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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. 371/263/B/WZ/2018-RA/6505: Date of Issue : 18.11.2022

ORDER No. 318/2022-CUS (WZ)/ASRA/MUMBAI DATED 14.11.2022.
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. 371/263/B/WZ/2018-RA

Applicant : Smt. Noor Banu Jan Mohammed Sama

Respondent : Pr. Commissioner of Customs, CSMIA, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-269/18-19 dated 30.07.2018
issued on 02.08.2018 through F.No. S/49-363/2016-17
passed by the Commissioner of Customs (Appeals),
Mumbai - III.

ORDER

This revision application has been filed by the Smt. Noor Banu Jan Mohammed Sama, (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-269/18-19 dated 30.07.2018 issued on 02.08.2018 through F.No. S/49-363/2016-17 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant who was bound for Dubai by Spice Jet Flight No. SG-13/24.07.2015 24 was intercepted by Customs Officers at the CSMI Airport, Mumbai after she had cleared immigration formalities. To query about possession of any contraband or foreign / Indian currency either on her person or in her baggage, the applicant had replied in the negative. The checked-in baggage was recalled with the help of the airline staff. Examination of her baggage, led to the recovery of Indian currency amounting to Rs. 19,50,000/- in denomination of Rs. 1000/- and Rs. 500/- which had been cleverly concealed in polythene packets kept among foodstuff and placed in the carton box. The applicant was off-loaded from the flight after completing the immigration formalities. The applicant revealed that she had concealed the Indian currency to avoid detection and that she intended to take a shop on rent in Dubai and that the money belonged to her, saved from her earnings and borrowed from friend. The applicant admitted knowledge, possession, concealment, carriage, recovery and non-declaration of seized Indian currency.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSMIA, Mumbai, vide Order-In-Original No. ADC/RR/ADJN/062/2016-17 dated 11.05.2016 issued through F.No. S/14-6-30/2015-16 ADJN [SD/INT/AIU/296/2015-AP'B'] confiscated the seized Indian currency amount to Rs. 19,50,000/- under Section 113 (d), (e) & (h) of the Customs Act, 1962. However, an option to redeem the Indian currency on payment of redemption fine of Rs. 2,00,000/- under Section 125(1) of the Customs Act, 1962 was granted to the applicant. Further, a

penalty of Rs. 1,50,000/- was imposed on the applicant under Section 114 of the Customs Act, 1962

4. Aggrieved by this order, the Respondent filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai - III, who vide his order Order-in-Appeal No. MUM-CUSTOM-PAX-APP-269/18-19 dated 30.07.2018 issued on 02.08.2018 through F.No. S/49-363/2016-17 allowed the appeal i.e. the Indian currency amounting to Rs. 19,50,000/- was absolutely confiscated. The penalty amount of Rs. 1,50,000/- imposed by the OAA under Section 114 of the Customs Act, 1962 was sustained.

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 A.A ought to have appreciated that the impugned order passed by the OAA was well reasoned order and the justification rationale for permitting redemption of impugned goods to the Applicant was well founded and was based on solid grounds and sound principles of law.
- 5.02. that the AA ought to have appreciated that there was only contravention of Section 77 of the Customs Act, 1962, by the Applicant. It is submitted that due to the reason of contravention of Section 77 of the Customs Act. 1962, the OAA had imposed fine and penalty on the Applicant.
- 5.03. that the AA ought to have appreciated that the Applicant was the owner of the Indian currency and had given full details of the acquisition of Indian currency
- 5.04. that the OAA had clearly and rightly expressed the reason for granting the option of redemption of Indian currency to the Applicant.
- 5.05. that the OAA had correctly recorded the judgments relied upon by the Applicant and the Grounds & Judgments mentioned in the Appeal filed by the Department were inapplicable to this case, since the facts of the said cases were entirely different from the facts of the present case.
- 5.06. that in the matter of Panchbhaya Ismail Suleman vs Commissioner Of Customs., Airport, Mumbai, cited by the respondent, the only differentiation is that the Appellant is a carrier, whereas here in this case the Applicant was a owner of the said Indian currencies. Also, it was a case before 2010.
- 5.07. that in the matter of Salim M. Mamdani vs. Commissioner of Customs (Airport), Mumbai, cited by the respondent, the only differentiation is that the Appellant is a carrier, whereas here in this

case, the Applicant was an owner of the said Indian currencies. That this case is of 2005.

