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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/277/B/WZ/2018-RA/248

Date of Issue : 08/12/2022

ORDER No. 357/2022-CUS (WZ)/ASRA/MUMBAI DATED.07.12.2022.
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. 371/277/B/WZ/2018-RA

Applicant : Shri. Janak Bharkumar Dave

Respondent : Commissioner of Customs, Marmagoa, Goa.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. GOA-
CUSTM-000-APP-046-2018-19 dated 30.08.2018 issued
on 14.09.2018 through F.No. A-04/CUS/GOA/2018-19
passed by the Commissioner Appeals, CGST & Customs,
Goa.

ORDER

This revision application has been filed by the Shri. Janak Bharatkumar Dave, (herein referred to as Applicant) against the Order-In-Appeal No. GOA-CUSTOM-000-APP-046-2018-19 dated 30.08.2018 issued on 14.09.2018 through F.No. A-04/CUS/GOA/2018-19 passed by the Commissioner Appeals, CGST & Customs, Goa.

2(a). Brief facts of the case are that the applicant who had arrived from Dubai by Air India Flight No. AI-994 was intercepted on 14.04.2017 by Customs Officers near the exit gate of the Customs Arrival Hall at the Dabolim Airport, Goa. The applicant had opted for the green channel of Customs. The baggage carried by the applicant was searched. Foreign and Indian currency in various denomination as detailed below, were recovered from the baggage of the applicant.

TABLE NO. 01

S.No.	Type of currency	Denomination	Nos of notes	Total value	Ex. Rate	Total Amount in INR
1	USD	100	486	48600	65.90	3202740
2	UAE Dirhams	1000	29	29000	18.30	762287
3		500	20	10000		
4		200	5	1000		
5		100	16	1600		
6		50	1	50		
7		5	1	5		
8	Indian Rupee	2000	14	28000	-	
9		500	42	21000	-	
10		100	120	12000	-	
			Total value of Foreign Currency in INR =			39,65,027/-
			Total value of INR =			61,000/-
			Aggregate value of FC & INR in INR =			40,26,027/-

2(b). The applicant had admitted that he had carried assorted foreign and Indian currencies and had deliberately not declared it at the Customs red channel. The applicant revealed that he was working as a Finance Manager at Thailand and that he was a frequent traveller.

2(c). The bank realization value of the foreign currency was Rs. 37,41,470/-. The total of the realized value of the foreign currency and Indian currency seized was Rs. 38,02,470/- (i.e. FC in INR equivalent = Rs. 37,41,470/- + INR of Rs. 61,000/-).

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Asstt. Commissioner of Customs, Custom House, Goa vide Order-In-Original No. 21/2017-18-ADC(CUS) dated 28.03.2018 issued through F.No. 11/32/2017-R&I(APT)(AIU)ADJ, ordered for the absolute confiscation of the seized foreign currency and Indian currency, totally valued at Rs. 38,02,470/- under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962 read with Regulation 3 and 6 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 notified by the Reserve Bank of India vide notⁿ no. FEMA 6(R)/RB-2015 dated 29.12.2015 and imposed a penalty of Rs. 3,00,000/- on the applicant under Section 112(a) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner Appeals, CGST & Customs, Goa, who vide his order Order-In-Appeal No. GOA-CUSTM-000-APP-046-2018-19 dated 30.08.2018 issued on 14.09.2018 through F.No. A-04/CUS/GOA/2018-19 upheld the OIO passed by the Original Adjudicating Authority and dismissed the appeal.

