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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/155/B/WZ/2022-RA/6906

Date of Issue : 21.09.2023

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ORDER No. 678/2023-CUS (WZ)/ASRA/MUMBAI DATED 20.09.2023.  
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.

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F.No. 371/155/B/WZ/2022-RA

Applicant : Shri. Vinod Mangturam Vasita

Respondent : Pr. Commissioner of Customs, Chhatrapati Shivaji  
Maharaj International Airport, Sahar,  
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-1587/2021-22 dated  
31.01.2022 issued on 03.02.2022 through F.No. S/49-  
998/2020 passed by the Commissioner of Customs  
(Appeals), Mumbai - III.

ORDER

This revision application has been filed by the Shri. Vinod Mangtaram Vasita, (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1587/2021-22 dated 31.01.2022 issued on 03.02.2022 through F.No. S/49-998/2020 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that the applicant who was bound for Dubai by Emirates Flight No. EK-501/16.08.2018 was intercepted by Officers of Customs, CSMI Airport on 16.08.2018 after he had cleared the immigration counter and security in the departure hall of CSMI Airport. To query whether he was carrying any foreign / Indian currency either on his person or in his baggage, the applicant had replied in the negative. Examination of his checked-in baggage led to the recovery of foreign currency namely 202 notes of UAE Dirhams in denomination of 500 and 18 notes of UAE Dirhams in denomination of 1000, in all totalling UAE Dirhams 1,19,000/- equivalent to ₹ 21,47,950/-. The said foreign currency had been found concealed in one empty packet of 'Dove Soap' and two empty packets of 'Sunfeast Dark Fantasy Choco Fills', kept in his checked in baggage.

2(b). The applicant in his statement recorded under Section 108 of the Customs Act, 1962 revealed that the foreign currency belonged to him and he was aware that carrying huge amount of foreign currency without valid receipt for possession of the same was an offence as per the law. Arrival / Departure details revealed that the applicant had travelled abroad nineteen times in twelve months through Mumbai Airport with stay abroad of short duration.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide his Order-In-Original No. ADC/SKR/ADJN/63/2019-20 dated 19.02.2020 issued on 28.02.2020 through F.No. S-14-6-59/2018-19/Adjn [SC/INT/AIU/370/2018 AP-B] ordered for the absolute confiscation of the foreign currency equivalent to ₹ 21,47,950/- under Section 113 (d), (e) & (h) of the Customs Act, 1962 read with relevant provisions of FEMA , 1999. A penalty of ₹ 3,22,200/- was imposed on the applicant under Section 114(i) of the Customs Act, 1962

4. Aggrieved by this order, the Applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide her order Order-in-Appeal No. MUM-CUSTM-PAX-APP-1587/2021-22 dated 31.01.2022 issued on 03.02.2022 through F.No. S/49-998/2020 upheld in to-to the order of 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 SCN issued on 29.1.19 had prematurely determined the matter, and had caused prejudice; that in a valid SCN the allegations would have been proposed in a tentative manner; however, the impugned notice pre-judged the issue and had left no room for inquiry; that as a consequence, defense submission and hearing had become a mere formality; that the necessity for an impartial approach by OAA was imperative for a lawful quasi-judicial procedure; that the SCN violated principles of natural justice and had a predetermined approach against release of goods;

5.02. that foreign currency was not prohibited goods and therefore absolute confiscation of the same was not justified; that reliance

on the Om Prakash Bhatia case for such confiscation was incorrect as it had been overruled by a larger Supreme Court Bench.

- 5.03. that the foreign currency was not prohibited under Customs Act, 1962 or FEMA; that prohibited items typically include items / goods like arms or drugs which posed universal risks; that import bans / prohibitions are usually based on potential dangers, with exceptions for specific conditions; that non-compliance of procedures should not lead to absolute confiscation as it did not endanger public health; . Non-compliance of in respect of currency did not endanger public health; that foreign currency was not prohibited and its import / export is subject to laws and rules and regulations issued by competent authority.
- 5.04. that the OIA lacked in substantive content and was not a reasoned decision on merits of the case; that consequently the OIA was invalid; the case's merits. Consequently, the Order-in-Appeal is deemed invalid.
- 5.05. that the decisions of lower authorities should have comprehensively included findings, conclusions, and underlying reasons regarding factual, legal, and discretionary aspects; that decisions must be reasonably clear for reviewing courts to ensure a justifiable assessment of pertinent issues; that departures from previous judicial precedents should have been explained; that adequate findings, which encompass jurisdiction and rule violations, were necessary to support the case; that inadequate findings would often lead to exoneration; that OAAs, AAs etc were obliged to personally decide cases, apply law to facts, and address applicant's submissions; that Orders must be detailed, clear, and supported by cogent reasoning; that in the present case the AA had failed to consider the applicant's contention.
- 5.06. that the penalty imposed is excessive in relation to the amount of currency seized and is unjustifiable; that penalty should match the violation; that the penalty of Rs 3,22,200/- imposed on applicant alongwith the forfeiture of the foreign currency was excessive and too harsh; that penalty was personal and should not be linked to seized goods; they rely on Hon'ble Supreme Court's case in Union of India Vs Mustafa & Najibai Trading Co (1998) 6 SCC 79 on nature of penalty and provisions;

