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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. 380/16/B/17-RA/805

Date of Issue 29/08/2018

ORDER NO. ⁶³³/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 21.08.2018
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 : Commissioner of Customs (Airport), Mumbai.

Respondent : Shri Kailash Jethanand Makhija

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-486/17-18 Dated 07.09.2017
passed by the Commissioner of Customs (Appeals),
Mumbai-III.



ORDER

This revision application has been filed by Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-486/17-18 Dated 07.09.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III.

3. Briefly stated the facts of the case are that the applicant, was departing from Mumbai to Bangkok on 18.08.2015. He was intercepted and examination of his baggage resulted in the recovery of Us \$ 39,600/- valued at Rs. 25,06,680/- (Twenty five lakhs Six thousand Six hundred and Eighty) from a false cavity made at the bottom of a black colored bag which was kept in another red coloured trolley bag. (Twenty five lakhs Six thousand Six hundred and Eighty).

4. After due process of the law vide Order-In-Original No.ADC/RR/ADJN/087/2016-17 dated 15.06.2016 the Original Adjudicating Authority ordered absolute confiscation of the foreign currency under Section 113 (d) and h of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act,1962.

5. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-486/17-18 dated 07.09.2017 set aside the absolute confiscation of the foreign currency and allowed its redemption on payment of redemption fine of Rs.6,25,000/-, and upheld the penalty and modified the appeal of the applicant.

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

6.1 The Order of the Commissioner (Appeals) is neither legal nor proper; the respondent had tried to smuggle the foreign currency by way of non declaration and had cleverly concealed the currency in a false bottom of his trolley bag; thus he had a culpable mind to smuggle them out of India; The Respondent has thus contravened the section 4 of FEMA,1999 and section 7(2)(ii) of the Foreign Exchange Management (Export & Import of currency)



Regulation, 2000; Under the two provisions the passenger was under obligation to show that the foreign currency was acquired from a authorized person, The Respondent could not provide any such documents and therefore the impugned currency became prohibited and liable for confiscation under section 113(d) of the Customs Act, 1962; The RBI circular No. 6/2015-16 dated 01.07.2015 sets limit of US\$ 2,50,000/- from a authorized dealer of FFMC in any one financial year to be taken abroad, in this case the passenger tried to carry Rs. 25,06,680/- without establishing the legal source of acquisition; He is a repeat offender and has admitted to carrying foreign currency abroad earlier; The Appellate authority failed to appreciate the above facts and also the ingenious concealment of the same; Taking into account the above facts and the gravity of the offence the Appellate authority's order to allow redemption under section 125 is not legal and proper; As the seized foreign currency was attempted to be sent abroad in a clandestine manner and therefore was not free from taint and may have been procured through illegal channels; The passenger has admitted carrying foreign exchange earlier and was also involved in a case of gold smuggling.

6.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority or such an order as deemed fit.

7. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 31.07.2018. Nobody from the department attended the personal hearing. The Respondent through his advocate

8. Shri Prakash Shingrani attended the hearing and reiterated the observations of the Appellate authority and in his written reply interalia submitted that;

8.1 Foreign currency is not a dutiable or prohibited item and its export or import is allowed subject to fulfilment of conditions; The RBI circular No. 6/2015-16 dated 01.07.2015 allows remittance of US\$ 2,50,000/- per year for private / business visits; Foreign currency is a restricted item and prohibition relates to goods which cannot be imported or exported by



anyone; The intention of the provisions of section 125 of the Customs Act, 1962 clearly is to permit such goods where conditions have been violated; The respondent has contended that he is the owner of the foreign currency attempted to be exported and it cannot be termed as prohibited goods; The law on absolute confiscation vis-à-vis option to redeem the same stands discussed in detail in the case of Gauri Enterprises Commissioner of Customs, Pune 2002 (145) ELT 706 (Tri. Bang) wherein it was held the absolute confiscation should be an exception and not the rule; In the case of CC (Prev) vs Uma Shankar Verma Hon'ble High Court of Calcutta has held that when the goods are not prohibited the authorities have no choice but to allow redemption on payment of fine; As the respondent is the owner of the goods, he is entitled to the benefits of the seized material under section 125 of the Customs Act, 1962 and the currency was rightly allowed redemption by the Appellate authority on payment of Redemption fine and penalty; In view of the above submissions there is no merit in the Revision application filed by the department and it may be dismissed.

9. Government has gone through the facts of the case, the respondent had intentionally concealed and attempted to export the foreign currency without declaration and therefore confiscation of the same is justified and upheld.

10. However, the Government notes that foreign currency is not declared as prohibited goods under the provisions of the Customs Act, 1962. Taking of currency abroad is regulated on the, source of acquisition and the maximum amount which can be taken out. There is also no requirement to declare currency below \$10,000. The Applicants have prayed for setting aside the Order in Appeal which allowed redemption of the currency on payment of redemption fine and penalty, and uphold the Order in Original which has absolutely confiscated the foreign currency. The foreign currency is not dutiable and its export and import is restricted and regulated. 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 in regard to goods that are not prohibited. The Government therefore is inclined to agree with the Order-in-Appeal that the goods ie currency is not prohibited for import and export in terms

of section 125 of the Customs Act, 1962. Further, there have been a series of liberalization in respect of foreign currency wherein the circular No. 6/2015-16 dated 01.07.2015 issued by the RBI allows remittance of US\$ 2,50,000/- per year



for private / business visits etc. The absolute confiscation ordered by the original adjudicating authority is therefore harsh and unjustified. The redemption of the foreign currency in the Order in Appeal is therefore required to be upheld and the revision application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.

(Handwritten Signature)
21.8.2018

(ASHOK KUMAR MEHTA)

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

ORDER No. 633/2018-CUS (WZ) /ASRA/MUMBAI

DATED 21.08.2018

To,

1. The Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport,
Terminal -2, Mumbai.
2. Shri Kailash Jethanand Makhija
Block A/735/1470,
Sahyadri Nagar, Prem Nagar,
Ulhasnagar,
Thane- 421 005.

Copy to:

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

ATTESTED

(Handwritten Signature)
29/8/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

