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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. 371/221/B/WZ/2020-RA / 6301: Date of Issue : 23.08.2023

ORDER No. 609/2023-CUS (WZ)/ASRA/ DATED. 23.08.2023.
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. 371/221/B/WZ/2020-RA

Applicant : Shri. Wasim Abdul Karim Khan

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-1166/2019-20 dated
22.01.2020 issued on 05.02.2020 through F.No.
S/49-311/2019 passed by the Commissioner of
Customs (Appeals), Mumbai - III, Marol, Mumbai -
400 059.

ORDER

This revision application has been filed by the Shri. Wasim Abdul Karim Khan, (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1166/2019-20 dated 22.01.2020 issued on 05.02.2020 through F.No. S/49-311/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059.

2(a). Brief facts of the case are that the applicant who was bound for Dubai by SpiceJet Flight no. SG 13 / 25.04.2018 was intercepted by Customs Officers on 5.04.2018 after he had cleared the Immigration and Customs counters and was about to board the flight. Detailed examination of his baggage resulted in the recovery of USD 6000/- concealed in cream bottle jar; USD 2500/- concealed in orange shampoo bottle which had markings 'Smooth Hair Clinic; USD 2500/- concealed in blue shampoo bottle which had markings 'Smooth Hair Clinic; USD 5000/- concealed in soaps. Thus, total of USD 16,000/- which were all in denomination of 100, equivalent to ₹ 10,47,001/- were recovered from the baggage of the applicant.

2(b). The applicant in his statement recorded under Section 108 of the Customs Act, 1962 admitted that he had carried the foreign currency for a monetary consideration; that he did not intend to declare the foreign currency to Customs.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSMI, Mumbai vide Order-In-Original No. ADC/AK/ADJN/391/2018-19 dated 21.12.2018 issued on 28.12.2018 through F.No. S/14-6-40/2018-19/Adjn [SD/INT/AIU/195/2018-AP'D]26.09.2020], ordered for the confiscation of the foreign currency viz, USD 16,000/- equivalent to ₹ 10,47,001/- under Section 113 (d), (e) & (h) of the Customs Act, 1962 read with Section 6(3)(g)

of the FEMA, 1999 and Regulations framed thereunder. However, an option to redeem the confiscated currency under Section 125(1) of the Customs Act, 1962 was granted to the applicant on payment of a redemption fine of ₹ 2,00,000/-. A penalty of ₹ 1,25,000/- was imposed on the applicant under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by this order, the Respondent 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-CUSTM-PAX-APP-1166/2019-20 dated 22.01.2020 issued on 05.02.2020 through F.No. S/49-311/2019 set aside the OIO passed by the OAA and ordered for the absolute confiscation of the USD 16000/- i.e. the appeal filed by the Revenue was allowed.

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 OIA dated 22.01.2020 is improper and incorrect on multiple reasons; that the OIA lacks proper reasoning, displaying arbitrary judgment and disregard for essential facts and legal principles; that factual errors have been made and pertinent laws have been ignored; the OIA is legally flawed; that case details have not been adequately considered; that the original adjudicating authority had appropriately allowed redemption of seized goods upon payment of fine and penalty.

5.02. that applicant did not have any intention of deceiving the Customs by not declaring it; that non-declaration during departure was a procedural lapse and not a grave offense; that the Foreign Exchange Management Regulations lacked specific penalties for such breach; that the facts had been appreciated by the Original Adjudicating Authority who had granted redemption with fine, considering the circumstances; that the AA had failed to recognise that the foreign currency had been stored in shampoo and cream containers for travel security.

5.03. that a coerced statement had been recorded under duress and no admission that he was carrier had been made; that a retraction had been filed asserting legal currency acquisition through personal means; that the investigation lacked any

