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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. 371/333/B/2021-RA / 7885

Date of Issue 30.10.23

ORDER NO. 792 /2023-CUS (WZ)/ASRA/MUMBAI DATED 26.10.2023
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. Manishkumar Ambalal Patel

Respondent : Pr. Commissioner of Customs (Airport), Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-290-21-22 dated 29.07.2021; DOI:
29.07.2021 issued through F.No. S/49-
165/CUS/AHD/2020-21 passed by the Commissioner of
Customs (Appeals), Ahmedabad.

ORDER

This Revision application has been filed by Shri. Manishkumar Ambalal Patel (hereinafter referred to as the Applicant) against the Order in Appeal AHD-CUSTOM-000-APP-290-21-22 dated 29.07.2021; DOI: 29.07.2021 issued through F.No. S/49-165/CUS/AHD/2020-21 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2(a). Brief facts of the case is that on 27.02.2019, the applicant was intercepted by the Customs Officers after he had completed the check-in and immigration formalities at the SVPIA. The applicant was scheduled to depart to Bangkok by SpiceJet flight No. SG-85. Examination of his checked-in baggage led to the recovery of assorted foreign currency as mentioned at Table - 01, below.

Table No. 01.

Currency	Nos. of notes	Denomination	Total Value	Value in Rs.
EURO	556	50	27800	22,03,150/-
USD	7	100	700	49,210/-
GBP	77	50	5850	5,33,520/-
GBP	100	20		
TOTAL	740	-	-	27,85,880/-

2(b). The recovered assorted foreign currency was found equivalent to INR. 27,85,880/-. The applicant was unable to furnish any bill or invoice evidencing the purchase of the said foreign currency.

2(c). In his statement recorded under Section 108 of the Customs Act, 1962, the applicant stated that he had in April, 2016 opened a scrap selling business at Dubai which was closed down in November, 2016 due to huge loss; that

thereafter, he had joined as a salesman in a trading company at Dubai worked there till December, 2018, that alongwith his job at Dubai he had his angadiya business at Ahmedabad which he had started in 2014; the he had purchased the foreign currency at Mumbai and did not have any documents for the same; that the money for the foreign currency was arranged by availing soft loans from his friends;

3. The Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs vide Order-In-Original No. 77/JC/SM/O&A/HQ/2019-20 dated 24.03.2020, DOI - 30.03.2020 issued through F.No. VIII/10-30/SVPIA/O&A/HQ/2019-20 ordered for the absolute confiscation of the seized impugned assorted foreign currency equivalent to INR 27,85,880/- under Section 113(d) & 113(e) of the Customs Act, 1962 read the FEM Regulations and Rule 7 of the Baggage Rules. A penalty of Rs. 3,00,000/- was also imposed on the applicant under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority viz, Commissioner of Customs (Appeals), Ahmedabad who vide Order-In-Appeal No. AHD-CUSTOM-000-APP-290-21-22 dated 29.07.2021; DOI: 29.07.2021 issued through F.No. S/49-165/CUS/AHD/2020-21 upheld the original order passed by the OAA and rejected the appeal.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant has preferred this revision application inter alia on the undermentioned grounds;

5.01. that the OAA passed the impugned order with biased mind and the AA had failed to apply his mind to the facts of the case; that the Apex has held that even in cases of "Ingenious" concealment goods confiscated can be redeemed on payment of suitable fine; that both the OAA and AA had gone overboard and rejected the application; that the applicant did not have intention of smuggling; that he was engaged in metal scrap business and money was required to be paid for the merchandise in Dubai and Bangkok; that there was no violation of

Baggage Rules; that he had not been given Customs Declaration Form at the departure counter where he could have declared the currencies; that there was no violation of any of the provisions of Baggage Rules; that the lower authorities had failed to consider that the case of the applicant is covered by Rule 7(3) (b) which allows the applicant to carry unspent foreign currency brought during his previous foreign visits.