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 applicant did not dispute the fact that he had not declared the currency to Customs on his arrival in India; that the foreign currency found in the possession of the applicant were sales proceeds of the jewellery belonging to his company which had been sold in Sharjah Exhibition from 04.04.2017 to 08.04.2017; that self-attested photocopies of the exchange receipts received from the sale of the jewellery through the invoices had been given; that payment had been received in cash in Dirhams and the same had been exchanged into USD; that he was unable to deposit the money in a bank account in Dubai as his company was not registered in Dubai; that the lower authorities had not considered the submissions and documents he had furnished to the investigating agency; that the money belonged to the applicant's company and they had not been made a noticee in the SCN; that the department ought to have made the company in which the applicant was working as the co-noticee; that on principles of a fair trial they rely on case law in the case of Zahira Habibullah Sheikh vs. State of Gujarat passed by the Apex Court; that the applicant was not a carrier of the currency; that the ratio of the cases cited in the OIO and OIA were not applicable to the case of the applicant; that the currencies had been legitimately acquired and documents had been submitted; that the statement of the applicant was exculpatory in character; that the penalty imposed was harsh and excessive especially considering that the offence was technical in nature; that the department should have considered every kind of mitigating circumstance including the pleas made by the applicant; the allegation made against the applicant had not been proved.

5.02. On mere failure to declare the currency, they rely on the following case laws;

(a). 2008 (221) E.L.T. 258 (Tri. - Chennai); T. SOUNDRARAJAN V/S CC, Chennai

(b). Halithu Ibrahim Vs Commissioner of Customs [2002 -TIOL 195 CESTAT-MAD],

(c). Felix DorexFernnees vs Commissioner of Customs [2002 TIOL 194 CESTAT MUM]

5.03. On the issue of self exculpatory confessions they relied on the case law of Palvinder Kaur vs. State of Punjab and State of Tamil Nadu vs. J.Jayalalitha both passed by the Apex Court of statement

5.04. On the issue of high penalty, they relied on the following case laws;

- (a). Apex Courts Order in respect of UOI vs. Mustafa & Najibai Trading Co [1998-6-SCC-79],
- (b). Apex Courts Order in respect of Management of Coimbatore Dist. Central Co-op Bank vs. Secretary, Coimbatore District Central Co-op. Bank Employees Association [2007-4-SCC-669].

Under the circumstance, 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 for re-export.

6. Personal hearing through the online video conferencing mode was scheduled for 03.08.2022. Shri. Prakash Shingrani, Advocate appeared for personal hearing on 03.08.2022 and submitted that the applicant was working as Finance Manager and the money found was properly accounted for. He submitted that merely for non-declaration, absolute confiscation is too harsh. He requested to release the money 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 and the Indian currency had not been declared by the Applicant to the Customs upon arrival as required under Section 77 of the Customs Act, 1962 and the provisions of Rule 6(b) of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29th December, 2015 (Notification No. FEMA 6 (R)/2015-RB) Therefore, the confiscation of the foreign currency was justified as the applicant had not declared the same to the Customs upon arrival into India.

8(a). Insofar as the import of foreign currency into the country under the liberalized economy of the country, it is relevant to reproduce here, the Regulation no. 6 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29th December, 2015.

6. Import of foreign exchange into India:- A person may –

(a) send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques;

(b) bring into India from any place outside India without limit foreign exchange (other than unissued notes).

provided that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations;

provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousand) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US\$ 5,000 (US Dollars five thousand) or its equivalent.

8(b). The Government notes that under the liberalized economy policy of India, foreign currency can be brought into the country and the requirements are (i). the same must be declared upon arrival and (ii). the foreign currency notes must not be unissued notes.

8(c). From the above, it is clear that the import of foreign currency is not prohibited and the same can be brought into the country provided that the two requirements stated above, are met. In this case, the foreign currency were issued notes and the only requirement not met by the applicant was that he had not declared the foreign currency upon arrival.

8(d). At the time of arrival and during the investigations, the applicant had produced the invoices, exchange details etc of the foreign currency found in his possession indicating that the same were proceeds of his business transactions.

9(a). Insofar as the import of Indian currency into the country under the liberalized economy of the country is concerned, it is relevant to reproduce here, the Regulation no. 3 of the Foreign Exchange Management (Export and import of currency) Regulations, 2015 dated 29th December, 2015.

