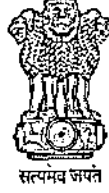


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/373-375/B/2022-RA / 2039 Date of Issue : 12.04.2023

ORDER NO. ^{H30-H32} H30-H32/2023-CUS (WZ)/ASRA/MUMBAI DATED 11.04.2023
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.

(i). F.No. 371/373-375/B/2022-RA

Applicant No. 1. : Shri. Balaji Rangrao Mustapure - [A1], } Applicants
Applicant No. 2. : Shri. Dnyaneshwar Abhangrao Bhosale - [A2] }
Applicant No. 3. : Shri. Parmeshwar Abhangrao Bhosale - [A3] }

Respondent : Commissioner of Customs, GST Bhavan, 41/A, Sassoon
Road, Pune – 411 001.

Subject : Revision Applications filed respectively, under Section 129DD
of the Customs Act, 1962 against Orders-in-Appeal No. PUN-
CT- APP II-[VNT]-122 to 125-2021-22 dated 28.01.2022 issued
through e-Office F.No. GAPPL/COM/CUSP/464 to 467/2022
by Commissioner (Appeals-II), Central Tax, Pune – 411 001.

ORDER

These three revision applications have been filed by (i). Shri. Balaji Rangrao Mustapure, (ii). Shri. Dnyaneshwar Abhangrao Bhosale & (iii). Parmeshwar Abhangrao Bhosale (hereinafter referred to as the Applicants or alternately and more specifically as Applicant No. 1,2 & 3 resp. or A1 to A3 resp.) against the Orders-In-Appeal No. PUN-CT-APP II-[VNT]- 122 to 125-2021-22 dated 28.01.2022 issued through e-Office F.No. GAPPL/COM/CUSP/464 to 467/2022 by Commissioner (Appeals-II), Central Tax, Pune – 411 001.

2(a). Briefly stated, facts of the case are that on 16.07.2019, the applicant no 1 was intercepted by the Customs Officers after he had cleared immigration at Pune International Airport (PIA). The applicant no. 1 had been issued a boarding pass by Spice Jet for their Flight No. SG-51 bound for Dubai from Pune. To the query whether he was carrying any Indian / foreign currency, the applicant no. 1 had replied in the negative. Search of the baggage of A1 led to the recovery 207 notes of Saudi Arabian Riyals in 500 denomination. The 1,03,500/- Saudi Arabian Riyals were equivalent to INR 18,42,300/-.

2(b). Investigations carried out and statements recorded revealed that the foreign currency was handed over to A1 by A3; that A3 had arranged for the ticket and visa of A1; that A2 was the proprietor of a fruit exporting entity name M/s. Fresh Mart; A3 who was the brother of A2 was actively involved in his business i.e. of A2; that A3 had admitted that he alongwith his brother A2 had given the foreign currency to A1 and also to another person viz, Shri. Mayur Bhaskar Patil who was travelling to Dubai on same day, also; that they i.e. A2 & A3 during the course of their business also received some cash in Dubai towards their supplies which they had brought to India while returning

from Dubai; that this cash was given to A1 for taking to Dubai for the development / improvement of shop of his brother viz, A3; that call data records were obtained and it revealed that there were contacts between the applicants; A3 had admitted to the facts and figures stated by his brother viz, A2.

2(c). Another person, Shri. Mayur Bhaskar Patil was also intercepted on the same day i.e. 16.07.2017 and foreign currency amounting to Rs. 16,82,100/- had been recovered from him. Investigations carried out had revealed that the same persons i.e. A2, A3 and another person were involved in the said seizure. A2 had admitted that the seized foreign currency belonged to him. This issue is briefly mentioned in the current OIO and OIA under discussion. However, since, the same is dealt with in detail in another OIO and OIA and is part of separate revision applications, the same has not been taken up here and has been taken up separately.

3. The Original Adjudicating Authority (OAA) viz, i.e. Joint Commissioner of Customs, Pune vide Order-In-Original No. No. PUN-CUSTOMS-000-JC-12/2020-21 dated 20.11.2020, ordered for the absolute confiscation of the seized currency i.e. 207 Saudi Riyals in 500 denomination Rs. 18,42,300/- under Section 113(d) & (e) of the Customs Act, 1962. Also, penalties mentioned at Table No. 01, below were imposed on the applicants.