- 5.07. that applicant claimed ownership of the foreign currency and prayed for its redemption; that a thorough consideration of all pertinent aspects, evidence, and contentions in the case should be made; that the single alleged incident of smuggling of foreign currency did not warrant absolute confiscation under Section 113 of the Customs Act, 1962; that the allegations in the notice displayed contradictions and bias, potentially driven by malice and misrepresentation; .
- 5.08. that on the part of the applicant there was no past involvement in criminal or smuggling activities; that the litmus test for organized smuggling had not been met; thus, penal action under Section 114 of the Customs Act, 1962 was unwarranted.
- 5.09. that for the above mentioned issues, the applicant has given an exhaustive submission and have relied upon a plethora of case laws; that some of the case laws relied upon by the applicant on the aforesaid issues are as mentioned below;
- (a). Hon'ble Calcutta High Court's decision in the case of Raghunandan Jalan vs. Collector of Central Excise reported in 1981 (8) ELT 476 Cal,
  - (b). Poona Bottling Co. Ltd. & Anr. v. Union of India and Others
  - (c). 1981 (8) E.L.T. 476 (Cal.) (Raghunandan Jalan v. Collector of Central Excise, West Bengal and Ors.)
  - (d). 1985 (21) E.L.T. 655 (Kar.) (Union of India and Ors. v. I.T.C. Limited and Another)
  - (e). Mysore Acetate and Chemicals Co. Ltd. v. Assistant Collector, Central Excise, Mysore).
  - (f). (Madras Rubber Factory Ltd. v. Assistant Collector of Central Excise, Madras and Another, 1981 (8) E.L.T. 565 (Mad.).
  - (g). Alembic Glass Industries Limited v. Union of India and Others), 1989 (24) E.L.T. 23 (Kar.).
  - (h). Suresh Kumar Agarwal V. Collector of Customs, Madras (1998 (103) E.L.T. 18 (A.P.) on use of discretion.
  - (i). Shaikh Jamal Basha vs Government of India\*\* - 1992 (91) ELT 227 (AP)
  - (j). Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai\*\* - 2006 (205) ELT 383 (Tri-Chennai)
  - (k). Mohd Zia Ul Haque Vs Addl Commissioner of Customs, Hyderabad - Revision Order No. 443/12-Cus dated 8-8-12, 2014 (214) ELT 849 (GOI)

- (l). Madras High Court in Commissioner of Customs, Tuticorin v. Sai Copiers [2008 (226) E.L.T. 486 (Mad.)]
- (m). In Commissioner of Customs (Import) v. Shankar Trading Co. [2008 (224) E.L.T. 206 (Bom.)] a Division Bench of the Bombay High Court
- (n). In the case of CC, Tuticorin vs. Sri Kamakshi Enterprises: 2009 (238) ELT 242 (Mad.) wherein the Hon'ble High Court
- (o). In the case of Maa Tara Enterprises vs. CC, Cochin reported in 2009 (248) ELT 730 (Tri.-Bang.), the Tribunal
- (p). In the case of New Copier Syndicate vs. Commissioner of Customs reported in 2015 (232) ELT 620 (Tri.-Bang.), the Tribunal
- (q). In the case of Omex International vs. Commissioner of Customs, New Delhi reported in 2015 (228) ELT 57 (Tri.-Del.),
- (r). Felix Dores Fernandes v. CC - 2000 (118) ELT 639.
- (s). Union of India Vs Harish Muljimal Gandhi reported in 2016 (340) ELT 93 (Bom)
- (u). Hon'ble CESTAT in the matter of Yaqub Ibrahim Yusuf Vs Commr. of Customs [2011(263) ELT 685]
- (v). High Court of Bombay in the matter of Commissioner of Customs(AP) Vs Alfred Menezes {2009 (242)ELT 334 BOM}

Under the circumstance, the applicant has prayed to the revision authority to release confiscated foreign currency on payment of reasonable redemption fine and to drop further proceedings.

