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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. 373/24/B/17-RA

Date of Issue 30/07/2018

ORDER NO. 55/2018-CUS (SZ)/ASRA/MUMBAI DATED 17.07.2018 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 Faisal Ibrahim

Respondent: Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 349/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Faisal Ibrahim (herein referred to as Applicant) against the order 349/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, who was bound for Kuala Lumpur at the Chennai International Airport on 09.09.2016. Examination of his baggage resulted in recovery of Malaysian Ringgit equivalent to Rs. 1,51,608/- (Rupees One lakh Fifty one thousand and Six hundred and eight). The currency was recovered from the hand baggage of the Applicant.

3. The Original Adjudicating Authority, vide order No. 635 batch C dated 09.09.2016 absolutely confiscated the currency mentioned above under section 113 (d),(e) & (h) of the Customs Act, 1962 read with Section 3(3) of the Foreign Exchange Management Act, 1999. A Personal penalty of Rs. 15,000/- was imposed under Section 114 (i) (ii) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai, Commissioner of Customs (Appeals) Chennai , vide his order No. 349/2016 dated 28.10.2016, rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The seized currency is not prohibited but restricted; Part of the currency was officially purchased from a foreign exchange firm; The adjudicating authority has not exercised the option available under section 125 of the Customs Act,1962; There is no contumacious conduct on part of the Applicant but of a person ignorant of the law; The Applicant was not aware that it was illegal to take monies out of India; The Applicant had orally declared the foreign currency and having seen the same the question of declaration does not arise; Even assuming without admitting the act of the Applicant is violation of RBI rules;

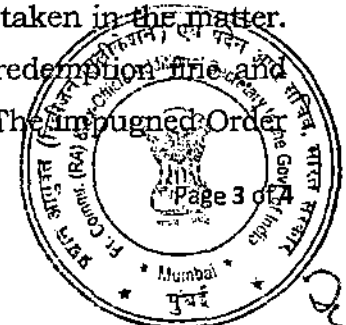


5.2 The Applicant further pleaded that the Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory; In the case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259(Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate. The Applicant further pleaded that in a reported judgement 2012 (276) ELT 129 (GOI) in 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.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for release of the impugned currency on the redemption fine and reduce the personal penalty and thus render justice.

6. 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 submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The currency were not properly declared and under the circumstances confiscation of the currency is justified. However, the facts of the case state that the currency was recovered from the Applicants hand baggage, and had not indigenously concealed the foreign currency. Absolute confiscation is a harsh option, and unjustifiable. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The Government is of the opinion that the redemption fine and penalty is on the higher side and a lenient view can be taken in the matter. The Applicant has pleaded for release of the currency on redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order



in Appeal therefore needs to be modified and the currency is liable to be allowed on payment of redemption fine and penalty.

8. In view of the above, Government allows redemption of the confiscated currency in lieu of fine. The impugned currency totally valued at Rs. 1,51,608/- (Rupees One lakh Fifty one thousand and Six hundred and eight) is ordered to be redeemed on payment of redemption fine of Rs.60,000/- (Rupees Sixty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 15,000/- (Rupees Fifteen thousand) to Rs. 12,000/- (Rupees Twelve thousand) under section 112(a) of the Customs Act, 1962.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.

Ashok Kumar Mehta

17.07.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 515/2018-CUS (SZ) /ASRA/MUMBAI

DATED 17.07.2018

To,

Shri Faisal Ibrahim
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

Copy to:

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

ATTESTED

Sankarsan Munda

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

