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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. 373/91/B/2018-RA | 3/11/18

Date of Issue 28.11.2018

ORDER NO. 859/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 26.10.2018 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 : Smt. Meharaj Gani

Respondent: Commissioner of Customs, Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 51/2018 – 2018-TRY(CUS) dated 28.02.2018 passed by the Commissioner of Cus & C.Ex. (Appeals), Tiruchirapalli.



ORDER

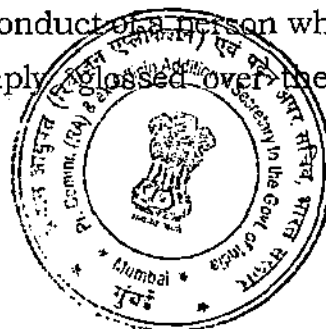
This revision application has been filed by Smt. Meharaj Gani (herein referred to as Applicant) against the Order in Appeal 51/2018 – 2018-TRY(CUS) dated 28.02.2018 passed by the Commissioner of Cus & C.Ex. (Appeals), Tiruchirapalli.

2. Briefly stated the facts of the case are that the applicant, was bound for Kuala Lumpur and was intercepted at the Trichy Airport on 20.10.2015. Examination of her baggage and person resulted in the recovery of Malaysian Ringits totally equivalent to Rs. 4,51,468/- (Rupees Four lakhs Fifty one thousand Four hundred and Sixty Eight) kept in her undergarments.

3. After due process of the law vide Order-In-Original No. 82/2017 dated 07.04.2017 the Original Adjudicating Authority ordered absolute confiscation of the currency under Section 113 (d) (e) & (h) of the Customs Act,1962 read with Foreign Exchange Management (Export and Import of currency) Regulations, 2015 and imposed a penalty of Rs. 50,000/- under Section 114 of the Customs Act, 1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 51/2018 – 2018-TRY(CUS) dated 28.02.2018 allowed redemption of the currency on payment of redemption fine of Rs. 1,00,000/- and partially allowed the Appeal of the applicant.

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

4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant submits that the seized currency is not prohibited but restricted; She had purchased the currency from the local bazaar to purchase goods in Malaysia; She was not aware that the taking the currencies out of India was an offence ; There is no requirement under the said Act to declare currency less than \$10,000/- and the seized currency is in permissible limits; There is no contumacious conduct on part of the Applicant but a conduct of a person who is ignorant of the law; The Appellate authority has simply closed over the judgements and the points



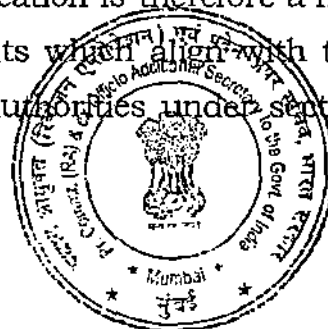
raised in the appeal grounds and reason has been given to reject the Appeal; The ownership of the currency is not disputed; She had orally declared the currency and therefore the question of declaration does not arise; Even assuming without admitting the act of the Applicant is only a violation of the Reserve Bank rules; In the case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259(Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate; 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.

5.3 The Revision Applicant cited various other assorted judgments and boards policies in support of her case and prayed for quashing the impugned order in Appeal with consequential benefits by means of reducing the redemption fine and reduce the 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 carried the foreign currency in her undergarments and did not declare the same and therefore confiscation of the same is justified.

8. However, the facts of the case state that the Applicant has not been involved in such offences earlier. The currency was not indigenously concealed. There is also no requirement to declare currency below \$10,000, and taking of currency abroad is restricted and not prohibited. Absolute confiscation is therefore a harsh option, and unjustifiable. 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. The Applicant has pleaded for release of the currency on reduced redemption fine and penalty. Government observes that the Appellate Authority has upheld the redemption of the currency and reduced the redemption fine imposed 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 disinclined to interfere with the order of the Commissioner(Appeals). The Revision Application is therefore held liable to be dismissed.

10. The Revision Application is accordingly dismissed.

11. So, ordered.

Ashok Kumar Mehta
28/10/18

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

ORDER No. 859/2018-CUS (SZ) /ASRA/MUMBAI

DATED 26.10.2018

To,

Smt. Meharaj Gani

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

ATTESTED

S.R. Hirulkar
28/10/18

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

Copy to:

1. The Commissioner of Customs, Airport Tiruchirapalli.
2. The Commissioner of Cus & C.Ex. (Appeals), Custom House, Tiruchirapalli.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

