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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. 371/116/B/2021-RA | 1350 Date of Issue : 03.03.23

ORDER NO. 342 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.02.2023 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. 371/116/B/2021-RA

Applicant : Shri. Hussain Saquib

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-669/20-21 dated 14.01.2021 issued on
20.01.2021 through F.No. S/49-1205/2019, passed by
the Commissioner of Customs (Appeals), Mumbai III.



ORDER

This revision application has been filed by Shri. Hussain Saquib (hereinafter referred to as the Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-669/20-21 dated 14.01.2021 issued on 20.01.2021 through F.No. S/49-1205/2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that the applicant who was bound for Dubai by Jet Airways Flight No. 9W-580 was intercepted by Customs Officers on 23.09.2018 at CSMI Airport, Mumbai. The applicant had cleared from the security and Immigration and had been proceeding to board his flight. 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 sustained interrogation, the applicant admitted that he was carrying foreign currency in his checked-in baggage. The checked-in baggage was off-loaded from the flight which was a corrugated box. On examination of the corrugated box, the undermentioned quantity of assorted foreign currency as mentioned at Table No. 01 below were recovered which had been concealed between two layers of the corrugated sheets at the bottom of the corrugated box.

TABLE No. 01.

Sl. No.	Currency	Denomination X no. of notes	Total value of currency	Exchange Rate.	Value in INR.
1.	US Dollar	100 X 300	30,000	71.95	21,58,500/-
2.	EURO	100 X 130	13,000	83.45	10,84,850/-
3.	Saudi Riyals	500 X 185	92,500	18.80	17,39,000/-
					49,82,350/-

2(b). An amount equivalent to INR 49,28,600/- was realised against the aforesaid foreign currency.



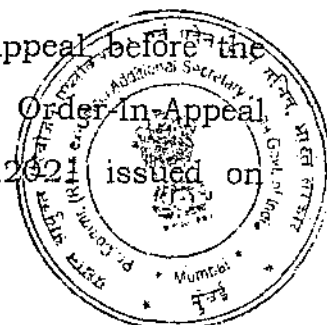
2(c). The applicant had neither declared the foreign currency to the Customs nor possessed any valid document/permit etc from RBI, as required under FEMA for export of the impugned foreign currencies. The applicant had informed that the foreign currency did not belong to him and he was supposed to hand over the same at Dubai and that he had carried the same for a monetary consideration.

2(d). The applicant had named the person to whom the money belonged. However, investigations were carried out and this person denied the facts told by the applicant.

2(e). The applicant retracted his earlier statement and stated that the foreign currency belonged to his brother who was working at Dubai and had asked him to bring the currency to Dubai as they intended to set up a business there. The applicant's brother was summoned but he did not join the investigations

3. The Original Adjudicating Authority (OAA) i.e. Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/193/2019-20 dated 18.10.2019 issued through F.No. S/14-6-68/2018-19/ADJN (SD/INT/AIU/411/2018 AP'A") ordered for the absolute confiscation of the seized assorted foreign currency equivalent to Rs. 49,28,600/- under Section 113(d), 113(e), 113(h) and 113(i) of the Customs Act, 1962 read with FEMA, 1999 and Foreign Exchange Management (Export and Import of currency) Regulations, 2015. Further a penalty of Rs. 5,00,000/- was imposed on the applicant under Section 114(i) of the Customs Act, 1962.

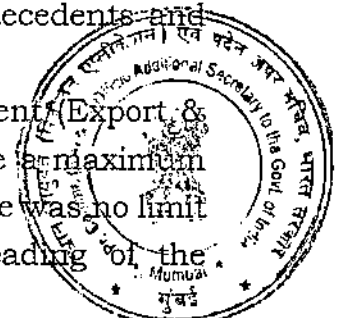
4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai - III who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-669/20-21 dated 14.01.2021 issued on



20.01.2021 through F.No. S/49-1205/2019, rejected the appeal and upheld the penalty imposed on the applicant by the OAA.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant has preferred this revision application inter alia on the grounds ;

