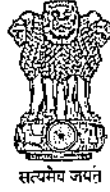


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No. 371/139/B/2020-RA | *hob* Date of Issue : *27*.10.2022

ORDER No. *300* /2022-CUS (WZ)/ASRA/ DATED. *20*.10.2022.
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. 373/139/B/WZ//2020-RA

Applicant : (1). Shri. Vijaykumar Holaram Chawla.

Respondent : 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-702-19-20 dated 06.03.2020
issued through F.No. S/49-301/CUS/AHD/2019-20,
passed by the Commissioner of Customs (Appeals),
Ahmedabad.

ORDER

This Revision Application has been filed by Shri. Vijaykumar Holaram Chawla 204, Shivmala Apartment, 2nd Floor, Bunglow Area, Block No C-655/656, Room No. 1310/11, Netaji Chowk, Ulhasnagar, Thane 421 004 (hereinafter referred to as Applicant) against the Order-in-Appeal No. AHD-CUSTOM-000-APP-702-19-20 dated 06.03.2020, issued through F.No. S/49-301/CUS/AHD/2019-20, passed by the Commissioner of Customs (Appeals), Ahmedabad.

2(a). Brief facts of the case are that the applicant who was bound for Bangkok from Ahmedabad by Spice Jet Flight No SG-85 on 25.08.2018 was intercepted by Customs Officers on 25.08.2018 in the waiting lounge near the boarding gate after he had completed the check-in formalities and immigration clearance and after he had moved out of the Customs area without declaring anything. To the query whether he had anything to declare, the applicant had replied in the negative. To a query about quantum of foreign currency being carried by him, he replied that he was having 2000 US dollars. A search of his person led to the recovery of 4000 US dollars and 2250 Thai Baht from his pant pocket. The applicant was then brought back to the customs office at the departure hall and the search of his check-in baggage led to the recovery of two plastic packets concealed in the gap within the sole of each of the slippers and three plastic packets concealed between the outer and inner layer of the lunch box in the cabin baggage. The plastic packets were opened and the undermentioned currency were recovered.

Table No. 1.

Foreign Currency	Recovered from	Denomination	No of notes	Total	Grand Total
Thai Baht	Pant pocket	20	5	100	2250
		50	1	50	
		100	1	100	
		1000	2	2000	

US DOLLARS	Pant Pocket	100	40	4000	40000
US DOLLARS	Slipper	100	90	9000	
US DOLLARS	Slipper	100	90	9000	
US DOLLARS	Lunch	100	180	18000	

2(b). The value of the aforesaid assorted foreign currency was valued at Rs. 27,80,928/-.

2(c). The applicant admitted that the said foreign currency belonged to him and he was not having any legal documents of acquirement of foreign currency and did not have any purchase vouchers/documents of the said foreign currency and was aware that it was illegal to carry such a large amount of foreign currency without any purchase documents.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Additional Commissioner, Customs, Ahmedabad vide his Order-In-Original No. 13/ADC-MLM/SVPIA/O&A/2019-20 dated 14.06.2019 issued on 14.06.2019 through F.No. VIII/10-130/SVPIA/O&A/HQ/2018 ordered for the absolute confiscation of the foreign currency equivalent to Rs. 27,80,928/- under Section 113 (d) & (e) of the Customs Act, 1962 read with Foreign Exchange Management (Export and Import of Currency) Regulation Act, 2015 and Rule 7 of the Baggage Rules. Penalty of Rs. 5,00,000/- was imposed on the applicant under Section 114(i) of the Customs Act, 1962. The packing materials /goods used in the concealment of the foreign currency were also confiscated.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner, Customs (Appeals), Ahmedabad, who vide his Order-in-Appeal No. AHD-CUSTOM-000-APP-702-19-20 dated 06.03.2020 issued through F. No. S/49-301/CUS/AHD/2019-20, upheld the order of the Original Adjudicating Authority and rejected the appeals.

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. the foreign currency carried by him was neither restricted nor prohibited and can be released on payment of redemption fine under Section 125 of the Customs Act, 1962 and no other person had claimed the currency which was found on his possession;

5.02. the master circular No 06/2015-16 dated 01.07.2016 issued by RBI wherein upto and aggregate of US\$ 250000 is allowed to be brought from an authorized dealer in a financial year, irrespective of number of visits undertaken during the year showed that export of foreign currency is not a prohibited item;

5.03. the discretion is available and is to be used while considering question of redemption on payment of fine in cases of absolute confiscation of goods. The applicant has placed reliance on the undermentioned case law Hargovind Das K Joshi vs. Collector of Customs [1992(61) E.L.T. 172(SC)];

