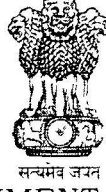


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/207-208/B/2022-RA / 441: Date of Issue : 18.01.2024

ORDER NO. 39-40/2024-CUS (WZ)/ASRA/MUMBAI DATED 17.01.2024
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 No. 1. : Shri. Tabrej Mohamedyunus Chhogala,

Applicant No. 2. : Shri. Makbul Abdul Rehman Doctor

Respondent : Principal Commissioner of Customs, Ahmedabad

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No
AHD-CUSTM-000-APP-1499 to 1500-21-22 dated 04.02.
2022 through F.No. S/49-1142 & 1143/CUS/AHD/
2020-21 passed by Commissioner of Customs
(Appeals), Ahmedabad.

ORDER

These two revision applications have been filed by (i). Shri Tabrej Mohamedyunus Chhogala, (herein referred to as Applicant No 1 (A1)) and (ii). Shri Makbul Abdul Rehman Doctor, (herein referred to as Applicant No. 2 (A2)) or alternately, these two, also referred to as Applicants, against the Orders-in-Appeal No. AHD-CUSTOM-000-APP-1499 to 1500-21-22 dated 04.02.2022 issued through F.No. S/49-1142 & 1143/CUS/AHD/2020-21 passed by Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that on the basis of Passenger profiling from departure passenger manifest, Applicant 1 was identified who was scheduled to depart to Bangkok by Spice Jet Flight No.SG-85 on 29.12 2018. It was suspected that the Applicant 1 would be carrying huge quantity of foreign currency illegally by concealing the same in person or in his baggage. The officers of Customs-AIU discreetly followed the Applicant 1 and after completion of check-in and immigration formalities, just when the Applicant 1 was about to move out of the Customs Area without declaring anything, he was intercepted by the AIU Customs Officers and brought to Customs Office located at Departure Hall, T2 Terminal near Immigration area. During the search operation, nothing objectionable was found from his hand baggage. Further, it was observed that the Applicant 1 was wearing a pair of new Brown coloured Chappals and one pair of shoes and socks were found inside the hand baggage. The hand baggage with its belongings and the Brown coloured Chappals were subjected to X-Ray in the CISF X-Ray Machine at departure area and upon scanning it was confirmed that something was concealed between the top and bottom layers of the brown coloured Chappals. The officers carried out a thorough search between the two layers of the Chappals and the appellant 1 was once again asked to declare what was concealed in between the top and sole of the Chappals, he once again denied of having anything. After

opening one end of the Chappals it was observed that some Newspaper wrapped packets were found inside the cavity between the Top layer and Sole of the Chappals. Upon opening one of the newspaper wrapped bundles it was observed that they were containing Foreign Currency Notes ie U.S.Dollar in denomination of USD-100 each. Each Chappal contained three packets of newspaper wrapped bundles. Therefore total in one pair Chappals it contained 06 bundles. Officers asked the Applicant 1 to confess about the quantity of the total Foreign Currency concealed in the Chappals, at this the Applicant 1 informed that he was not aware about it. Thereafter, the officers of Customs informed the Applicant 1 that the quantum of Foreign Currency concealed in the Chappals of the Applicant 1 was beyond the permissible limit of Foreign Currency as per Customs Act, 1962 and Rules made there under and the Rules made under the FEMA Regulations. As per the panchnama dated 29.12.2018 foreign currency totaling USD 50000.00 (500 Notes of U S. Dollar each of 100 denomination) equivalent to Indian Rs. 34,87,500.00 was recovered from the Applicant 1. The statement of the Applicant I was recorded on 30.12.2018 in which he had confessed that he did not have any Bill/Receipt for purchase of the said amount of foreign currency as the said foreign currency concealed in Chappals (one pair of Chappal) was handed over to him by Applicant 2 who came with him from Surat to Ahmedabad by train namely Coimbatore-Rajkot Express and was going to Bangkok by Spice Jet Flight No. SG-85 dated 29.12.2018 with him. During the investigation, it was suspected that the main person of the Booking Agent Firm namely Altaf and/or the Applicant 2 were the mastermind behind the racket of Smuggling of foreign currency out of India. Further, a summons dated 04.04.2019 addressed to the Applicant 2 and a summons dated 07.05.2019 addressed to Mr. Altaf Hanif Chasmawala were issued by the Superintendent, AIU Customs, SVPI Airport Ahmedabad to record their statements under Section 108 of Customs Act, 1962. But both the persons did not turn up before customs officers to record their statement. Further, a summons dated 14.05 2019 was issued by the Superintendent, AIU Customs, SVPI Airport

