

F.No. 371/91/B/2021-RA

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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. 371/91/B/2021-RA / 6918

Date of Issue : 21.09.2023

ORDER NO. 672/2023-CUS (WZ)/ASRA/MUMBAI DATED 18.09.2023
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.

Applicant : Shri Mohammed Munaf Abdulhamid Mansuri

Respondent : The Commissioner of Customs, Airport, Mumbai

Subject : Revision Applications filed respectively, under Section 129DD
of the Customs Act, 1962 against Orders-in-Appeal No. MUM-
CUSTM-PAX-APP-687/2020-21 dated 14-01-2021 [issued on
25-01-2021] [F.No. S/49-1444/2019] passed by the
Commissioner of Customs (Appeals) M

F.No. 371/91/B/2021-RA

ORDER

This revision application has been filed by Shri Mohammed Munaf Abdulhamid Mansuri (hereinafter referred to as the Applicant) against the Order-In-Appeal No. MUM-CUSTOM-PAX-APP-687/2020-21 dated 14-01-2021 issued on 25-01-2021 [F. No. S/49-1444/2019] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 11-01-2018, the Officers of Customs, AIU, CSI Airport, Mumbai intercepted Shri Mohamed Munaf Abdulhamid Mansuri, the applicant holding Indian passport No. P6767930, while proceeding to board Indigo Airlines Flight 6E-063, departing to Dubai after he had cleared from the Security and Immigration in the Departure. On being asked whether he was carrying any contraband, Foreign/Indian currency either in baggage or in person, he replied in negative. Detailed examination of his black colored trolley bag conducted in the presence of Pancha witness and Gazetted officer resulted in recovery of US Dollars in denomination 100 and 50 kept in between the clothes. Details of currency recovered are as follows:

Sr.No	Currency	Denomination	Total No. of Notes	Total Amount (USD)	Total Amt (Rs)
1.	US Dollar	100	306	30600	
2.	US Dollar	50	48	2400	
TOTAL				33000	24,05,700

The Officers seized the said foreign currency under the reasonable belief that the same was attempted to be smuggled out of India and was liable for confiscation under the provisions of Customs Act, 1962 read with provisions of

Foreign Exchange Management Act, 1999 and regulations framed thereunder. Subsequently Show cause Notice was issued to the Applicant on 28-03-2019.

3. The Original Adjudicating Authority (OAA) viz, i.e. Additional Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. No. ADC/AK/ADJN/200/2019-20 dated 23-10-2019 ordered the absolute confiscation of the seized currencies totally amounting to Rs.24,05,700/-, under Section 113(d), (e) & (h) of the Customs Act, 1962 read with Sections 6(3) (g) of the FEMA 1999 and regulations framed thereunder. Also, a personal penalty of Rs. 2,50,000/- was imposed on the Applicant, under Section 114(i) & (ii) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-687/2020-21 dated 14-01-2021 issued on 25-01-2021 [F.No. S/49-1444/2019] upheld the Order passed by the original adjudicating authority.

5. Aggrieved with the above order, the Applicants have made an exhaustive submission of case laws and have submitted copies including their submissions made before the lower authorities etc. They have filed these revision applications on the following main points:

5.01 That Foreign currency is not a Prohibited item. Currency imported by the applicant is not liable for absolute confiscation; that the applicant claims ownership of the currency and prayed for redemption of the currency;

5.02. That the decisions of Tribunals, High Court etc relied upon by the petitioner were rejected by the Adjudicating authority without proper application of mind; that factual situation of the case of the applicant fits in with the decisions on which reliance was placed; that the order of the Appellate Authority is not sustainable on account of bias violations of principles of natural justice and fair play;

5.03 That the penalty of Rs.2,50,000/- imposed on the applicant is disproportionate to the value of the goods imported by him and hence the imposition of heavy penalty on the applicant is not sustainable.