5.04. the Section 125 of the Customs Act, 1962 clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods and the word 'prohibited' cannot be read as 'prohibited absolutely'. The applicant has placed reliance on the undermentioned case laws

- (i) Commissioner of Customs (Preventive), West Bengal vs. India Sales International [2009(241) E.L.T. 182(Cal)]
- (ii) Alfred Menezes vs. Commissioner of Customs, Mumbai [2011(236) E.L.T. 587(Tri-Mumbai)]

5.05. the confiscation of currency in the case of undeclared foreign currency is sustainable but currency ought to be allowed to be redeemed on payment of fine. The applicant has placed reliance on the undermentioned case laws;

- (i) Felix Dores Fernandes vs. Commissioner of Customs, ACC, Mumbai [2000 (118) E.L.T. 639 (Tri.-Mumbai)]
- (ii) Philip Fernandes vs. Commissioner of Customs, Airport, Mumbai [2002(146) E.L.T. 180(Tri.-Mumbai)]

5.06 The applicant has also placed reliance on the following case laws in support of their contention that currency was not prohibited goods and applicant was entitled to redemption of currency on payment of appropriate redemption fine

- (i) Kishin Shewaram Loungani vs. Commissioner of Customs, ACC, Mumbai [2002(140) E.L.T. 225 (Tri.-Mumbai)]
- (ii) T. Soundarajan vs. Commissioner of Customs, Chennai [2008(221) E.L.T. 258(Tri.-Chennai)]
- (iii) RE: Kanwaljit Singh Bala [2012(275) E.L.T (GOI)].
- (iv) Yakub Ibrahim Yusuf vs. Commissioner of Customs, Mumbai [2011(263) E.L.T. 685((Tri.-Mumbai)]
- (v) Dhanak Madhusudan Ramji vs. Commissioner of Customs (Airport), Mumbai [2009(237) E.L.T. 280 (Tri.-Mumbai)]
- (vi) RE: A. Mahesh Raj [2007(214) E.L.T. 588 (Sett. Comm)]

The applicant has prayed to the Revision Authority to release the foreign currency and reduce the personal penalty imposed on him.

6. Personal hearing in the case was scheduled for 29.09.2022. Shri. N.J.Heera, Advocate, appeared for hearing on 29.09.2022 on behalf of the applicant. He submitted that the foreign currency being goods, deserved to be released on nominal redemption fine and penalty. He submitted copies of several judgements on the subject where foreign currency has been released on redemption fine and penalty.

The gist of the judgements submitted are as under

- (i) Commissioner of Customs vs. Rajinder Nirula [2017(346)ELT-9 (Bom)] where the Hon'ble High Court of Bombay rejected the departments plea for absolute confiscation and upheld the order allowing redemption, passed by CESTAT, Mumbai.
- (ii) GOI order in the case of Mohd. Arif [2018(361)E.L.T 959(G.O.I)] wherein the departmental appeal against allowing redemption of absolutely confiscated goods was rejected but the redemption fine was enhanced.
- (iii) GOI order No. 166/10-CUS dated 15.04.2010 in the case of Abdul Razack Abdul Bakki and order No 167/10-CUS dated 15.04.2010 in the case of Ameer Ali Sarpudeen, wherein it was held that an option for redemption of confiscated goods can be given under Section 125 of the Customs Act, 1962 and seized foreign currency was confiscated but option for redemption was allowed
- (iv) Order No ADC/AK ADJN/58/2018-19 dated 15.05.2018 in the case of Ms. Reshmabano Mohd. Zubair Memon Order No ADC/AK/ADJN/139/2017-18 dated 31.01.2018 in the case of Sayyad Rahman Ali and Order No ADC/AK/ADJN/143/2018-19 dated 29.06.2018, wherein seized foreign currency was confiscated but option for redemption was allowed

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 had been recovered from the possession of the applicant. Further, in their statements the applicant had admitted the possession, carriage and recovery of the foreign currency. The fact remains that the applicant was in possession of foreign currencies which was way above the permissible limit. 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 goods become liable for confiscation in view of the prohibition imposed in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. The Government finds that the applicant had not taken any general or special permission of the RBI to carry the foreign / Indian currency and had attempted to take it

out of the country. 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 the confiscation of the foreign currency was justified.

8. Section 125 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.

9. In a similar case, Bombay High Court in case of Commr. Of Customs vs. Rajinder Nirula [2017(346)ELT-9 (Bom)] while upholding the release of the foreign currency on redemption fine by CESTAT, observed that

"4. The only contention raised before us and equally before the Tribunal is that the seized goods are currency and should not have been allowed to be released by paying a fine. The seizure is of foreign currency and which was attempted to be smuggled out of India without any authorisation. The Tribunal has seriously erred in law in granting the relief.