- 5.02. that the lower authority has not shown anywhere that the foreign currency falls under prohibited category of goods; that the applicant stated that foreign currency falls under restricted category and not prohibited category of goods; that the lower authority has held that the said goods "foreign currency" is restricted goods not prohibited goods; that as per Foreign Exchange Management (Export and Import of Currency) Regulation, 2000, Notification No. FEMA 6/RB- 2000 dated 03/05/2000, as per Regulation 5 of Foreign Exchange management (Export and import of Currency) Regulations 2000 wherein Reserve Bank of India may by regulations prohibit, restrict or regulate the export, import or holding of currency notes; that the export and import of foreign currency was not prohibited in the sense that it can be done only with the "general or special permission of the RBI"; that even under Customs Act 1962, the export and import of foreign currency was not prohibited but only restricted; that the applicant was ignorant of the law, and had not taken the necessary permission; that the confiscation of the entire goods was not proper as permissible limit was Rs. 25000/- per person as per the baggage rules
- 5.03. that as per either the Customs Act, 1962 or FEMA 2000, the export of foreign currency was not prohibited, but only restricted and as such, penalty could not be imposed under section 114 of the Customs Act, 1962; that the goods to be prohibited were required to be notified under Section 11 of the Customs Act, 1962, that both the authorities had nowhere held that foreign currency fell under section 11 of the said Act; that therefore, mere non declaration of foreign currency did not render the goods prohibited.
- 5.04. that the applicant has relied on a host of case laws, a few of them are as under; -
- (i). Kishan Shewaram Loungani reported in 2002(140) ELT-225(Tri-Mum).
 - (ii). Government of India in Re. Chellani Mukesh reported in 2012(276)ELT 129 (GOI).
 - (iii). Suresh Gangaram Hole reported in 2015(327) ELT 555. (Tri-Mum).

- (iv). Philip Frenandes reported in 2002(146) ELT 180 (Tri- Mum).
- (v). Government of India in Re. Kanwaljit Singh Bala reported in 2012(275) ELT 272 (GOI).
- (vi). High Court of New Delhi Prem Kimar V/s. Customs. CRL. M.C. 1990/2010 ORDER DATED 8TH FEB.2016.
- (vii). Shri Ravathur Naina Mohamed Vs Commissioner of Customs, Anna International Airport, Chennai vide Order No: 161/2018-CUS(SZ)/ASRA/Mumbai dated 28.03.2018 issued from F No: 373/426/B/14-RA/64 dated 10.4.2018.
- (viii). Shri Aboobucker Sitheek Vs Commissioner of Customs, Anna International Airport, Chennai vide Order No: 159/2018-CUS(SZ)/ASRA/Mumbai dated 28.03.2018 issued from F No: 373/292/8/14-RA/66 dated 10.4.2018. 3. Commissioner of Customs(Appeals)Mumbai Vs Kailash Jethanand
- (ix). Makhija vide Order No:633/2018-CUS(WZ)/ASRA/Mumbai dated 21.08.2018.
- (x). Talish Mirza vide order No: ADC/AK/ADJN/256/2018-19 dated 19.09.2018 of the Additional Commissioner, Customs, Mumbai.
- (xi). Deputy Commissioner of Customs, IGI Airport, New Delhi V/s. Mr. Naved Meerut, Order No. 06/2017-Cus. Principal Commissioner & Additional Secretary, Government of India. dated 12-09-2017.
- (xii). Mr. Sudhirkumar, New Delhi V/s Commissioner of Customs, IGI Airport, New Delhi, Order No. 40/2017-Cus. Principal Commissioner & Additional Secretary, Government of India. dated 02-11-2017. 7.
- (xiii). etc.

Under the circumstances, the applicant has prayed to the revision authority to allow his revision application; the foreign currency taken over may be released; the penalty imposed on him may be dropped / reduced or pass such order as deemed fit.

6. Personal hearing was scheduled for 23.08.2023. Shri. Rishikesh Mehra, Advocate for the applicant appeared for hearing on 23.08.2023 and submitted that applicant was carrying some foreign currency which was absolutely confiscated. He submitted that currency was out of his personal saving. He further submitted that due to ignorance of law no permission was taken from

RBI. He also submitted currency was for business purpose. He requested to allow release of the currency on reasonable fine and penalty.

7. Government has gone through the facts of the case, submissions made, documents etc furnished by the applicant 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 knowledge, possession, carriage, concealment, non-declaration and recovery of the foreign currency. The applicant was unable to give the documents for licit acquisition and 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. The 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 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 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 lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 have been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified.

9. 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."

