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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. 373/179/B/15-RA/810 Date of Issue 28/06/2018

ORDER NO.346/2018-CUS (SZ)/ASRA/MUMBAI DATED 16.05.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. Shakul Shirajideen

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 04-05/2015 dated 13.02.2015 passed by the Commissioner of Cus. C. Ex. (Appeals), Trichy.

Pr. Commr. (Revision Application) & ex-Officio Additional Secretary to the Govt. of India * Mumbai *

ORDER

This revision application has been filed by Shri. Shakul Shirajideen (herein referred to as Applicant) against the order No. 04-05/2015 dated 13.02.2015 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated facts of the case are that the applicant, an Indian National was going abroad from Trichy Airport on 08.01.2014. assorted foreign currency amounting to Rs. 13,61,337/- (Rupees Thirteen lakhs Sixty one thousand Three hundred and thirty seven) was recovered from him by the officers of the Air Intelligence Unit. As the impugned currency was meant for illegal export The currency was confiscated absolutely by the original Adjudication Authority vide order 28/2014 dated 28.11.2014 under section 113 (d), (e) and (h) of the Customs Act,1962 read with FEMA 1999, FEMA (Exp and Imp of Currency,2000). A penalty of Rs. 2,60,000/- was also imposed on the Applicant under section 112 of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Trichy. The Commissioner (Appeals) Trichy, vide his order No. . 04-05/2015 dated 13.02.2015 allowed redemption of the seized foreign currency on payment of Rs. 6,80,000/- as redemption fine and allowed the Appeal of the Applicant.

4. Aggrieved by the order of the Commissioner (Appeals), the Applicant has filed the Revision Application on the grounds that;

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case; The Applicant had borrowed t the monies from other persons and was unaware that it could not be taken outside the country; The detection was because he voluntarily declared the currency; there was no contumacious conduct on the part of the appellant but the conduct of a person who was ignorant of the law, since she violated the provisions of Customs Act,1962 and FEMA1999; the currency was orally declared and shown, having seen the same the question of declaration does not arise; The Adjudication authority should have released the currency without redemption fine and penalty;

4.2 It has also been pleaded in a reported in 2012 (276) ELT 129 (GOI) in re Chellani Mukesh and in the case of Keetheswari 373/46/B/11 04.05.2012 the hon'ble Revisional Authority has stated absolute confiscation is very harsh and

granted the option to redeem the confiscated currency; that the Hon'ble Supreme Court has state that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; The joint Secretary to the GoI order No. 87/07 dated 15.02.2007 has stated that taking out foreign currency is only restrictive in nature and ordered release of the foreign currency on nominall fine and penalty.

4.3 The Applicant cited various assorted judgments in support of his case and prayed that the Hon'ble Revision Authority may please release the Indian currency on reduced redemption fine and personal penalty and thus render justice.

5. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals in support of his case. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant was carrying Assorted foreign currency beyond permissible limits. He was not having any documentary support or any specific permission for the same and therefore confiscation of the currency is justified.

7. However, the Applicant was not aware that carrying currency abroad was not permitted. The currency was not ingeniously concealed. There are numerous judgments wherein currencies have been released on payment of redemption fine and penalties. Further, the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. Government also observes that there were no allegations of ingenious concealment of the currency. Under the circumstances Government holds that the Redemption fine of Rs. 6,80,000/- penalty of Rs. 2,60,000/- imposed on the currency of Rs. 13,61,337/- (Rupees Thirteen lakhs Sixty one thousand Three hundred and thirty seven) is on the higher side and the applicant can be treated with a lenient view. The Applicant has pleaded for lesser redemption fine and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified reduced redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government, reduces the redemption fine imposed from Rs. 6,80,000/-(Rupees Six lakhs Eighty thousand) to Rs. 4,00,000/- (Rupees Four lakhs). Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 2,60,000/-(Rupees Two lakhs Sixty thousand) to Rs.2,00,000/- (Rupees. Two lakhs) under section 112(a) of the Customs Act,1962.

9. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.346/2018-CUS (SZ) /ASRA/MUMBAI DATED 16.05.2018

To,

True Copy Attested

Shri Shakul Shirajideen
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एस. आर. हिरूलकर
S. R. HIRULKAR
(A.C)

Copy to:

1. The Commissioner of Customs, Trichy
2. The Commissioner of Cus. & C. Ex. (Appeals),Trichy
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.