

REGISTERED
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. 371/347/B/2021-RA

| 5008 :

Date of Issue : 03.08.23

ORDER No. 552/2023-CUS (WZ)/ASRA/ DATED. 27.7.23
.07.2023. 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.

F.No. 371/347/B/2021-RA

Applicant : Shri. Mohammed Mushtaque Patel

Respondent : Principal Commissioner of Customs, CSMI Airport,
Sahar, Andheri East, Mumbai - 400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-752/2021-22 dated
06.10.2021 issued on 27.10.2021 through F.No.
S/49-1084/2020 passed by the Commissioner of
Customs (Appeals), Mumbai - III, Marol, Mumbai -
400 059.

ORDER

This revision application has been filed by the Shri. Mohammed Mushtaque Patel, (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-752/2021-22 dated 06.10.2021 issued on 27.10.2021 through F.No. S/49-1084/2020 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059.

2. Brief facts of the case are that the applicant who was bound for Dubai by Emirates Flight no. EK 505 was intercepted by Customs Officers on 26.09.2020 after he had cleared the Immigration counter and was about to board the flight. His personal search resulted in the recovery of foreign currency of USD 7,000/- i.e. 70 notes in denomination of 100 from his hand purse. He was found in possession of a print-out of Capstone Forex Pvt. Ltd for having exchanged USD 5,000/- which appeared to have been retrieved from his whatsapp. However, he did not possess the original receipt.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Deputy Commissioner of Customs, CSMI, Mumbai vide Order-In-Original No. Air Cus/T2/49/08/ETC/2020/INI-D dated 26.09.2020, ordered for the absolute confiscation of the foreign currency viz, USD 7,000/- equivalent to Rs. 5,10,300/- under Section 113 (d), (e) & (h) of the Customs Act, 1962. A penalty of Rs. 51,000/- was imposed on the applicant under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059, who vide his Order-in-Appeal No. MUM-CUSTOM-PAX-APP-752/2021-22 dated 06.10.2021 issued on 27.10.2021 through F.No. S/49-1084/2020 upheld in to-to the order passed by the Original Adjudicating Authority.

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 lower authorities had failed to appreciate that the applicant had produced an exchange certificate for USD 5,000/- but could not produce the exchange certificate for USD 2,000/-; that the said amount was the savings balance of the amount which used to be left over as he was regularly travelling abroad; that the said foreign currency belonged to him and was his personal money; that penalty came to be imposed on him for non-declaration; that the applicant was not acting as a courier for anybody; that the foreign currency was not beyond the permissible limit; that the order has been passed on the basis of presumptions and assumptions without any cogent and clinching evidence; that the orders are illegal and bad in law;

Under the above circumstances of the case, the applicant has prayed to Revision Authority to quash and set aside the OIA passed by the AA and to release the foreign currency on payment of redemption fine and penalty or pass any other order as deemed fit.

6. Personal hearing was scheduled for 06.07.2023. Smt. Shivangi Kherajani, Advocate appeared on 06.07.2023 and submitted that applicant was carrying USD 7,000/- which was accounted for. She further submitted that applicant did not conceal currency and he is not a habitual offender. She requested to allow release of the currency unconditionally.

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 was not declared by the Applicant to the Customs at the point of departure. Further, in his statement the applicant had admitted the possession, carriage, non-declaration and recovery of the foreign currency. The applicant was unable to coherently give, the source of how he came in possession of the foreign currency. The fact remains that the applicant had not disclosed the impugned foreign currency and the source of the foreign currency had remained unaccounted. Applicant was unable to show that the impugned foreign currency in his possession was procured from authorized persons as specified under FEMA. 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 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 the applicant 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.

8. The Government finds that the applicant had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. 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, 2000 have been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the lower adjudicating authority has applied the ratio of the judgement of the Madras High Court in the case of Apex Court in the case of Commissioner of Customs, Chennai v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad))] wherein it was held at para 13 as under;

..... We find, in the present case, the passenger has concealed the currency of 55,500 US dollars and other currencies, attempted to be taken out of India without a special or general permission of the Reserve Bank of India and this is in violation of the Rules. The fact that it was procured from persons other than authorized person as specified under the FEMA, makes the goods liable for confiscation in view of the above-said prohibition. Therefore, the Original Authority was justified in ordering absolute confiscation of the currency. The key word in Regulation 5 is prohibition of import and export of foreign currency. The exception is that special or general permission should be obtained from the Reserve Bank of India, which the passenger has not obtained and therefore, the order of absolute confiscation is justified in respect of goods prohibited for export, namely, foreign currency.....

9. Government finds that 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 with the scope of "prohibited goods" is applicable in this case.

10. 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.

11. The Government finds that the amount involved in this case is small. Also, the currency was found in the hand purse carried by the applicant. A case that the concealment adopted by the applicant was ingenious had not been made out. Also, a case that the applicant was a habitual offender had not been made out. Government finds that under such circumstances, using the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 is excessive and unjustified. The order of the Appellate authority is therefore liable to be modified and the foreign currency is liable to be allowed redemption on suitable redemption fine and penalty.

12. The Government finds that the personal penalty of Rs. 51,000/- imposed on the applicant under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

13. In view of the above, the Government modifies the impugned order of the Appellate authority. The foreign currency i.e. USD consisting of 70 notes of \$100 denomination, equivalent to INR. 5,10,300/- is allowed redemption on payment of a fine of Rs. 1,00,000/- (Rupees One Lakh Only). The penalty of Rs. 50,000/- under section 114(i) of the Customs Act, 1962 imposed by the lower adjudicating authority and upheld by the appellate authority is sustained.

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

Shrawan
27/7/23
(SHRAWAN KUMAR)

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

⁵⁵²
ORDER No. /2023-CUS (WZ)/ASRA/MUMBAI DATED ²⁷.07.2023.

To,

1. Mr. Mohammed Mushtaque Patel, Dadani Manzil, 3rd Floor, Flat No. 26, Opp. Bana Bakery, 40, Khambekar Street, Mumbai 400 003.
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri East, Mumbai - 400 099.

Copy to:

1. Smt. Shivangi Kherajani, Advocates, 501, Savitri Navbahar CHS, 19th Road, Khar West, Mumbai - 400 052.

2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.