TABLE No. 01.

Sl. No.	Applicant No.	Amount of Penalty imposed under Section 114(j) of the Customs Act, 1962.	Amount of Penalty imposed under Section 114AA of the Customs Act, 1962.
1.	A1	Rs. 52,000/-	Rs. 1,02,000/-
2.	Another person	Rs. 52,000/-	Rs. 52,000/-
3.	A2	Rs. 1,52,000/-	Rs. 52,000/-
4.	A3	Rs. 1,52,000/-	Rs. 52,000/-

4. Aggrieved by the said order, the applicants had filed appeals before the Appellate Authority (AA) viz, Commissioner (Appeals-II), Central Tax, Pune – 411 001, who vide Orders-In-Appeal No. PUN-CT-APP II-[VNT]- 122 to 125-2021-22 dated 28.01.2022 issued through e-Office F.No. GAPPL/COM/CUSP/464 to 467/2022 modified the OIO passed by the OAA only to the extent of setting aside the penalties imposed on each of the applicants (i.e. A1, A2, A3 and another person) under Section 114AA of the Customs Act, 1962 and also the penalty of Rs. 52,000/- imposed on another person under Section 114(i) of the Customs Act, 1962 , i.e. the absolute confiscation of the foreign currency and the penalty imposed on each of the applicants (i.e. A1, A2 & A3) under Section 114(i) by the OAA were upheld.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicants have filed these revision applications;

I). A1 has filed revision application, inter alia on the grounds that;

5.01. that he reiterates the same grounds and citations mentioned by him during the filing of the appeal.

5.02. that he had admitted that the foreign currency had been given to him by A3 and that they both i.e. A2 & A3 had claimed that they were the owners of the currency,

5.03. that not being a frequent traveller he was not aware about the rules,

5.04. that there was no concealment of the foreign currency,

5.05. that he did not have any objection to the currency being released to A2 and A3.

A1 has prayed to the revision authority that the foreign currency may kindly be released on nominal fine under Section 125 of the Customs Act, 1962 and the personal penalty imposed on him under Section 114(i) may be set aside /reduced substantially or pass any other order as deemed fit.

II). A2 & A3 have filed revision applications, inter alia on the grounds that;

5.06. that they had been penalized in connection with the seizure of foreign currency carried by A1;

5.07. they have reiterated the same grounds and citations mentioned by them during the filing of the appeals.

5.08. that there was no duty involved in the export of foreign currency,
5.09. that they were the owners of the currency and the same had been accepted by A1

5.10. that they rely on case laws as under;

(a). In the case of Raju Sharma vs. UOI passed by Delhi High Court reported in 2020 (372) ELT 249-Del, which has allowed the release of the foreign currency to the owner and not carrier. It was held that foreign currency was not liable to absolute confiscation and can be returned to owner of the goods on payment of redemption fine.

(b). Commr. vs. Rajinder Nirula passed by Bombay High Court, 2017 (346) ELT 9 (BOM), where currency was ordered to be released.

(c). In RE. Mohd Arif passed by Revision Authority 2018(361)ELT 959 GOI, where foreign currency though prohibited can be released.

(d). In RE. Kailash Jethanand Makhija vide Revision Authority Order no. 633/2018-CUS(WZ)/ASRA/Mumbai dated 21.08.2018.

(e). CESTAT Order in the case of T Sundarajan vs. Commr. Of Customs, Chennai reported in 2008 (221) ELT 258 (Tri- Chennai),

(f). etc.

A2 & A3 have prayed to the revision authority that the personal penalty imposed on them may be set aside / reduced substantially or pass any other order as deemed fit.

6. The applicants have filed an application for condonation of delay citing that the delay of about a month was due to the COVID situation.

7. Personal hearing was scheduled for 06.12.2022, 20.12.2022. Shri. N.J Heera, Advocate appeared for hearing on 20.12.2022 and submitted that quantity of currency is not very large, applicants are not habitual offenders, and there is no dispute on ownership of currency. He requested for release of goods on R.F. He also requested to reduce penalty on applicants. He further requested that applicant 2 has no role in the matter, therefore, penalty on him be set aside.