Ahmedabad (Camp at Customs Division Surat) to Mr. Altaf Hanif Chasmawala for recording his statement. In response of said summons a statement of Mr. Altaf Hanif Chasmawala was recorded under Section 108 of Customs Act, 1962 on dated 14.05.2019 at Surat. Wherein he stated that regarding the mode of payment for the Flight tickets of the Applicant 1 Passport No. H9833331 shown to him, he confirmed that the payment for both the tickets were received by him from the Applicant 2 of Surat having mobile number +919904646160 in cash. After the investigation SCN was issued to: a) the Applicant 1 as to why the said foreign currency attempted to be illegally exported out of India should not be confiscated and to as to why penalty should not be imposed and b) the Applicant 2 as to why not to impose penalty for the acts of masterminding the conspiracy of smuggling of Foreign Currency out of India, directly involving himself in illegal procurement, harbouring, keeping, dealing in Illegal Foreign Currency and also aiding and abetting in the act of Smuggling of the said Foreign Currency.

3 After due process of the law, the Original Adjudication Authority (OAA) viz, Joint Commissioner Of Customs, Ahmedabad vide Order-In-Original No 24/JC/SM/O&A/2020-21 dated 14.08.2020, ordered for absolute confiscation of the said foreign currency under Section 113(d) & (e) of the Customs Act, 1962 read with the FEMA Regulations and rule 7 of the Baggage Rules ordered for absolute confiscation of the packing materials used for packing and concealment of the said seized foreign currency notes under Sections 118(b) & 119 of the Customs Act, 1962; imposed penalty of Rs.3,00,000/- on the Applicant 1 and penalty of Rs 1,50,000/- on the Applicant 2 under Section 114(1) of the Customs Act, 1962.

4 Aggrieved by this order, Applicant 1 and Applicant 2 filed appeals before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad who vide his Orders-In-Appeal No. AHD-CUSTM-000-APP-1499 to 1500-21-22 dated

04.02.2022 issued through F.No. S/49-1142 & 1143/CUS/AHD/2020-21, upheld the OIO passed by OAA and rejected the appeal filed by the applicants.

5. Aggrieved with the above order, the Applicants have made an exhaustive submission of case laws and have submitted copies including their submissions made before the lower authorities etc. They have filed these revision applications on the following main points:

5.1 That the retracted statement of the Applicant 1 cannot be relied upon, in absence of any corroborative evidence from an independent source;

5.2 That Delayed retraction is not ineffective to the case of the applicant;

5.3 That the Applicant 1 was not a carrier and that Applicant 2 is his friend and had only arranged for his travel tickets on his request;

5.4 That the SCN prejudged the entire issue and the Adjudicating Authority yielded to the prejudged SCN;

5.5 That the Orders of OAA and the AA are not orders on merits and not a speaking order;

5.6 That for concluding foreign currency is prohibited goods and for ordering absolute confiscation of the currency, the Adjudicating Authority relied upon the judgement in the case of Om Prakash Bhatia (2003(155)ELT423(SC)), Abdul Razak (2012 (275)ELT300(Ker)) and Samyanathan Murugesan (2009(247)ELT21(Mad)) which has been overruled by a larger Bench of Supreme Court;

5.7 That Penalty of Rs.3,00,000/- is disproportionate to the value of the currency to be exported by the Applicant 1 and imposition of heavy penalty is not sustainable;

5.8 That Confession of Applicant 1 cannot be relied upon against Applicant 2;

5.9 That Applicant 2 submitted that he was in no way concerned with the case and that he was never examined during the investigation of the case by the officers;

5.10 That Applicant 1 claimed ownership of the currency and prayed for redemption of the foreign currency as the same are not prohibited goods,

5.11 The Applicants concluded by submitting that it was a single and solitary incident of an alleged act of smuggling of foreign currencies which can never be justifiable ground for absolute confiscation of the goods. The applicants submitted that they did not commit any act of omission or commission which can be termed as crime or manifesting of smuggling activity for monetary consideration

In view of the above, Applicant 1 has prayed to release the confiscated currency on payment of reasonable redemption fine and penalty and also to drop further proceedings against him; Applicant 2 has prayed to set aside the penalty imposed on him and to drop further proceedings against him.