3. Export and Import of Indian currency and currency notes: -

(1) Save as otherwise provided in these regulations, any person resident in India,

(a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000/- (Rupees Twenty Five Thousand Only) per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time;

(b) may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation: 'Commemorative Coin' includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.

(c) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000/- per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time.

1.

(2) Save as otherwise provided in these regulations, any person resident outside India, not being a citizen of Pakistan or Bangladesh, and visiting India,

(a) may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

(b) may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

9(b). Regulation 3(1)(c) and 3(2)(b) pertain to import of Indian currency into the country and stipulates that an amount not exceeding Rs. 25,000/- per person or such other amount and subject to conditions as notified by RBI can only be brought into the country.

9(c). From the above, it is clear that the import of Indian currency exceeding Rs. 25,000/- is prohibited and can be brought in only subject to permission from RBI. These regulations also indicates that the person going abroad can take upto Rs. 25,000/- which he can then bring back to the country. In this case, the applicant is a frequent traveller to & fro from India and had not obtained permission from RBI to bring in Indian currency in excess of Rs. 25,000/-.

9(d). For Indian currency in excess of Rs. 25,000/-, the applicant did not have any valid explanation.

10(a). Section 2(33) of the Customs Act, 1962 pertaining to definitions, reads as under,

2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

10(b). Government notes that the applicant upon arrival into India had not filed a declaration about the foreign currency in his possession and in respect of the Indian currency found in his possession, had not obtained requisite permission from RBI for the amount in excess of Rs. 25,000/-.

11(a). From the foregoing paras, in respect of the foreign currency brought into the country by the applicant is concerned, Government finds that this is a case of non-declaration of foreign currency rather than a case of smuggling. No case has been made out that the concealment was ingenious or the applicant was a repeat offender. The applicant has provided an account of the accrual of the foreign currency and furnished documents. Under the circumstances, Government finds that the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 is harsh and unjustified. The order of the lower authorities is therefore liable to be set aside and the foreign currency is liable to be allowed redemption on suitable redemption fine and penalty.

11(b). In respect of the Indian currency, Government notes that the applicant is eligible to bring an amount of Rs. 25,000/- into the Country. However, for an amount exceeding Rs. 25,000/- i.e. Rs. 36,000/-, the applicant has not been able to produce any permission from RBI for the importation of the said Indian currency into India. Therefore, confiscation of Indian currency of Rs. 61,000/- is justified. However, considering the facts and circumstances of the case, Government is inclined to allow redemption of confiscated goods in view of Section 125 as reproduced below.

11(c). Section 125. 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 ¹ [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:

² [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, ³ [no such fine shall be imposed]:

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.

⁴ [(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.]

⁵ [(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.

*Explanation .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be*

exercised within a period of one hundred and twenty days from the date on which such assent is received.]

12. In view of the above, the Government,

(a). modifies the impugned order of the Appellate authority in respect of the absolute confiscation of the foreign currency. The foreign currency equivalent to realised amount of INR. 37,41,470/- and Indian currency of Rs. 61,000/-, total Rs. 38,02,470/- after confiscation is allowed redemption on payment of a fine of Rs. 7,75,000/- (Rupees Seven Lakhs Seventy-Five Thousand only).

(b). the penalty of Rs. 3,00,000/- imposed under Section 112(a) of the Customs Act, 1962 is appropriate and reasonable and the same is upheld.

12. The Revision Application is disposed of on above terms.


(SHRAWAN KUMAR)

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

ORDER No. 357/2022-CUS (WZ)/ASRA/MUMBAI DATED 07.12.2022.

To,

1. Mr. Janak Bharatkumar Dave, R/O – 311/B, Sainath Square, Near Jalaram Nagar, Char Rasta, Gotri, Vadodara, Gujarat : PIN : 390 021.
2. Commissioner of Customs, Custom House, Marmagoa, Goa – 430 803.

Copy to:

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