8. On the issue of condonation of delay, Government notes that the OIA was passed on 28.01.2022 and the applicants in the FORM CA-8 have stated that the same was received by them on 07.02.2022. The revision applicant has been filed on 11.07.2022. Government notes that upto 28.02.2022, the

Apex Court had granted a moratorium for filing of appeals, etc due to the COVID pandemic. In effect, considering the aforesaid moratorium period and the extension / condonable period of 90 days i.e. 3 months + 3 months, where required to file the revision applications by 28.08.2022. They have filed the revision applications on 11.07.2022 which is within the condonable period. Therefore, Government condones the delay.

9. Government has gone through the facts of the case. Government finds that there is no dispute that the seized foreign currency was not declared by A1 to the Customs at the point of departure. Further, in his statement, A1 had admitted the possession, carriage, non-declaration and recovery of the foreign currency. The applicant no. 1 had admitted that the currency did not belong to him and those who were the actual owners of the currency / involved in the case i.e. A2 & A3 too, were unable to give the source of how they came in possession of the foreign currency. A1 had acted in concert with others viz, A2 and A3 in attempting to smuggle out the foreign currency. Applicants were unable to show that the impugned foreign currency was procured from authorized persons as specified under FEMA. Source of currency had remained unaccounted. A1 had admitted that the foreign currency did not belong to him, in other words, he was merely a carrier. 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 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 Regulation 5 of 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 as A1 had been carrying foreign currency in excess of the permitted limit and no declaration as required under section 77 of the Customs Act, 1962 had been filed.

10(a). The Government finds that A1 had not taken any general or special permission of the RBI to carry the foreign currency as stipulated under Regulations 3(1)(a) and 7(1), (2)(ii) and (3) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 framed with clause (g) of sub-Section (3) of Section 6 and under sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 and had attempted to take it out of the country without declaring the same to Customs at the point of departure.

10(b). From the investigations, Government notes that on the same day i.e. 16.07.2019, A2 and A3 who were the owners of the foreign currency had through another passenger, attempted to smuggle a further amount of Rs. 16,82,100/- without declaring the same. The AA at para 9.11 of the OIA has observed that evidence in the form of call data records indicated frequent conversations between the applicants which shows that it was a planned syndicate operation to smuggle the foreign currency out of the country. A2 and A3 had not produced any evidence to show that the foreign currency was obtained by them through legitimate sources.

10(c). 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, 2015 have been violated by the applicants is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Government finds that

the lower adjudicating authority had applied the ratio of the judgement of the Apex Court in the case of Sheikh Mohd. Umar v/s. Commissioner of Customs, Calcutta [1983(13) ELT 1439 (SC)] wherein it is held that non-fulfilment of the restrictions imposed would bring the goods within the scope of "prohibited goods".

11. Government finds that the case of Commissioner of Customs v/s. Savier 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) cheq
ues drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii) forei
gn 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.

12. 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.

13. Government finds that considering that a substantial amount of foreign currency was being carried in the baggage, currency remained unaccountable, that a syndicate was involved in smuggling the foreign currency, that some of the applicants are habitual offenders, thus, discretion used by OAA to absolutely confiscate the currency is appropriate and judicious. Facts and circumstances of the case warrants absolute confiscation of foreign currency as held by the adjudicating authority and

upheld by the appellate authority. The Government notes that the AA after considering all the relevant facts had rightly set aside the penalties imposed under Section 114AA of the Customs Act, 1962. Government finds that the penalties imposed on A1, A2 and A3 resp. are commensurate with the omissions and commissions committed and is reasonable and judicious. Government therefore finds no reason to interfere in the Order passed by the AA.

14. Accordingly, the three revision applications filed by the applicants are dismissed.

Shrawan
21/4/23
(SHRAWAN KUMAR)

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

ORDER NO. ^{H30-} H32/2023-CUS (WZ)/ASRA/MUMBAI DATED || .04.2023

To,

1. Shri. Balaji Rangarao Mustapure, 5/83, Hulsoor, Bidar, Karnataka – 585 416.
2. Shri. Dnyaneshwar Abhangrao Bhosale, No. 79, Jai Bhavani Nagar, Garud Wasti, Hadapsar, Pune – 411 028,
3. Shri. Parmeshwar Abhangrao Bhosale, No. 79, Jai Bhavani Nagar, Garud Wasti, Hadapsar, Pune – 411 028.
4. Commissioner of Customs, GST Bhavan, 41/A, Sassoon Road, Pune – 411 001.

Copy To,

1. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai – 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.