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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. 373/116/B/2018-RA (2/8)

Date of Issue 29.11.2018

ORDER NO. 941/2018-CUS (SZ)/ASRA/MUMBAI DATED 22.10.2018 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 Ashik Ali

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. 38/2018 dated 19.03.2018 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Ashik Ali (herein referred to as Applicant) against the order C. Cus I No. 38/2018 dated 19.03.2018 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 12.09.2017. Examination of his baggage and person resulted in the recovery of 25 notes of Euros of 100 denomination each totally equivalent to Rs. 3,75,500/- and 50 notes of denomination 2000 each of Indian currency, both totally valued at (Rupees 4,75,500/- (Rupees Four lakhs Seventy Five thousand Five hundred) kept in his wallet and hand bag.

3. After due process of the law vide Order-In-Original No. 474/2017-18-AIRPORT dated 30.12.2017 the Original Adjudicating Authority ordered absolute confiscation of the currency under Section 113 (d) & (e) 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. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus I No. 38/2018 dated 19.03.2018 released Rs. 25,000/- of the currency and upheld the ordered absolute confiscation the rest of the currency 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; Currency is considered as goods as under section 2(22) of the Customs Act, 1962 and the same is neither dutiable nor prohibited; Goods must be prohibited before import or export simply because of non declarations goods cannot become prohibited.; The Applicant had declared the currency to the Customs officers; The Applicant has retracted his statements given earlier as they were recorded by force and coercion; The averments that he received currency from some unknown sources is based on non existent material and also amounts to extraneous consideration; The currency was seized from the possession of the Applicant and therefore he is entitled to claim the same under section 125 of the Customs Act,1962; There is no

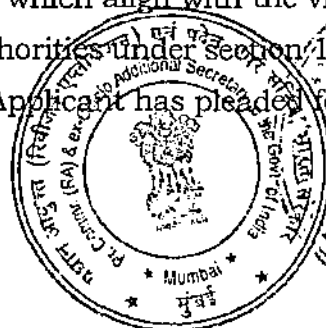


requirement under the said Act to declare currency less than \$10,000/- and the seized currency is in permissible limits; Currency is a restricted item and not prohibited; that in a reported judgement 2012 (276) ELT 129 (GOI) in the case of Chellani Mukesh the Hon'ble Revisionary Authority had set aside absolute confiscation and allowed redemption of the of the same under section 125 of the Customs Act, 1962; 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; 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.

5.3 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 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.

707127 The Government has gone through the case records it is observed that the Applicant had kept the currency in his pant pockets 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. 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 redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the currency is liable to be allowed on payment of redemption fine and penalty.

8. In view of the above, Government allows redemption of the confiscated currency in lieu of fine. The impugned currency totally valued at Rs. 4,50,500/- (Rupees Four lakhs Fifty thousand Five hundred) is ordered to be redeemed on payment of redemption fine of Rs.2,00,000/- (Rupees Two Lakhs) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case do not justify reduction in the penalty imposed. Hence the penalty imposed on the Applicant under section 112(a) of the Customs Act,1962 remains unchanged.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.


22 XIV
(ASHOK KUMAR MEHTA)

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

ORDER No. 941/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 22.10.2018

To,

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

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.