- 5.08. that in the matter of Harish Muljimal Gandhi vs. Commissioner of Customs, ACC, Mumbai, relied upon by the respondent, it is an old case of year 2007, the only differentiation is that the Appellant is a carrier and the same was sent by post, whereas here in this case the Applicant was an owner of the said Indian currencies.
- 5.09. that the OAA had passed reasoned order; that there are judgements of various forums including the Apex Court where goods have be ordered to be released to the carriers also.; The list is as under;
- (a). that CESTAT, in the case of Shri Ivan Leslie Anthony Pinto wherein vide Order No A/94645/16/SMB dated 24.08.2016, and which is direct on the subject Appeal involving absolute confiscation of INR Rs. 49,73,000/- carried by the said Appellant, the Bench set aside the Order of absolute confiscation and directed the release of the INR currency on payment of RF and Penalty. In doing so and while interpreting the provisions relating to release of currency, it was observed that Currency was not prohibited goods and, therefore, the adjudicating authority is bound to allow redemption to the person from whom it was seized and option to redeem the goods had been allowed.
- (b). that CESTAT vide Order No A/85021/17/SD dated 08.11.2016, set aside the Order of absolute confiscation of INR Rs. 21,00,000/- and foreign currency of Rs.47,00,000/- from the Appellant, Shri Sanjay Agarwal was released.
- 5.10. The applicant has relied upon the following case laws;
- (i). Hargovind Das K. Joshi vis. Collector of Customs Civil Appeals Nos. 139-143 of 1985, decided on 6-1-1987; Absolute Confiscation of Goods by Collector without considering question of redemption on payment of fine although having discretion to do so - Matter remanded to Collector for consideration of exercise of discretion for imposition of redemption fine - Section 125 of Customs Act, 1962.
- (ii). Alfred Menezes v/s. Commissioner of Cus..(C.S.I.) Airport, Mumbai. Final Order Nos. A/613-614/2008-WBZ/C-II/(SMB) and Stay Order Nos. S/298 299/2008-WBZ/C-II(SMB), dated 1-8-2008 in Application Nos. C/Stay/862 and 1063/2008 in Appeal Nos. C/531-532/2008 ; Power of adjudicating authority under provisions of Customs Act, 1952 to offer redemption fine in lieu of confiscation of prohibited / restricted goods confiscated-Section125(1) Ibid clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods.
- (iii). Commissioner of Customs, Kandla v/s. Deluxe Exports : Order Nos. 2065-2076/2000-WBZ/C-II, dated 25-7-2000 in Appeals Nos. C/368, 554 to 564/2000-Mum.
- (iv). R.Mohandas v/s. Commissioner of Customs, Cochin : W.P. (C) Nos. 24074 and 39096 of 2015 (H), decided on 29-2-2016 ; Department cannot plead that they will not release goods to person who is not owner- Petitions Allowed.

(v). Yakub Ibrahim Yusuf vis. Commissioner of Customs, Mumbai : Final Order No. A/362/2010-WBZ/C-II/(CSTB), dated 28-10-2010 in Appeal No. C/51/1996-Mum;

prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation - It does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health.

(vi). Union of India v/s. Dhanak M. Ramji : Writ Petition Nos. 1397 with 1022 of 2009, decided on 4-8-2009 ; Confiscated goods Redemption of Ownership Tribunal order assailed on the ground that goods could not be released to non-owner- Finding by Tribunal that application for release of goods maintainable Goods not prohibited but became prohibited due to violation of law - Discretion properly exercised by Tribunal in ordering release of confiscated goods on payment of redemption fine

5.11. that in similar situations / cases, Customs have permitted the redemption of Indian currency under Section 125 of the Customs Act, 1962 and therefore the impugned goods in the present case also ought to have been released under Section 125 of Customs Act, 1962.; that these orders had been accepted by the department and the Department ought to have observed Judicial Discipline as held by the Apex Court and other Judicial Authorities, while dealing with the cases having similar facts and situations,

(a). that they rely on the case of Birla Corporation Ltd. V/s. Commissioner of Central Excise reported in 2005 (186) ELT 266 (S.C.) passed by the Apex Court on judicial discipline.