5.04 The applicant concluded by submitting that it was a single and solitary incident of an alleged act of smuggling and can never be justifiable ground for absolute confiscation of the goods; that the act of the applicant cannot be termed as crime or manifesting of an organized smuggling activity; that he committed the mistake only with an intention to save little money and for making a small profit and that he was not a habitual offender. The applicant submitted that he is from a respectable family and a law abiding citizen and has never come under any adverse remarks

Under the above circumstances of the case, the applicants prayed to Revision Authority to release the foreign currency on payment of redemption fine and penalty.

6. Personal hearing in the case was scheduled on 02.08.2023. Shri. Prakash Shingarani, Advocate for the applicant appeared for personal hearing and submitted that the foreign currency belonged to the applicant and it was not

concealed. He requested to allow redemption of foreign currency on nominal fine and penalty.

7. Government has gone through the facts of the case. 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 statements, the applicant had admitted the possession, carriage, concealment, non-declaration and recovery of the foreign currency. The applicant was unable to give any documentary evidence /receipt of the licit purchase of the foreign currency to prove the ownership of the impugned currency. Applicant was unable to show that the impugned foreign currency in his possession was procured from authorized persons as specified under FEMA. Source of currency had remained unaccounted. 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 Regulation 5 of 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 absolute confiscation of the foreign currency was justified as the applicant was carrying foreign currency in excess of the permitted limit and 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/Indian currency as stipulated under Regulations 3(1)(a) and 7(1), (2)(ii) and (3) of the Foreign

Exchange Management (Export and Import of Currency) Regulations, 2015 framed with clause (g) of sub-Section (3) of Section 6 and under sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 and had attempted to take it out of the country without declaring the same to Customs at the point of departure. The Government notes that admittedly the applicant had made as many as 5 visits abroad for short duration during the period from 18-05-2017 to 11-10-2018 and was well versed with the law. He had knowingly attempted to export large amount of foreign currency worth Rs. 24,05,700/-. Further, the applicants had used an ingenious and clever method to conceal the foreign currency and hoodwink the authorities. The currency notes had been concealed between the clothes in his trolley bag. 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, 2015 has been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified.

9. Government finds that the case of Commissioner of Customs v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad)] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

"10. On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.

11. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals

with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :

5. "Prohibition on export and import of foreign currency. -

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

7. Export of foreign exchange and currency notes. -

(1) An authorized person may send out of India foreign currency acquired in normal course of business.

(2) any person may take or send out of India, -

(i) cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii) foreign exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder

....."

12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also."

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. Government finds that considering that such huge amount of foreign currency was being carried in the baggage, currency remained unaccountable, method of concealment being ingenious, there being organized attempt to smuggle currency, thus discretion used by OAA to absolutely confiscate the currencies is appropriate and judicious. Facts and circumstances of the case warrants absolute confiscation of foreign currency as held by the adjudicating

authority and upheld by the appellate authority. Government finds the order passed by the AA is legal and judicious.

12. Government finds that the penalty of Rs. 2,50,000/- imposed on the applicant, for the seized currencies worth Rs.24,05,700/-, by the OAA under Section 114(i) & (ii) of the Customs Act, 1962 and upheld by the AA is reasonable and commensurate with the omissions / commissions committed.

13. For the aforesaid reasons, the Government therefore finds no reason to interfere in the Order passed by the AA and is not inclined to interfere in the same.

14. Accordingly, the revision application is dismissed.

Shrawan
18/9/23
(SHRAWAN KUMAR)

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

ORDER NO. 672/2023-CUS (WZ)/ASRA/MUMBAI DATED 18.09.2023

To,

1. Shri. Mohammed Munaf Abdulhamid Mansuri, 5/1399, Near Summajwali Masjid, Kanskiwad, Haripura, surat city, Gujarat-395003.
2. Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai - 400 099.
3. Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point (5th Floor), Makwana Lane, Behind S. M. Centre, Andheri-Kurla Road, Marol, Mumbai-400059

Copy To,

1. Shri Prakash K, Shingarani, Advocate High Court, 12/334, Vivek, New MIG colony, Bandra (E), Mumbai-400051
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.

