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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. 371/480/B/WZ/2019-RA/6623 Date of Issue : 24/11/2022

ORDER NO. 324 /2022-CUS (WZ)/ASRA/MUMBAI DATED 21.11.2022
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.

(i). F.No. 371/480/B/WZ/2019-RA.

Applicant : Shri. Naseer Ahmed Abdul Sattar Shaikh.

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-CUSTOM-PAX-APP-623/19-20 dated 31.10.2019
issued through F.No. S/49-728/2018 passed by
Commissioner of Customs (Appeals), Mumbai -III.

ORDER

This revision application has been filed by Shri. Naseer Ahmed Abdul Sattar Shaikh (herein after referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-623/19-20 dated 31.10.2019 issued through F.No. S/49-728/2018 passed by Commissioner of Customs (Appeals), Mumbai -III.

2. Briefly stated facts of the case are that the applicant bound for Dubai by Jet Airways Flight No. 9W-536 / 24.10.2017 was intercepted by Customs Officers at the CSMI Airport on 24.10.2017 after he had cleared himself through immigration and Customs. Earlier, he had arrived at CSMI Airport from Bangalore onboard Jet Airways Flight No. 9W-041. To query whether he was in possession of any contraband, foreign / Indian currency, he had replied in the negative. On persistent inquiry, the applicant admitted that he was carrying more than USD 50,000/- in his checked-in bag. The checked-in bag of the applicant was recalled with the help of the airline staff. Examination of the checked-in bag led to the recovery of 1,100 notes of USD in denomination of 100 and 800 currency notes of INR in denomination of Rs. 500 which had been concealed in a cylindrical shaped tin container kept inside the checked in bag. The cancellation of the emigration of the applicant was carried out. Thus, in all USD 1,10,000/- and INR 4,00,000/- were recovered from the applicant and an amount equivalent to Rs. 69,74,000/- was realised after exchange of the said foreign currency. Total of Rs. 73,74,000/- (i.e. FC equivalent to INR 69,74,000/- and INR 4,00,000/-) were recovered from the applicant. The applicant did not possess any documents / permit as required under FEMA for legal export of the impugned foreign currency and as he had attempted to smuggle the same out of the country by way of concealment and non-declaration to Customs, the foreign currency and Indian currency were seized.

3. After due process of the law, the Original Adjudication Authority (OAA) viz, Addl. Commr. of Customs, CSMI Airport, Mumbai vide Order-In-Original No.

ADC/AK/ADJN/314/2018-19 dated 27.09.2018 issued on 12.10.2018 through F.No. S/14-6-03/2018-19/Adjn [SD/INT/AIU/286/2017-AP'B] ordered for the

- (i). absolute confiscation of the Indian currency amounting to Rs. 4,00,000/- under Section 113(d), (e) & (h) of the Customs Act, 1962;
- (ii). confiscation of the foreign currency i.e. USD 110,000/- equivalent to Rs. 69,74,000/- under Section 113(d), (e) & (h) of the Customs Act, 1962 read with Section 6(3)(g) of FEMA, 1999 and Regulations framed, thereunder. However, an option to redeem the same on payment of redemption fine of Rs. 13,50,000/- in lieu of confiscation, under Section 125(1) of the Customs Act, 1962 was granted to the applicant;
- (iii). personal penalty of Rs. 9,00,000/- under Section 114(i) and (iii) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by this order, the applicant filed an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III only on the ground that the applicant ought to have been given an option to redeem the Indian Currency in terms of Section 125 of the Customs Act, 1962 being an owner. The Appellate Authority vide his Order-In-Appeal No. MUM-CUSTOM-PAX-APP-623/19-20 dated 31.10.2019 issued through F.No. S/49-728/2018 did not find it necessary to interfere in the OIO passed by the OAA.

5. Aggrieved with the above order, the applicant has filed this revision application alleging that (i). OAA while ordering the release of the foreign currency had erred in holding that the applicant was a carrier; (ii). that the AA had rejected the appeal and had held that the applicant was a carrier.

The applicant has prayed to the revisionary authority to set aside the absolute confiscation of the Indian currency or to grant any such reliefs as deemed fit and proper.

6. Accordingly, personal hearing in the case through the online video conferencing mode were scheduled for 10.08.2022 and 24.08.2022. Shri. Prakash Shingrani, Advocate, appeared for personal hearing on 10.08.2022 and submitted that small amount of Indian currency should be released on nominal fine and penalty.

7. Government has gone through the facts of the case. Government finds that that the OAA had granted an option to redeem the foreign currency equivalent to Rs. 69,74,000/- while the Indian currency amounting to Rs. 4,00,000/- was absolutely confiscated. Government finds that applicant had filed an appeal before the AA only on the issue of seeking / praying for allowing the redemption of the Indian currency. The foreign currency had been allowed to be redeemed by the OAA and the applicant has not gone in appeal before the AA on the matter of the foreign currency. In other words, the OIO to the extent of the release of the foreign currency ordered by the OAA and upheld by the AA, was accepted by the Respondent.

8. Applicant has prayed for setting aside the absolute confiscation of the Indian currency and praying that the same may be allowed to be redeemed on payment of RF and penalty.

9. Government notes that applicant was found in possession of Indian currency in excess of Rs. 25,000/-. 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 his 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 Regulation no. 3 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Hence, the confiscation of the Indian currency was justified.

10. The Government finds that in the said Foreign Exchange Management (Export and import of currency) Regulations, 2015, there is no scope available to take Indian currency in excess of Rs. 25,000/- outside the country. Government notes that the conclusions arrived at by the lower authorities 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.

11. 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.

12. The Government finds that the concealment was not ingenious, there is no past record of the applicant, the applicant has claimed ownership of the Indian currency which has not been controverted by the respondent. In the circumstances, Government finds that the absolute confiscation of the Indian currency is harsh and unreasonable. Government is inclined to set aside the

absolute confiscation of the Indian currency amounting to Rs. 4,00,000/- as held by the AA and allows the applicant to redeem the same on payment of a redemption fine of Rs. 80,000/- (Rupees Eighty Thousand only).

13. The Government finds that applicant has filed this revision application praying for allowing the redemption of the Indian currency which has been confiscated absolutely. Government notes that the OIO passed by the OAA had gained finality on the issue of redemption of the foreign currency and the personal penalty imposed on applicant as these were not appealed against before the AA by both the applicant as well as the respondent. Accordingly, they have not been taken up here.

14. Revision application filed by the applicant is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. ~~324~~ /2022-CUS (WZ) /ASRA/MUMBAI DATED 21.11.2022

To,

1. Shri. Naseer Ahmed Abdul Sattar Shaikh, D/50, Firdaus Park CHS, S.V. Road, 80, Near Allahi Masjid, Jogeshwari (West), Mumbai - 400 102.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Level-II, Terminal - 2, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

1. Shri. Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.