasy Business Park, City of Joy, JSD Road, Mulund (West), Mumbai 400 080
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Noticeboard.