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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. 373/164/B/15-RA

Date of Issue 10/08/2018

ORDER NO. ⁵⁶⁸/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018
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 Sarbuteen Ali

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-I No.
75/2015 dated 27.02.2015 passed by the Commissioner of Customs
(Appeals), Chennai.



ORDER

This revision application has been filed by Shri Sarbuteen Ali (herein referred to as Applicant) against the Order in Appeal C. Cus No. 75/2015 dated 27.02.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, was travelling abroad and was intercepted at the Chennai Airport on 24.11.2014. Examination of his baggage and person resulted in the recovery of with Indian currency valued at Rs. 2,75,000/- (Rupees Two lakhs Seventy Five thousand).

3. After due process of the law vide Order-In-Original No. 1428 AIU A dated 24.11.2014 the Original Adjudicating Authority ordered absolute confiscation of the currency under Section 113 (d) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 10,000/- under Section 114 (i) and (iii) of the Customs Act,1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 75/2015 dated 27.02.2015 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that

4.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Commissioner Appeals should have considered the fact that the Applicant was going to Singapore to seek employment for his son and the currency was carried to be given as a security deposit to an agent; The Applicant never concealed the currency; The are a catena of judgements that have directed that confiscated currencies should be allowed to be redeemed on redemption fine and penalty even in deep concealment cases; It is a well settled principle that the quantum of penalty should be as per the role played by the individual.



4.2 The Revision Applicant cited case laws in his defense and prayed for passing such orders as deem fit and proper in the facts and circumstances of the case and in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicants has attempted to take currency abroad beyond permissible limits and under the circumstances confiscation of the currency is justified.

7. However, the facts of the case state that the Applicant had not concealed the impugned currency indigenously. The currency was recovered from the baggage of the Applicant. Taking of currency abroad is restricted and not prohibited. Though the Applicant has been involved in offences earlier, the 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 Applicant has pleaded for release of the currency on redemption fine and penalty and the Government is inclined to accept the plea. Under the circumstances 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.

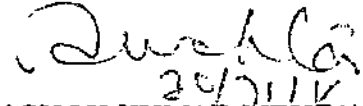
8. In view of the above, Government allows redemption of the confiscated currency in lieu of fine. The impugned currency totally valued at Rs. 2,75,000/- (Rupees Two lakhs Seventy Five thousand) is ordered to be redeemed on payment of redemption fine of Rs. 1,40,000/- (Rupees One lakh forty thousand) 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. 10,000/- (Rupees Ten thousand) to Rs. 7,000/- (Rupees Seven thousand) under section 112(a) of the Customs Act,1962.

8. In view of the above, Government allows redemption of the confiscated currency in lieu of fine. The impugned currency totally valued at Rs. 2,75,000/- (Rupees Two lakhs Seventy Five thousand) is ordered to be redeemed on payment of redemption fine of Rs. 1,40,000/- (Rupees One lakh forty 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. 10,000/- (Rupees Ten thousand) to Rs. 7,000/- (Rupees Seven 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.

11. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. ⁵⁶⁸/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.07.2018

To,

Shri Sarbuteen Ali
c/o M/s L. K. Associates
"Time Tower" Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

Copy to:

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

ATTESTED



SANKARSAN MUNDA

Asstt. Commissioner of Customs & C. Ex.