10. In a similar case, Bombay High Court in case of Commr. Of Customs vs. Rajinder Nirula [2017(346)ELT-9 (Bom)] while upholding the release of the foreign currency on redemption fine by CESTAT, observed that

4. *The only contention raised before us and equally before the Tribunal is that the seized goods are currency and should not have been allowed to be released by paying a fine. The seizure is of foreign currency and which was attempted to be smuggled out of India without any authorisation. The Tribunal has seriously erred in law in granting the relief.*
5. *After having perused the order of the Tribunal, we find that the Tribunal came to the conclusion that the confiscated foreign currency should be redeemed. In that regard the Tribunal relied upon a judgment of the High Court of Delhi in the case of Mohd. Ayaz v. Union of India - 2003 (151) E.L.T. 39 (Del.). It also relied upon its own order passed in the case of Pankaj Jagda - 2004 (171) E.L.T. 125 (Tri.-Mum.).*
6. *We do not find any merit in the learned counsel's argument that the course adopted by the Tribunal was impermissible. The definition of the term "goods" includes currency and negotiable instruments [see Section 2(22)(d)]. When the power of redemption is exercised, what the law postulates is that there is an option to pay fine in lieu of confiscation. Section 125(1) of the Customs Act, 1962 provides that whenever confiscation of any goods is authorised by this Act, the officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay, in lieu of confiscation, such fine as the said officer thinks fit.*
7. *In these circumstances, we do not find that there was any error or lack of power. The seized currency was released and by imposing penalty. In the present case, the Tribunal, therefore, was justified in holding that since the foreign currency is redeemed on payment of fine, the penalty also deserves to be scaled down or reduced. This is essentially a finding of fact rendered after consideration of the materials on record. We do not think that the Tribunal was in error in adopting the course that it has adopted. We do not find any merit in the appeal. It is dismissed".*

11. In another case of confiscation of Currency, Delhi High Court in the case of Raju Sharma v/s. Union of India [2020(372) ELT 249 (Del.)] while allowing release of Indian currency observed,

- “18. the actual grievance of the Revenue before the Revisionary Authority, was that the seized currency was “prohibited”, redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated. This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, in such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of ` 50,000/-, no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). Exercise of discretion, by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse

or tainted by patent illegality, or is tainted by oblique motives [Mangalam Organics Ltd. v. UOI - (2017) 7 SCC 221 = 2017 (349) E.L.T. 369 (S.C.)]. No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine of ₹ 50,000/-. The Commissioner (Appeals) rightly refused to interfere with the said decision, and the Revisionary Authority, in an order which reflects total non-application of mind, chose to reverse the said decision.

19. *We are unable to sustain the order of the Revisionary Authority. We uphold the decision of the Commissioner (Appeals) as well as the order of the AC, which stands affirmed thereby. The seized currency shall, therefore, forthwith be returned to Petitioner No. 2*.*

12. The Government finds that the amount involved in this case is not huge. The applicant from the outset has claimed ownership of the Currency and had explained the source of the money and the purpose for taking it out of the country. The past record of the applicant does not indicate anything adverse. The concealment was not ingenious. Also, in the investigations the ownership claims of the applicant had not been disputed. This case is a case of non-declaration rather than smuggling. Government finds that the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 is excessive and unjustified. The order of the Appellate authority is therefore liable to be modified and the foreign currency is liable to be allowed redemption on suitable redemption fine.

13. The Government finds that the personal penalty of Rs. 3,00,000/- imposed on the applicant under Section 114(i) of the Customs Act, 1962 and upheld by the AA as reasonable and commensurate with the omissions and commissions committed.

14.1 In view of the above, the Government modifies the impugned order of the Appellate authority in respect of the assorted foreign currency mentioned at Table No. 01, above. The said foreign currency equivalent to INR. 27,85,880/-- is allowed to be redeemed on payment of a redemption fine of Rs. 5,25,000/- (Rupees Five Lakhs Twenty-Five Thousand Only).

14.2 The penalty of Rs. 3,00,000/- imposed under section 114(i) of the Customs Act, 1962 by the lower adjudicating authority and upheld by the appellate authority is sustained.

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

Shrawan
26/10/23
(SHRAWAN KUMAR)

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

ORDER NO. 792 /2023-CUS (WZ)/ASRA/MUMBAI DATED 26.10.2023.

To,

1. Shri. Manishkumar Ambalal Patel, B/23, Sudarshan Apartments, Anil Starch Road, Near Tapovan Society, Part - 1, Saraspur, Ahmedabad - 380 018.
2. The Pr. Commissioner of Customs, Custom House, 1st Floor, Opp. Old High Court, Navrangpura, Ahmedabad - 380 009.

Copy to:

3. Shri. Rishikesh Mehra, B/1103, Dev Vihaan, Behind 3rd Eye Residency, Motera Stadium Road, Motera, Saharmati, Ahmedabad - 380 005
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Noticeboard.