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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. 371/429/B/2022-RA / 691

Date of Issue : 30.01.2024

ORDER No. 86 /2024-CUS (WZ)/ASRA/MUMBAI DATED. 24.01.2024
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 Mr. Vinod Prakashlal Bhatia

Respondent : Pr. Commissioner of Customs, C.S.I Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-587/2022-23 dated 06 07.2022 [Date of
issue 07.07 2022] [F No S/49-1957/2021] passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application has been filed by Mr. Vinod Prakashlal Bhatia (herein referred to as 'Applicant') against the Order-in-Appeal No MUM-CUSTOM-PAX-APP-587/2022-23 dated 06 07.2022 [Date of issue 07 07 2022] [F. No S/49-1957/2021] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III

2. Brief facts of the case are that on 09.04.2019, on intelligence and profiling, the Applicant, holder of an Indian passport, who was bound for Dubai by Air India Express Flight No IX-247 was intercepted by officers of AIU, Customs, CSI Airport after he had cleared the Immigration at departure. On being asked whether he was carrying any foreign or Indian currency, either on his person or his baggage, the Applicant replied in the negative. Not being satisfied with the reply, officers conducted personal search of the Applicant and examination of his baggage which resulted in the recovery of foreign currency i.e US \$ 30,900 and UAE Dirhams 1000, collectively equivalent to Rs. 21,11,575/-, which were concealed in his wallet, the shoes worn by him and the hollow cavity of the pair of ladies sandals kept in the black coloured bag carried by him. The said foreign currency was seized under the reasonable belief that the same were being attempted to be smuggled out of India and hence were liable to confiscation for contravention of the provisions of the Customs Act, 1962 read with FEMA, 1999 and Regulations made thereunder.

2.1. The Applicant, in his statement informed that he was trading in readymade garments in India and admitted knowledge, possession, carriage, non-declaration, concealment and recovery of the assorted foreign currency, that the shoes were handed over to him by a distant relative and was to be handed over to some person in Dubai, that he carried the foreign currency for monetary gains; that he was aware that carrying foreign currencies in excess of the permissible limits without valid documents was an offence punishable under the provisions of the Customs Act, 1962

3 After following the due process of law, the Original Adjudicating Authority (OAA) viz, Additional Commissioner of Customs, Chhatrapati Shivaji International (C S.I) Airport, Mumbai vide Order-In-Original No ADC/VDJ/ADJN/47/2021-22 dated 04.06.2021 [Date of issue: 07.06.2021] absolutely confiscated the assorted foreign currency consisting of US\$ 30,900 and 1000 UAE Dirham, collectively equivalent to Rs 21,11,575/- under Section 113 (d) (e) & (h) of the Customs Act, 1962 read with FEMA, 1999 and FEM (Export and Import of currencies) Regulations, 2015. Penalty of Rs. 2,00,000/- was imposed on the Applicant under Section 114(i) of the Customs Act, 1962. The pair of sandals and the pair of shoes used for concealment of the foreign currencies were confiscated under Section 119 of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide his order Order-in-Appeal No MUM-CUSTOM-PAX-APP-587/2022-23 dated 06 07.2022 [Date of issue: 07.07 2022] [F No S/49-1957/2021] upheld 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 following ground:

5.01. That the order passed by the OAA is bad in law and unjust;

5.02. That the impugned order has been passed without giving due consideration to the documents on record and facts of the case;

5 03 That this was the first time that the Applicant was carrying this type of goods and there is no previous case registered against him;

5 04. That the OAA ought to have appreciated that there is no duty involved in the export of foreign currency and there is no margin of profit and therefore absolute confiscation of foreign currency and heavy penalty imposed is totally unjustified as the offence, if any is technical in nature;

5.05. That foreign currency is neither restricted nor prohibited and can be released on payment of redemption fine under Section 125 of the Customs Act, 1962,

5.06. That, in various types of similar cases, various authorities and forums have allowed release of foreign currency on redemption fined and personal penalty of goods even in case of non-declaration of foreign currency The Applicant has placed reliance on the following cases:

- (i) Hargovind Das K. Joshi vs Collector of Customs [1992(61) E L T 172(SC)]
- (ii) Commr of Customs vs Rajinder Nirula [2017(346) E L T 9(Bom)]
- (iii) In RE: Mohd Arif [2018(361) E LL T 959(GOI)]
- (iv) In RE. Kailash Jethanand Makhija -Order No 633/2018-CUS (WZ)/ASRA/MUMBAI dated 21 08 2018
- (v) Commr of Customs (Prev), West Bengal vs India Sales International [2009(241) E L T 182(Cal)]
- (vi) Alfred Menezes vs Commr. of Customs, Mumbai [2011(236) E L.T. 587(Tri-Mum)]
- (vii) Philip Fernandes vs Commr of Customs (Airport), Mumbai - Order Nos 1923-26/2002-WZB/C-I dated 16 07 2002
- (viii) Felix Dores Fernandes vs. ACC, Mumbai [2000(118) E.L T 639 Tri]
- (ix) Kishin Shewaram Loungani vs Commissioner of Customs, ACC, Mumbai [2002 (140) E.L.T 225(Tri-Mum)]
- (x) T Soundarajan vs CC, Chennai [2008(221) E L T 258(Tri -Chennai)]
- (xi) Kanwaljit Singh Bala [2012(275) E L T 272(GOI)]
- (xii) Yakub Ibrahim Yusuf vs Commr of Customs , Mumbai [2011(263) E L T 685(Tri-Mum)]

Under the circumstances the Applicant prayed for setting aside the OAA, release the foreign currency be released on payment of redemption fine and personal penalty be reduced substantially or any other order as deemed fit to be issued.

6. Personal hearing in the case was scheduled for 22.11.2023 or 01.12.2023, 12.12.2023 or 13.12.2023. Shri N.J Heera, Advocate appeared

for the hearing on 12 12 2023, on behalf of the Applicant and submitted that the Applicant was carrying small amount of foreign currency for business purpose. He further submitted that Applicant is not a habitual offender and requested to allow redemption of the currency on reasonable fine and penalty.

7 Government has gone through the records and facts of the case and the submissions of the Applicant. Government finds that there is no dispute that the seized assorted foreign currency was not declared by the Applicant to the Customs at the point of departure. The seized assorted foreign currency was kept in his wallet, in the shoes worn by him and the hollow cavity of the pair of ladies sandals in the baggage of the Applicant with the express intention of hoodwinking the Customs. The Applicant in his statement had admitted the knowledge, possession, carriage, concealment, knowledge non-declaration and recovery of the foreign currency. The Applicant had explained that the purpose of attempting to take it out of the country was for monetary gains and that he did not have any legal/valid documents for purchase of the foreign currency. The Applicant admitted that he was aware that carrying such currency and not declaring the same was an offence under the Indian law. 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) ELT 39 (Del). It also relied upon its own order passed in the case of Pankaj Jagda - 2004 (171) ELT 125 (Trn -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. The Government finds that the amount involved in this case is not substantial and the Applicant has attempted to take out the currency by keeping in his wallet, in his shoes and the hollow cavity of the ladies sandals kept in his baggage. There are no allegations that the Applicant is a habitual offender and was involved in similar offence earlier or there is nothing on record to prove that the Applicant was part of an organized smuggling syndicate. This case is at best a case of mis-declaration rather than smuggling. Government finds that the discretion not to allow redemption of 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.

12. The Government finds that the personal penalty of Rs. 2,00,000/- imposed on the Applicant under Section 114 (i) and (iii) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

13. In view of the above, the Government modifies the impugned order of the Appellate authority in respect of the absolute confiscation of the foreign currency and allows the same to be redeemed on payment of redemption fine. The seized assorted foreign currency of US \$ 30,900 and UAE Dirhams 1000 equivalent to Rs 21,11,575/- is allowed redemption on payment of a

fine of Rs. 4,00,000/- (Rupees Four Lakhs only) The penalty of Rs 2,00,000/- imposed under section 114 (1) of the Customs Act, 1962 by the lower adjudicating authority and upheld by the Appellate Authority is sustained.

14. The Revision Application is disposed of on above terms

(SHRAWAN KUMAR)

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

ORDER No. 86 /2024-CUS (WZ)/ASRA/MUMBAI DATED 24.01.2024.

To,

- 1 Mr. Vinod Prakashlal Bhatia, Room No 2, Barrack No 1903, Section 40, Ulhasnagar 421 005, Distt Thane.
- 2 The Pr Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.

Copy to

- 1 The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, 5th Floor, Makwana Lane, Behind S M Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
- 2 Shri N J Heera, Advocate. Nulwala Building, Ground Floor, 41, Mint Road, Opp G.P.O, Fort, Mumbai 400 001.
3. Sr. P S. to AS (RA), Mumbai
4. File Copy
5. Noticeboard