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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. 373/36/B/2017 (MUM) / 7302

Date of Issue 22/12/2021

ORDER NO. 319/2021-CUS (SZ)/ASRA/MUMBAI
DATED 15.12.2021 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. Sahul Hameed Ameen.

Respondent : Commissioner of Customs, Anna International Airport,
Meenambakkam, Chennai Pin : 600 027.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal Airport
C.C.No. 132/2017 dated 20.07.2017 [C4-I/105/0/2017-
AIR] passed by the Commissioner of Customs (Appeals-I),
Chennai 600 001.



ORDER

This revision application has been filed by Shri. Sahul Hameed Ameen (herein referred to as Applicant) against the Order-In-Appeal No. AIRPORT C.C.No. 132/2017 dated 20.07.2017 [C4-I/105/0/2017-AIR] passed by the Commissioner of Customs (Appeals-I), Chennai 600 001.

2. Brief facts of the case are that the applicant, an Indian National was bound for Bangkok by Thai Airlines Flight dated 20.10.2016 was intercepted by the Customs Officers at the Chennai Airport. On examination, foreign currency i.e of 83 nos. of US Dollars of denomination 100 equivalent to INR 5,46,140/- kept concealed inside pipes placed in his hand baggage was recovered. Applicant had neither declared the currency to the Customs nor possessed any valid document/permit from RBI, as required under FEMA for export of the impugned currency.

3. After, due process of law, the Original Adjudicating Authority viz, Addl. Commr. Of Customs (Airport), Chennai, vide Order-In-Original No. 11/2016-17-AIRPORT dated 27.04.2017 [F.No. O.S. No. 763/2016-AIR] ordered for the absolute confiscation of the foreign currency i.e 83 nos of US Dollars of denomination 100 equivalent to INR 5,46,140/- under Section 113 (d), (e) & (h) of the Customs Act, 1962 read with Foreign Exchange Management Act, 2009 and imposed a penalty of Rs. 55,000/- on the applicant under Section 114(1) of the Customs Act, 1962.

4. Aggrieved with this order, the applicant filed an appeal with the appellate authority viz, Commissioner of Customs (Appeals-I), Chennai, who vide Order-in-Appeal Airport C.C.No. 132/2017 dated 20.07.2017 [C4-I/105/0/2017-AIR], rejected the appeal.



5. Aggrieved with the above order, the Applicant has filed this revision application on the grounds that the Appellate order is neither legal nor proper for the following grounds;

- 5.1. that the order of the appellate authority was against the law, weight of evidence and circumstances and probabilities of the case
- 5.2. that the seized currency was not prohibited and the same was a restricted item.
- 5.3. that he was the owner of the foreign currency.
- 5.4. that there was no legal requirement to declare currency below USD 10,000/-.
- 5.5. that to buttress their case, the applicant has cited an exhaustive list of case laws.

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

6. A personal hearing in the case through the online video conferencing mode was scheduled for 17.11.2021 / 24.11.2021. Shri. Kamalamalar Palanikumar Advocate for the applicant vide her letter dated 23.11.2021 expressed his inability to attend the hearing and requested to pass an order with the available records and show leniency. Accordingly, the case was taken up for decision on the basis of available records.

7. Government has gone through the facts of the case. Government finds that the applicant had not declared the seized foreign currency to the Customs at the point of departure. On being confronted, the applicant had admitted that he was carrying some Indian currency but had not disclosed that he was carrying foreign



currency. Further, the Government has observed that the applicant had concealed the foreign currency in the hollow of the pipes to avoid detection.

8. The source of the foreign currency had remained unaccounted. The fact that the foreign currency was procured from persons other than authorized persons as specified under FEMA, 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, confiscation of the foreign currency was justified.

9. The Government finds that the respondent had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. 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 have been violated by the respondent is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Government finds that the lower adjudicating authority has correctly applied the ratio of the judgement of the Madras High Court in the case of Apex Court in the case of Commissioner of Customs, Chennai v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad)] wherein it was held at para 13 as under;

..... We find, in the present case, the passenger has concealed the currency of 55,500 US dollars and other currencies, attempted to be taken out of India without a special or general permission of the Reserve Bank of India and this is in violation of the Rules. The fact that it was procured from persons other than authorized person as specified under the FEMA, makes the goods liable for confiscation in view of the above-said prohibition. Therefore, the Original Authority was justified in ordering absolute confiscation of the currency. The key word in Regulation 5 is prohibition of import and export of foreign currency.



12. Government finds that 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 within the scope of "prohibited goods" is applicable in this case.

13. 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.

14. The Government finds that the amount involved in this case is small, though over the prescribed limit set by the RBI. Government notes that the applicant is not a habitual offender. Government finds that in the facts and circumstances of the instant case, the discretion used to not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 is punitive 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.



15. The Government finds that the personal penalty of Rs. 55,000/- imposed on the applicant under Section 114(i) of the Customs Act, 1962 is commensurate with the act of omissions and commissions committed by the applicant.

16. In view of the above, the Government sets aside the impugned order of the Appellate authority in respect of absolute confiscation of the foreign currency. The foreign currency consisting of USD 8,300/- equivalent to INR 5,46,140/- is allowed redemption on payment of Rs. 1,50,000/- (Rupees One Lakhs Fifty Thousand only). The penalty of Rs. 55,000/- imposed under Section 114(i) of the Customs Act, 1962 imposed by the lower adjudicating authority and upheld by the appellate authority is appropriate.

17. Revision Application is disposed of on above terms.

Shrawan
15/12/21
(SHRAWAN KUMAR)

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

ORDER No. 319/2021-CUS (SZ) /ASRA/

DATED 15.12.2021

To,

1. Shri. Sahul Hameed Ameen, S/o. Shri. Ameen, No. 59/1, Pitchandi Lane, Rayapuram, Chennai : 600 013.
2. Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai Pin : 600 027.

Copy to:

1. Shri. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai – 600 001. Mobile 98410 50029.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.