(b) Judgment of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nasik Vis Jain Vanguard Polybutlene Ltd. Reported in 2010 (256) ELT 523 (Bom) on judicial discipline.

c) Judgement of Hon'ble CESTAT in the case of Commissioner of Central Excise, Vapi V/S Trinity Industries reported in 2010 (254) E.L.T.119 (Tri-Ahmd.) on judicial discipline

Under the circumstance of the case, the applicant has prayed to the Revision Authority to set aside the OIA passed by the AA and to uphold the OIO passed by the OAA, alternately, to remand the case back to the AA for passing orders on merit or for passing any such orders as deemed fit.

6(a). Personal hearing through the online video conferencing mode was scheduled for 02.08.2022. Shri. N.J Heera, Advocate for the applicant appeared for personal hearing and submitted that OIO passed was just, fair

and reasonable. He requested to maintain OIO passed by adjudicating authority.

7. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized Indian 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 Indian currency. The export of Indian currency outside the country in excess of Rs. 25,000/- was proscribed in terms Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 [amended vide RBI notification no. 309/2014-RB dated 04.06.2014]. Hence, the confiscation of the Indian currency was justified.

8. The Government finds that in the said Foreign Exchange Management (Export and import of currency) Regulations, 2000, there was no scope to take Indian currency in excess of Rs. 25,000/- outside the country. Government observes that the conclusions arrived at by the lower authorities noting that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 have been violated by the applicant, is correct and therefore, the confiscation of the Indian currency ordered, is justified.

9. Government notes that the applicant had claimed that the Indian currency belonged to her and had explained the source of the money and the purpose for taking it out of the country. The respondent at no stage had controverted this claim of the applicant. At para 7.2 of the OIO, the OAA has held the following,

7.2. I, find that the noticee has concerned herself in carrying Indian currency beyond the permissible limit. Any person resident in India is allowed to take outside Indian currency notes of Government of India and Reserve Bank of India notes upto Rs. 25,000/- per person as per Regulation 3 of the Foreign Exchange Management (Export

and Import of Currency) Regulations, 2000 (as amended). Since, the passenger was carrying INR much more than prescribed limit she violated Regulation 3 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000. The currency therefore, has become liable for confiscation under Section 113 (d), (e) and (h) of the Customs Act, 1962 and the passenger liable for penal action under Section 114(i) and 114(ii) of the Customs Act, 1962.

10. 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.

11. The OAA has also observed that the applicant was carrying Indian currency which was acquired by her from her own resources. Concealment was not ingenious, past record of the applicant does not indicate anything adverse. In the circumstances, Government finds that the absolute confiscation of the currency is harsh and unreasonable. The OAA had used his discretion in allowing the Indian currency to be redeemed on payment of

a fine. Government finds the same to be legal and proper and is inclined to restore the OIO passed by the OAA.

12. The Government finds that the personal penalty of Rs. 1,50,000/- imposed on the applicant under Section 114 of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

13. In view of the above, the Government sets aside the OIA passed by the AA and hereby, restores the OIO passed by the OAA. The quantum of penalty imposed on the applicant under Section 114 of the Customs Act, 1962 is appropriate.

14. Accordingly, the Revision Application is allowed on the above terms.


14/11/22 ✓
(SHRAWAN KUMAR)

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

ORDER No. 318/2022-CUS (WZ)/ASRA/MUMBAI DATED. 11.11.2022.

To,

1. Smt. Noor Banu Jan Mohammed Sama, Flat No. 3/A, Ist Floor, m Hilton CHS Ltd, 35A, Hill Road, Bandra West, Mumbai - 400 050.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Terminal - 2, Level - 2, Sahar, Andheri West, Mumbai - 400 099.

Copy to:

3. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai - 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Noticeboard.