- 5.01. that the applicant's statement was involuntary and against truth and ought not to have been relied upon; that he had been forced to admit that he had carried the currency for Mr Mohammed Faique for a monetary consideration of Rs 10,000/-; that in the case of Smt. Selvi and ors. Vs. State of Karnataka, reported in 2010 (3) Supreme 558, the Apex Court opined that subjecting a person to the impugned techniques in an involuntary manner violates the prescribed boundaries of privacy; that it has been held that where the statement is made as a result of coercion after the person is treated as an offender and accused, such statement must be regarded as involuntary; that the applicant had retracted his statement; that in the absence of any corroborative evidence from an independent source, confession should not have been relied upon; case law relied upon are Rafikul Alam & Others vs. The State of West Bengal 2008; Padala Veera Reddy vs. State of Andhra Pradesh and Others 1989 Supp. 2 SCC 706; etc; that Hon'ble Supreme Court in the matter of Mohtesham Mohd. Ismail [2007 (220) ELT 3 (S.C.)] held that even confession of an accused is not a substantive evidence; that the applicant has relied upon an exhaustive list of cases on the issue that reliance should not be placed on a retracted statement.
- 5.02. that the applicant claimed ownership of the currency and prayed for redemption of the foreign currency;
- 5.03. that the applicant was the owner of the assorted foreign currency equivalent to Rs 49,28,600/-; that the money was from his savings and out of personal loan obtained by him from his friends for the purpose of starting a restaurant business in Dubai; that he had got the currency converted into foreign currency from foreigners outside the international airport; that he did not have any bad antecedents and initial statement given was not voluntary.
- 5.04. that the Regulation 7(2) of Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 did not prescribe a maximum amount to be exported by a person resident in India. There was no limit provided for export of foreign currencies. A plain reading of the

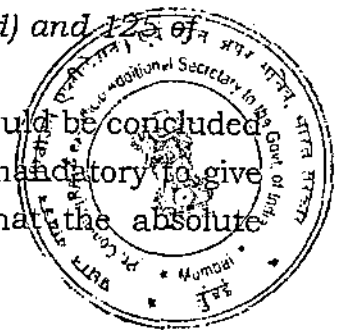


Regulation makes it clear that foreign currency as such was not prohibited goods and its import or export was subject to the permission given by the Reserve Bank of India. Further as per Regulation 7 (2)(ii) of the said Regulations '(2) any person may take or send out of India (ii) foreign exchange obtained by him by draw from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder.' Thus, Foreign currency was not prohibited and its import or export was subject to law and rules and regulations issued by a competent authority. The foreign currency was not notified as 'prohibited' under Customs Act, 1962 and FEMA.

- 5.06. that the applicant submitted that permission from RBI could not be taken due to the fact that he was unaware of the said provision of the law.
- 5.07. that foreign currency was not a prohibited item and was a restricted item and consequently the person from whom it was recovered or the owner of the goods was entitled for release of the seized material under Section 125 of the Customs Act; that the benefit of the same should have been extended to him.
- 5.08. that from the perusal of the said provision, it was clear that the adjudicating officer had the discretion to give an option of redemption fine in case of prohibited goods but for other goods, it was mandatory to give the option of redemption fine. Reliance is placed on the decision given by the Hon'ble Revisionary authority in the case of Chellani Mukesh, reported as 2012 (276) E.L.T. 129 (G.O.I.) wherein it was held that:-

Confiscation and penalty (Customs) Absolute confiscation Option of redemption fine Non-declaration of Indian currency and attempt to export such illegally-Currencies not being prohibited goods, absolute confiscation is very harsh Option to redeem confiscated currency granted in view of the various precedent decisions of CESTAT/GOI giving liberal interpretation as regards to absolute confiscation of currencies - However, no ground to reduce personal penalty-Sections 111(d) and 125 of Customs Act, 1962. [paras 7, 8. 91]

- 5.09. that in the light of the numerous case laws cited, it could be concluded that as currencies are not prohibited goods, it was mandatory to give option to redeem the confiscated currency and that the absolute confiscation is very harsh.



- 5.10. that reliance was placed on the decision in the case of PERINGATIL HAMZA Versus COMMISSIONER OF CUSTOMS (AIRPORT), MUMBAI: 2014 (309) E.L.T. 259 (Tri. - Mumbai), the Tribunal held as follows:

Para 7: The general principle is that on whose possession the goods are found then that person is to be the owner of the goods. In this case, the currency has been recovered from the possession of the petitioner and the petitioner claims the owner of the goods and the adjudicating authority is holding that he is not the owner of the goods. Therefore, the onus lies on the adjudicating authority to find out who is the owner of the goods. As he has not arrived at a decision as who is the actual owner of the goods, therefore, in all probability the petitioner is the owner of the goods as the currency has been recovered from his possession on 8-12- 2004. Further, the absolute confiscation has been done by the adjudicating authority holding that the petitioner is not the owner of the goods is incorrect in the light of the findings here-in above. Therefore, in these circumstances, I hold that the absolute confiscation of the currency is not warranted. Accordingly, I hold that the Indian currency can be released to the petitioner on imposition of redemption fine and penalty.

- 5.11. that on the issue of penalty being harsh the applicant has placed reliance in the Supreme Court case of Union of India Vs Mustafa & Najibai Trading Co (1998) 6 SCC 79, in the case of Commissioner of Customs, Cochin vs. Dilip Ghelani: 2009 (248) ELT 888 (Tri.-LB), etc
- 5.12. that the applicant has stated that in the various decision cited by him, the penalty had been reduced from 10% and 5% of the value of the goods.

