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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. 373/90/B/15-RA

54X

Date of Issue 17/07/2018

ORDER NO 439/2018-CUS (SZ)/ASRA/MUMBAI DATED 05.06.2018 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. Hyder Ali

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus-I No. 69/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri. Hyder Ali (herein referred to as Applicant) against the order No. 69/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the applicant, an Sri Lankan national was going abroad from Chennai Airport on 12.02.2015. assorted Indian currency amounting to Rs. 1,00,000/- (Rupees One Lakh) was recovered from him by the Custom officers. As the impugned currency was meant for illegal export, the currency was confiscated by the original Adjudication Authority vide order 117/ Batch C dated 12.02.2015 under section 113 (d), (e) and (h) of the Customs Act,1962 read with FEMA 1999, FEMA (Exp and Imp of Currency,2000). An option of redeeming the same was extended on payment of fine of Rs. 37,500/-. A penalty of Rs. 7,500/- was also imposed on the Applicant under section 114 (i) of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner (Appeals) Chennai, vide his order No. 69/2015 dated 27.02.2015 rejected 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 Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; There is no contumacious conduct on part of the Applicant but of a person ignorant of the law; Even assuming without admitting he had not declared the currency it was only a technical fault; He had orally declared the currency to the officer and showed him the currency having seen the same the question of declaration does not arise; The Joint Secretary to the GOI order No. 87/07 dated 15.02.2007, in the case of Sheikh Abdulla Latif has stated that taking out foreign currency is only



restrictive in nature and ordered release of the foreign currency on nominal 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; 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;

4.3 The Applicant cited various assorted judgments in support of reduction of redemption fine and personal penalty and prayed that the Hon'ble Revision Authority may please reduce the 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 Indian 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. 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. 37,500/- and penalty of Rs.



7,500/- imposed on the currency of Rs. 1,00,000/- (Rupees One Lakh) 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. 37,500/- (Rupees Thirty seven thousand) to Rs 25,000/- (Rupees Twenty Five thousand). 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. 7,500/- (Rupees Seven thousand Five hundred) to Rs .5,000/- (Rupees Five thousand) 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
5.6.18

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

ORDER No. ⁴³⁹/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 05.05.2018

To,

Shri Hyder Ali
C/o Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

Attested

Copy to:

1. The Commissioner of Customs, Chennai
2. The Commissioner of Customs (Appeal-I) Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Sankarsan Munda
17/7/18
SANKARSAN MUNDA
Asst. Commissioner of Customs & C. Ex.

