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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 373/124/B/2019-RA/1929:

Date of Issue : 19/05/2022

ORDER No. 80/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 17.05.2022.
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. 373/124/B/2019-RA

Applicant : Shri. Richards Michael Ramasamy

Respondent : Pr. Commissioner of Customs, Commissionerate – I,

Chennai Airport and Aircargo Complex, New Custom
House, Meenambakkam, Chennai – 600 016.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus. I
No. 80/2019 [C4/I/155/O/2018-AIR] dated 20.03.2019
passed by the Commissioner of Customs (Appeals-I),
Chennai 600 001.

ORDER

This revision application has been filed by the Shri. Richards Michael Ramasamy, (herein referred to as Applicant) against the Order-in-Appeal C. Cus. I No. 80/2019 [C4/I/155/O/2018-AIR] dated 20.03.2019 passed by the Commissioner of Customs (Appeals-I), Chennai 600 001.

2. Brief facts of the case are that the applicant who was a Sri Lankan national was bound for Colombo by Sri Lankan Airlines Flight No. 122 /06.03.2018 was intercepted by Customs Officers on 06.03.2018 after he had cleared the Immigration counter and was proceeding towards the security hold area in the departure terminal of the Chennai International Airport. To query whether he was carrying any foreign / Indian currency / contraband either on his person or in baggage, the applicant had replied in the negative. On examination of his hand baggage nothing incriminating was recovered. A personal search led to the recovery of 67 notes of USD in denomination of 100, from the inner pockets of the pant worn by him. The total equivalent value of the foreign currency was INR 4,31,480/-. The applicant had neither declared the foreign currency to the Customs nor did he possess any valid document/permit etc from RBI, as required under FEMA for export of the impugned currencies. The applicant had informed that the foreign currency did not belong and that he had carried the same for a monetary consideration; that he was aware that carrying foreign currency without valid documents was an offence.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Asstt. Commissioner of Customs (Adjudication-AIR) vide Order-In-Original No. 128/2018-19-Commissionerate-I, Chennai dated 24.10.2018 issued through F.No. O.S. No. 95/2018-AIU-A, absolutely confiscated the foreign currencies viz, USD 6700/- (67 notes of USD of 100 denomination), equivalent to Rs. 4,31,480/- under Section 113 (d), (e) & (h) of the Customs Act, 1962. A penalty of Rs. 40,000/- was imposed on the applicant under Section 114(i) of the Customs Act,

1962. The applicant nor his Advocate attended the personal hearing, however, the Advocate vide letter dated 28.09.2018 had requested to pass an order.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals-I), Chennai 600 001, who vide his order Order-in-Appeal C. Cus. I No. 80/2019 [C4/I/155/O/2018-AIR] dated 20.03.2019 upheld in to-to the order of the Original Adjudicating Authority and rejected 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;

- 5.01. 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; that the goods must be prohibited before export or import; that simply because of non filing of declaration, the goods cannot become prohibited; that the conclusion drawn that the goods is prohibited because of non filing of a declaration is nothing but clear non-application of mind.
- 5.02. that there are various adjudication orders passed by the Customs department and judgments of Hon'ble High Court, Madras in respect of identical goods, but the OAA and AA have failed to consider the same ; that the OAA and AA are not following the guidelines or orders passed by the High Court, thus amounting to violation of law.
- 5.03. 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.
- 5.04. the applicant has cited and relied on various case laws where release of the foreign currency was 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.

5.05. that as per Board's Instruction vide F. 275/17/2015-CX BA dated 11.03.2015, in the national litigation policy (NLP) formulated by Government of India aiming to reduce government litigation it is mentioned that quality judgements should be passed which stand up to legal scrutiny.

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 18.02.2022 handed over on 30.03.2022 handed over 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; that Customs Act, 1962 is concerned with the illegal importation into India and exportation out of the country and in the absence of any prescription requiring declaration of foreign currency taken out, the confiscation was not justified.

(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 (HC-BOM); that when power of redemption is exercised, law postulates that there is an option to pay fine in lieu of confiscation.

7. Government has gone through the facts of the case and the submissions. 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 as required under Section 77 of the Customs Act, 1962. Also, the applicant could not disclose the procurement of the foreign currency from licit source. Thus,

lower adjudicating authority had rightly held 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 which makes the foreign currency liable for confiscation in view of the prohibition imposed in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Therefore, the confiscation of the foreign currency was justified as the applicant could not account for the legal procurement of the currency and no declaration as required under Section 77 of the Customs Act, 1962 was filed.

8. The Government finds that the applicant who is a foreign national could not account for the source of the foreign currency in his possession and initially had stated that he had carried the same for a monetary consideration. Government notes that in the OIO, at para 4, it is mentioned that the applicant had submitted a letter dated 16.03.2018 wherein, he had informed the department about possession of 67 notes of USD 100 denomination. However, no rebuttal of the department to this claim has been made available.

9. The Government finds that the amount involved is small and there is no case made out that the concealment was ingenious. Also, no case has been made out that the applicant is a repeat offender. Therefore, this is a case of non-declaration of foreign currency both at the time of entering India and exiting India, rather than a case of smuggling. Government finds that the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 is harsh and unjustified. The order of the Appellate authority is therefore liable to be set aside and the foreign currency is liable to be allowed redemption on suitable redemption fine and penalty.

10. The Government finds that the personal penalty of Rs. 40,000/- imposed on the applicant under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

11. In view of the above, the Government sets aside the impugned order of the Appellate authority in respect of the foreign currency. The foreign currency consisting of 67 notes of USD of 100 denomination, equivalent to INR. 4,31,480- is allowed redemption on payment of a fine of Rs. 1,05,000/- (Rupees One lakh Five thousand only). The penalty of Rs. 40,000/- imposed under Section 114(i) of the Customs Act, 1962 by the lower adjudicating authority and upheld by the appellate authority is sustained.

12. The Revision Application is disposed of on above terms.

Shrawan
17/5/22 ✓

(SHRAWAN KUMAR)

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

ORDER No. \ 80 /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 17.05.2022.

To,

1. Mr. Richards Michael Ramasamy, S/o. Shri. Michael Ramasamy, No. 28/6, Sethsiri Uyana, Kristu Raja M/W, Wattala, Sri Lanka.
2. The Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport, New Custom House, Meenambakkam, Chennai - 600 016.

Copy to:

3. Smt. Kamalamalar Palanikumar, No. 10, Sunkurama Street, Second Floor, Chennai - 600 001..
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. File Copy.
6. Noticeboard.