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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. 373/92/B/2018-RA/2150 Date of Issue 29.11.2018

ORDER NO.248/2018-CUS (SZ)/ASRA/MUMBAI DATED 25.10.2018 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 : Shri Govinda Rajan Kulandhaivel

Respondent : Commissioner of Customs, (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus I No. 192-193/2017 dated 13.12.2017 passed by the Commissioner of Customs (Appeals), Chennai.

Pr. Commr. (Rly.) & ex-Officio Additional Secretary to the Govt. of India, Mumbai

ORDER

This revision application has been filed by Shri Govinda Rajan Kulandhaivel (herein referred to as Applicant) against the order C. Cus I No. 192-193/2017 dated 13.12.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, was bound for Kuala Lumpur and was intercepted at the Chennai Airport on 16.06.2017. Examination of his baggage and person resulted in the recovery of Rs. 4,00,000/- Indian currency (Rupees Four lakhs) kept in his hand bag.

3. After due process of the law vide Order-In-Original No. 357/2017-18-AIRPORT dated 31.08.2017 the Original Adjudicating Authority ordered the release of Rs. 25,000/- and ordered absolute confiscation of the rest of the currency of Rs. 3,75,000/- under Section 113 (d) & (h) of the Customs Act,1962 read with Foreign Exchange Management (Export and Import of currency) Regulations, 2015 and imposed a penalty of Rs. 40,000/- under Section 114 of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus I No. 192-193/2017 dated 13.12.2017 set aside the absolute confiscation of the currency allowed redemption of the currency on payment of Rs. 90,000/- as redemption fine and partially allowed the appeal of the Applicant.

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

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; that in a reported judgement 2012 (276) ELT 129 (GOI) in the case of Chellani Mukesh the Hon'ble Revisionary Authority had set aside absolute confiscation and allowed redemption of the of the same under section 125 of the Customs Act,1962; Currency is a restricted item and not prohibited; The Adjudication authority has not exercised his option under section 125 of the Customs Act,1962; Even assuming without admitting the act of the Applicant is only a violation of the Reserve Bank rules; There is no contumacious conduct on part of the Applicant but a conduct of a person who is ignorant of the law; The currency was recovered from his hand

baggage and it was not indigenously concealed ; the Apex court in the case of Hargovind Das vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory; The Applicant further in the case of Keetheswari 373/46/B/11 04.05.2012 the hon'ble Revisional Authority has stated absolute confiscation is very harsh and granted the option to redeem the confiscated currency.

5.2 The Revision Applicant cited various other assorted judgments and boards policies in support of his case and prayed for quashing the impugned order in Appeal with consequential benefits by means of reduced redemption fine and reduced personal penalty and thus render justice.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri S. Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and pleaded for release of the currency on reduced redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant had kept the currency in his hand baggage and did not declare the same and therefore confiscation of the same is justified. However, the facts of the case state that the Applicant has not been involved in such offences earlier. The currency was not indigenously concealed. Further,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. Government notes that the Appellate Authority has rightly exercised his discretion of allowing the currency on payment of redemption fine and penalty vide section 125 of the Customs Act, 1962 giving relief to the Applicant.

9. Government observes that the facts of the case justify the quantum of redemption fine and penalty imposed, and notes that the redemption fine and penalty imposed is appropriate and therefore is not inclined to interfere with the impugned order of the Commissioner(Appeals). The Revision Applicant is therefore liable to be dismissed.

10. The Revision Application is accordingly dismissed.

11. So, ordered.

25/10

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.848/2018-CUS (SZ) /ASRA/ DATED 25.10.2018

To,

Shri Govinda Rajan Kulandhaivel
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Copy to:

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