- evidence of organized smuggling and the statement of others had not been recorded.
- 5.04. that he disputes the assertion that currency had not been acquired lawfully; that foreign currency export was permitted under the Foreign Exchange Management Regulations, with no set maximum limit for residents.; that currency was not prohibited under the Customs Act; that all these aspects had been considered by the Original Adjudicating Authority who had allowed redemption with fine under Section 125 of the Customs Act.
- 5.05. that the Customs Act categorized goods as either strictly prohibited for import/export or allowed with conditions; that Section 125 indicates that currency must be restricted and can be potentially redeemed at the authority's discretion, if conditions are not met.
- 5.06. that foreign currency was not prohibited under Customs Act and restrictions on remittances have been eased over time; that no evidence of organized crime was found; that he seeks redemption based on these grounds, as similarly allowed by past Tribunal decisions; that the original adjudicating authority's redemption decision is justifiable.
- 5.07. that they place reliance on various judgments by Hon'ble Tribunals, Hon'ble High Courts and the Hon'ble Supreme Court,
- i). T.Soundarajan vs Commissioner of Customs, Chennai-2008(221) ELT258(Tri-Chennai).
 - ii). Kanwaljit Singh Bala-2012(275) ELT272(GOI).
 - iii). Yakub Ibrahim Yusuf vs Commissioner of Customs, Mumbai-2011(263)ELT 685(Tri-Mumbai).
 - iv). Felix Fernades VS Commissioner of Customs, ACC, Mumbai-200(118) ELT639(Tri-Mumbai).
 - v). Union of India vs Dhanal M.Ramji-2010((252) ELT A102(SC)).
 - vi). Hargovind Das K. Joshi vs Collector of Customs, 1992(61) ELT 172 (SC): The Supreme Court remanded the case for considering the option of redemption under Section 125 of the Customs Act, 1962.
 - vii). Universal Traders vs Commissioner of Customs, 2009 (249) ELT A 78 (SC): The Supreme Court allowed redemption of exported goods that were not prohibited.
 - viii). Gauri Enterprises vs CC, Pune, 2002 (145) ELT (705)(Tri-Bangalore) CESTAT: The CESTAT ruled that absolute

confiscation should be an exception, not a rule, especially if similar goods were released on fine earlier.

ix). CC (Airport), Mumbai vs Alfred Menezes, 2009(242) ELT 334(Bom): The Bombay High Court stated that Section 125(1) of the Customs Act empowers the adjudicating authority to offer redemption even for prohibited goods.

- 5.08. that the OAA's decision of Redemption may be upheld; that the AA had failed to failed to consider that the admission lacked documentary evidence for corroboration; that in the case of Mohd Fasrin vs State of Tamil Nadu in criminal appeal No.298 of 2014, the Supreme Court had ruled that even if confessions are admissible, they alone are insufficient for conviction; that OIA should be overturned;
- 5.09. that they had received the attested copy of the impugned OIA on January 6, 2020, and as per the usual procedure, the appeal should have been filed within three months from that date, which would have been before April 5, 2020. However, due to the nationwide lockdown due to COVID, the limitation period was extended until September 30, 2020, through a notification by CBIC; that consequently, their have filed the application on time;

Under the circumstances, the applicant has prayed that the OIA passed by the AA may be set aside with consequential relief or pass any other relief as deemed fit.

6. Personal hearing of the case was scheduled for 11.05.2023, 18.05.2023, 07.07.2023 and 14.07.2023. No one turned up on behalf of the Applicant / Respondent for the personal hearing. Sufficient opportunities have been given to the applicant / respondent. Therefore, the case is being taken up for a decision, ex-parte, on the basis of evidence available on the records.

7. Government has gone through the facts of the case including the written submissions filed alongwith the revision application. 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. 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. Section 125 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.

9. The Government finds that the amount involved in this case is small. Government notes that the OAA after considering the facts and circumstance of the case and various judgements on the issue, had used

his discretion in allowing the redemption of the foreign currency on payment of a fine. Also, a case that the applicant was a habitual offender or that he was part of an organised smuggling operation, had not been made out. Government finds that under such circumstances, the discretion used by the OAA in allowing the release of the foreign currency on payment of a fine is not only reasonable and fair but also proper and legal. Therefore, the Government finds the order of the Appellate authority, absolutely confiscating the foreign currency is harsh and excessive and is inclined to set aside the same.

10. The Government finds that the personal penalty of ₹ 1,25,000/- imposed on the applicant under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

11. In view of the above, the Government sets aside the OIA passed by the AA and restores the OIO passed by the OAA.

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

Shrawan
23/8/23
(SHRAWAN KUMAR)

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

ORDER No. ⁶⁰⁹ /2023-CUS (WZ)/ASRA/MUMBAI DATED ²³ .08.2023.

To,

1. Mr. Wasim Abdul Karim Khan, Ground Floor, Room No. 48, Lalji Sajan Chawl, 49, Jail Road (N), Dongri, Mumbai – 400 009.
2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri East, Mumbai – 400 099.

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