6. Personal hearing was scheduled for 18.07.2023, 25.07.2023. Shri. Prakash Shingarani, Advocate, appeared on 25.07.2023 and submitted that foreign currency seized belonged to applicant, that applicant was carrying this for business purposes; that he is not a habitual offender. He requested to allow redemption of currency on reasonable fine and penalty.

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, concealment, non-declaration and recovery of the

foreign currency. The applicant was unable to 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 had been filed.

8. A substantial amount of foreign currency was recovered from the applicant. In this case, the applicant had adopted a clever and ingenious method of concealment to misguide the authorities and smuggle the foreign currency out of the country. The foreign currency had been kept concealed in an empty packet of 'Dove Soap' and two empty packets of 'Sunfeast Dark Fantasy Choco Fills'. Had it not been for the alertness of the Officers, the applicant would have been successful in taking out the foreign currency.

9. 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 appellate authority that the said provisions of Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 which warrants that the foreign currency should be sourced from legal channels has been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Government finds that the appellate authority had rightly applied 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 within the scope of "prohibited goods".

10. 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*

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for



*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.

11. 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.*

12. The Government finds that the amount involved in this case is substantial; that the foreign currency had been cleverly and ingenious concealed; applicant was a frequent traveller and so was well aware of the law. Government finds that this is a pre-meditated and well thought-out, conscious plan of the applicant to smuggle out substantial quantity of foreign currency. The applicant had not produced any evidence suggesting that the foreign currency was garnered / accumulated from authorized persons. Quantity, unaccounted source, manner of keeping, non-declaration and applicant not being able to explain, etc are factors relevant for using discretion not to allow goods to be released on redemption fine.

13. At para 5.9 of the OIA, the AA has held as under;

*“5.9. In the case at hand, I note that the appellant was not able to produce licit documents for procurement of foreign currency and has not declared any such currency in prescribed forms in contravention of Section 77 of the Customs Act, 1962. Therefore, appellant has failed on both the criteria. I find that the appellant is a normal resident in India and was intercepted while departing from India therefore, his intention to travel and carry the foreign currency abroad, is established. The concealment evidencing the mensrea is clear. As per the provisions of Section 113(d) of the Customs Act, 1962 ‘any goods attempted to be exported or brought within the limits of any Customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force’ ..... shall be liable to confiscation. Section 113(h) of the Customs Act also states that ‘any goods which are not include or are in excess ....., or in the case of baggage in the declaration made under Section 77 of Customs Act, 1962 are liable to confiscation.”*

14. The Government finds that the quantum of the currency is substantial and the appellate authority has rightly upheld the absolute confiscation of the foreign currency held by the OAA and had denied the redemption of the

currency. Facts and circumstances of the case especially, the ingenious concealment resorted to by the applicant and unaccounted source, warrants absolute confiscation of foreign currency as held by the OAA and upheld by the Appellate Authority. Government finds the order passed by the AA is legal and judicious and does not find it necessary to interfere in the same.

15. The Government finds that the personal penalty of ₹ 3,22,000/- imposed on the applicant under Section 114 of the Customs Act, 1962 is nearly 15% of the seizure value and is a bit harsh and excessive and is not commensurate with the omissions and commissions committed and is inclined to reduce the same.

16. In view of the above, the Government modifies the OIA passed by the AA only to extent of the quantum of penalty imposed on the applicant which is reduced from ₹ 3,22,000/- to ₹ 2,00,000/- (Rupees Two Lakhs only). The absolute confiscation of the foreign currency consisting of UAE Dirhams 1,19,000/- equivalent to ₹ 21,47,950/- is sustained.

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

*Shrawan*  
20/9/23  
( SHRAWAN KUMAR )

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

**ORDER No. 678/2023-CUS (WZ)/ASRA/MUMBAI DATED 20.09.2023.**

To,

1. Mr. Vinod Mangtaram Vasita, Barrack No. 1234, Room No. 4, Vasita Colony, Near Shreeman Talkies, Ulhas Nagar – 421 004.

2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Level - II, Terminal - 2, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

3. Shri. Prakash K. Shingrani, Advocate, 12/334, Vivek Bldg, New MIG Colony, Bandra (East), Mumbai - 400 051.
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Noticeboard.