5. *After having perused the order of the Tribunal, we find that the Tribunal came to the conclusion that the confiscated foreign currency should be redeemed. In that regard the Tribunal relied upon a judgment of the High Court of Delhi in the case of Mohd. Ayaz v. Union of India - 2003 (151) E.L.T. 39 (Del.). It also relied upon its own order passed in the case of Pankaj Jagda - 2004 (171) E.L.T. 125 (Tri.-Mum.).*
6. *We do not find any merit in the learned counsel's argument that the course adopted by the Tribunal was impermissible. The definition of the term "goods" includes currency and negotiable instruments [see Section 2(22)(d)]. When the power of redemption is exercised, what the law postulates is that there is an option to pay fine in lieu of confiscation. Section 125(1) of the Customs Act, 1962 provides that whenever confiscation of any goods is authorised by this Act, the officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay, in lieu of confiscation, such fine as the said officer thinks fit.*
7. *In these circumstances, we do not find that there was any error or lack of power. The seized currency was released and by imposing penalty. In the present case, the Tribunal, therefore, was justified in holding that since the foreign currency is redeemed on payment of fine, the penalty also deserves to be scaled down or reduced. This is essentially a finding of fact rendered after consideration of the materials on record. We do not think that the Tribunal was in error in adopting the course that it has adopted. We do not find any merit in the appeal. It is dismissed".*

10. In a case of confiscation of Indian Currency, Delhi High Court in the case of Raju Sharma v/s. Union of India [2020(372) ELT 249 (Del.)] while allowing release of Indian currency observed,

- "18. the actual grievance of the Revenue before the Revisionary Authority, was that the seized currency was "prohibited", redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated. This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, in such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of ` 50,000/-, no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). Exercise of discretion, by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motives [Mangalam Organics Ltd. v. UOI - (2017) 7 SCC 221 = 2017 (349) E.L.T. 369 (S.C.)]. No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine of ` 50,000/-. The

Commissioner (Appeals) rightly refused to interfere with the said decision, and the Revisionary Authority, in an order which reflects total non-application of mind, chose to reverse the said decision.

19. *We are unable to sustain the order of the Revisionary Authority. We uphold the decision of the Commissioner (Appeals) as well as the order of the AC, which stands affirmed thereby. The seized currency shall, therefore, forthwith be returned to Petitioner No. 2".*

11. In the instant case, it is noted that quantity of foreign currency with the applicant was not substantially large, there is nothing on record to show that the applicant was a habitual offender, applicant once confronted had admitted to carrying currency. In these circumstances, absolute confiscation of currency leading to dispossession of applicant is harsh and excessive.

12. Considering the aforestated facts, Government is inclined to set aside the order of absolute confiscation passed by the Appellate Authority and considers granting an option to the applicant to redeem the currencies on payment of a suitable redemption fine as the same would be more reasonable and fair.

13. Applicant has also pleaded that the penalty imposed on him be reduced. The value of the foreign currency in the case is Rs. 27,80,928/-. From the facts of the case as discussed above, Government finds that the penalty of Rs. 5,00,000/- imposed on the applicant under Section 114(i) of the Customs Act, 1962 is excessive and the same is required to be reduced. Penalty of Rs. 2,75,000/- is commensurate with the omissions and commissions committed by the applicant.

14. In view of the above, the Government modifies the impugned order of the Appellate Authority in respect of the foreign currency seized from the applicant. The assorted foreign currencies equivalent to Rs. 27,80,928/- is allowed to be redeemed on payment of a fine of Rs. 5,25,000/- (Rupees Five Lakhs Twenty Five Thousand only). The penalty of Rs. 5,00,000/- imposed on

the applicant under Section 114(i) of the Customs Act, 1962 is modified to Rs. 2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only).

17. The revision application is disposed of on the above terms.

Shrawan
20/10/22
(SHRAWAN KUMAR)

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

ORDER No. 300 /2022-CUS (WZ)/ASRA/ DATED 20.10.2022.

To,

1. Shri Vijaykumar Holaram Chawla, 204, Shivmala Apartment, 2nd Floor, Bungalow Area, Block No C-655/656, Room No. 1310/11, Netaji Chowk, Ulhasnagar, Thane 421 004
2. The Pr. Commissioner of Customs, Custom House, Ahmedabad, 1st Floor, Customs House, Near All India Radio, Income Tax Circle, Navrangpura, Ahmedabad, 380 009

Copy to:

1. The Commissioner of Customs (Appeals), Ahmedabad, 7th Floor, Mrudul Tower, Off Ashram Road, Near Times of India, Navrangpura, Ahmedabad 380 009
2. Shri. N.J.Heera, Advocate, C/o Advani, Sachwani & Heera Advocates, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O, Fort, Mumbai 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Noticeboard.