Under the circumstances, the applicant has prayed to the Revision Authority to set aside the OIA and to release the currency on payment of a reasonable fine and penalty and to drop the proceedings.

6. Personal hearing was scheduled for 05.12.2022. Shri. Prakash Shingrani Advocate appeared for physical hearing on 06.12.2022 and submitted that applicant was caught with some foreign currency which belonged to him. He



further submitted that applicant is not a habitual offender. He requested that foreign currency be released on nominal RF and penalty.

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. Further, in his statement the applicant had admitted the possession, carriage, non-declaration and recovery of the foreign currency. The foreign currency had been kept between the two layers of the corrugated sheets at the bottom of the corrugated box. The fact remains that the initially the applicant had not disclosed the impugned foreign currency and the source of the foreign currency had remained unaccounted. Applicant was unable to show that the impugned foreign and Indian currency in their possession was procured from authorized persons as specified under FEMA. The fact remains that the applicant was in possession of foreign / Indian 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. Therefore, the confiscation of the foreign currency was justified.

8.1. Applicant has pointed out several procedural issues relating to cross examination, retraction of statements, etc. All these issues have been examined in light of evidences on record. Undisputed fact remains that currency was recovered from the applicant. Minor procedural infractions cannot be used to alter this vital fact.



8.2. The applicant has kept the foreign currency in the checked-in baggage between the corrugated sheets. The Government finds that the applicant 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. 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 applicants is correct.

9. Government finds that the case of Commissioner of Customs, Chennai v/s. Xavier Poonolly [2014(310 E.L.T. 231 (Mad)] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

10. On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.

11. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :

5. "Prohibition on export and import of foreign currency. -

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

7. Export of foreign exchange and currency notes. -

(1) An authorized person may send out of India foreign currency acquired in normal course of business.

(2) any person may take or send out of India, -

(i) ^{cheques} drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii) ^{foreign} exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder

12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which

has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

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.

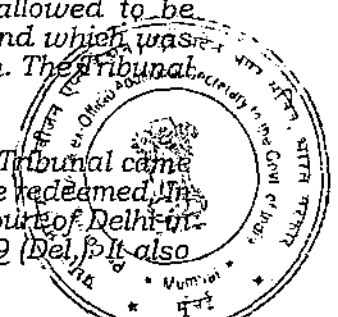
71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment 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. 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



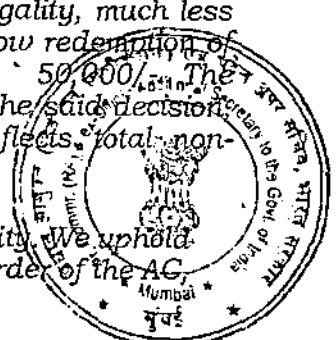
relied upon its own order passed in the case of Pankaj Jagda - 2004 (171) E.L.T. 125 (Tri.-Mum.).

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".*

12. In another case of confiscation of 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".

13.1. Section 125 stipulates that ;

Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging 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 :

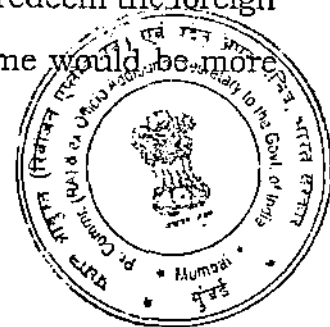
Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

13.2. Considering the afore-stated facts and position of law, 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 foreign currency on payment of a suitable redemption fine as the same would be more reasonable and fair.



14. Government finds that the penalty of Rs. 5,00,000/- imposed on the applicant by the OAA under Section 114(i) of the Customs Act, 1962 and upheld by the AA is reasonable and commensurate with the omissions / commissions committed.

15. In view of the above, the Government modifies the impugned order of the Appellate authority in respect of the foreign currency. The absolute confiscation of the foreign currencies mentioned at Table No. 1, above, equivalent to INR 49,28,600/- is set aside and is allowed redemption on payment of a fine of Rs. 10,00,000/- (Rupees Ten Lakhs Only). The penalty of Rs. 5,00,000/- imposed under section 114(i) of the Customs Act, 1962 by the lower adjudicating authority and upheld by the appellate authority is sustained.

16. Accordingly, the revision application is decided on the above terms.

Shrawan
28/12/23
(SHRAWAN KUMAR)

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

ORDER NO. 342 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.02.2023.

To,

1. Shri. Hussain Saquib, H.No. 52, Barni Garden, Khalifa Street, Dharanta, Bhatkal, Karwar, Karnataka - 581 320.
2. The Pr. Commissioner of Customs, CSMI Airport, Terminal -2, Level - II, Mumbai - 400 059.

Copy to:

3. Shri. Prakash Shingrani, Advocate, 12/334, Vivek Marg, New MIG Colony, Bandra East, Mumbai - 400 051
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Noticeboard.