6 Personal hearing in the matter was scheduled for 13-10-2023. Shri Prakash Shingarani, Advocate of the applicant, appeared for the hearing and submitted that applicant was carrying some foreign currency for purchase of capital goods. He further submitted that foreign currency is not a prohibited goods and applicant has no past history of any offence. He further mentioned several judgements in which foreign currency has been allowed to be redeemed. He requested to allow redemption of currency on reasonable redemption fine and penalty.

7. Government has gone through the facts of the case and the submissions made by the Applicants. Government finds that there is no dispute that the seized foreign currency was not declared by the Applicant 1 to the Customs at the point of departure. Further, the Applicant 1 had admitted the possession, carriage, concealment, non-declaration and recovery of the foreign currency. Thus, it has

been rightly held that in absence of any valid document for the possession of the foreign currency, the same had been procured from persons other than authorized persons as specified under FEMA, which makes the goods 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 and penalty imposed on Applicant 1 was justified as the Applicant 1 could not account for the legal procurement of the currency and that no declaration as required under section 77 of the Customs Act, 1962 was filed by him. Further, it is observed that Applicant 1 in his statement had submitted that he was carrying the foreign currency out of India on the advice of the Applicant 2, which reveals that Applicant 2 was abetting Applicant 1 in carrying the currency without declaration and hence the penalty imposed on the Applicant 2 was justified.

8 Section 125 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.”

9. In a similar 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 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 Rs. 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”.

10. The Government also notes that in the case law decided by Hon'ble High Court of Bombay vide its judgment dated 27.10.2016 in case of CC, Mumbai Vs Rajinder Nirula (Customs Appeal No 60/2006), it was held as under

“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.”

11 The Government finds that the amount involved in this case is not very large. Also, the Applicant 1 submitted that the applicant was carrying the said foreign currency for purchase of capital goods under the advice of Applicant 2. Further, there are no allegations that the Applicant 1 is a habitual offender. This case is a case of mis-declaration of currency rather than a case of syndicated operation. Government finds that the discretion not to release the foreign currency with reasonable Redemption Fine under the provisions of Section 125 of the Customs Act, 1962 would be harsh and unreasonable. The order of the Appellate authority is therefore liable to be modified and Government considers granting an option to the Applicant 1 to redeem the currency on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

12. Government finds that the penalty of Rs. 3,00,000/- imposed on the Applicant 1 for the impugned foreign currency amounting to USD 50,000 equivalent to Indian Rupees amounting to Rs.34,87,500/- under Section 114(i) of the Customs Act, 1962, is commensurate with the omissions and commissions committed. Government observes that Applicant 2 has prayed for setting aside the penalty imposed on him on the grounds that the penalty was imposed on him only on the basis of the statement of co-accused. Government notes that in the interest of justice, Applicant 2 was granted an opportunity to record his statement and present his stand/evidence which he failed to do. Hence Government finds that the penalty of Rs.1,50,000/- imposed on the Applicant 2 is fair and reasonable.

13. In view of the above, the Government modifies the impugned order of the Appellate authority and the foreign currency viz USD 50000.00 (500 Notes of U S Dollar each of 100 denomination) equivalent to Indian Rs. 34,87,500.00 is allowed redemption on payment of a fine of Rs 7,00,000/- (Rupees Seven Lakh Only)

14. The penalty of Rs. 3,00,000/- imposed on the Applicant 1 and penalty of Rs.1,50,000/- imposed on the Applicant 2 under section 114(i) of the Customs Act, 1962 by the Original Adjudicating Authority and upheld by the appellate authority is sustained.

15. The Revision applications are decided on the above terms.

(SHRAWAN KUMAR)

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

ORDER No. 39-46/2024-CUS (WZ)/ASRA/MUMBAI DATED 17.01.2024

To,

1. Mr Tabrez Mohamedyunus Chogale, Plot No. 120, Aman Coop Hsg Society, Behind Jivan Jyot Cinema, Aanjana, Udhana, Surat-394210.
2. Mr Makbul Abdul Rehman Doctor, House No.2055, Ward No.10, Sindhi Wad, Bhagav Talav, Main Road, Soni Falia, Surat, Gujarat-395003.
3. The Principal Commissioner of Customs, 1st Floor, Customs House, Near All India Radio, Income tax Circle, Navrangpura, Ahmedabad-380009.
4. The Commissioner of Customs (Appeals), Ahmedabad, 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009

Copy to:

1. Shri Prakash K. Shingarani (Advocate), 12/334, Vivek, New MIG Colony, Bandra East, Mumbai-400051
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.

