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F.No. 372/2/B/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 23/4/14

Order No. 96/14-cus dated 21.04.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Order-in-Appeal No.
08/CUS (Baggage) KOL/AP/12-Air
dated 30-03-2013 passed by the Commissioner of
Customs (Appeals), Custom House, Kolkata.

Applicant : Mr. Amritlal
C/o S.S. Arora Advocate,
B-1/71, Safdarjung Enclave,
New Delhi-110029.

Respondent : Commissioner of Customs,
Custom House, Kolkata.

ORDER

This revision application is filed by applicant Mr. Amritlal C/o S.S. Arora Advocate, B-1/71, Safdarjung Enclave, New Delhi against the Order-in-Appeal No. 08/CUS (Baggage) KOL/AP/12-Air dated 30-03-2013 passed by the Commissioner of Customs (Appeals).

2. Brief facts of the case are that the applicant was leaving for Bangkok on 18-10-2012 from N.S.C.B.I Airport by Flight No. 9W-066 dated 19-10-2010, the applicant passenger was intercepted at the departure Area by the officers of Air intelligence Unit after completion of Immigration formalities. Subsequently on examination of his baggage Indian Currency of Rs. 60000/- were found. He could not give any satisfactory reply regarding the possession of the currency notes and could not produce any licit document regarding the same. Considering this as an attempt of illegal export of currency, the said currency notes were detained under detention Receipt (DR) No. 140/2012 (Dep) (AIU) dated 18-10-2010. On 27-12-2012 the applicant appeared before the adjudicating authority and requested for release of the currency notes. As the applicant attempted to export the currency notes in violation of provisions of the Customs Act, 1962, Foreign Exchange Management (Import and Export of currency) Regulation 2000 (Made under FEMA 1999) the passenger was informed about the same and a personal hearing was granted as he was heard. The applicant admitted his guilt for carrying the currency without declaring and without any valid documents and requested to take a lenient view. The Assistant Commissioner, Airport (Adjudicating authority) held that the passenger violated the provisions of the Customs Act, 1962, Foreign Exchange Management (Import and Export of currency) Regulation 2000 (Made under FEMA 1999) by carrying Indian Currency more than the permissible limit and absolutely confiscated the Indian Currency of Rs. 60,000/- under Section 113 (d) and (h) of the Customs Act, 1962 and Foreign Exchange Management 1999 and imposed penalty of Rs. 10000/- under section 114 of the Customs Act, 1962. The applicant paid the requisite penalty of Rs. 10000/- under Baggage Receipt No. 6574 dated 27-12-2012.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the same.
4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:
 - 4.1 The Indian Currency was kept in the pocket of the petitioner, the same was not found to conceal in person.
 - 4.2 On being asked by the Customs officer to declare the foreign and Indian currency, the petitioner immediately declared the currency to the baggage officer.
 - 4.3 The petitioner was legible for possession of foreign exchange up to US \$ 2000. But unfortunately, he forgot to exchange the currency from the bank situated at the departure hall.
 - 4.4 The applicant belongs to a poor family and his family is running from his earning as disclosed by him before the Assistant Commissioner.
 - 4.5 The petitioner may be allowed to redeem the Indian currency on payment of some fine in lieu of confiscation in terms of section 125 of the Customs Act.
5. Personal hearing scheduled in this case 29-03-2014 at Kolkata was attended by Shri Rameshwar Meena AC Customs (Airport), who pleaded to uphold the impugned Order-in-Appeal. Shri S.S. Arora, advocate of applicant had requested for hearing at Delhi on 07-04-2014. Hearing held at Delhi on 07-04-2014 was attended by Shri S.S.Arora advocate on behalf of the applicant who reiterated the grounds of revision application.
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the said Indian currency was not declared by the applicant passengers before customs as required under section 77 of Customs Act, 1962. Applicant attempted to export said currency in violation of provisions of FEMA 1999, Foreign Exchange Management (Export and Import of currency) Regulations 2000, r/w section 11 and 77 of Customs Act. As such order for its confiscation under section 113 (d) (h) and imposition of penalty under section 114 ibid cannot be assailed.

8. Government notes that Indian currency was allowed to be redeemed on payment of redemption fine under section 125 in similar circumstances vide GOI Revision Orders No. 308/2001 dt. 11-06-2001, 290/97 dt. 04-06-1997, 771/99 dt. 06-09-99 and in a recent order No. 361/14-Cus dt. 21-02-2014 in the case of Shri Shantilal Shenkarlal Vs. Commissioner of Customs Airport Chennai.

8.1 Government notes that in the case of Mohammed Akram Mohamad Shayam, Additional Commissioner of Customs, Chennai vide Order-in-Original No. 23/2009/AIR dated 26-03-2010 had allowed redemption of Indian currency of Rs. 1250000/- on payment of redemption fine under section 125 of Customs Act and the said order was upheld by Commissioner (Appeals) Customs, Chennai vide Order-in-Appeal No. 603/10-AIR dt. 30-09-2010. Finally Government vide Government of India Order No. 247/11-Cus dated 10-08-2011 upheld the said Order-in-Appeal.

8.2 CESTAT in the case of Rajeev Johar Vs. CC Calcutta reported on 2001 (135) ELT 102 (T.Kol) has held as-

" Redemption fine- Attempt to export Indian currency of Rs. 2 lakhs-Ignorance of law is no excuse-Redemption of said amount of Indian currency allowed on payment of redemption fine of Rs. 25000/- taking a lenient view-section 125 of Customs Act, 1962. "

8.3 Similarly Government of India in its Order No. 57/2002 dt. 28-02-2003 in the case Shri Kapil Mansoor (RA filed against Order-in-Appeal No. 467/2002-AP'B' dated 25-07-2002 passed by Commissioner of Customs (Appeals) Mumbai) had allowed

redemption of Indian currency of Rs. 256500/- on payment of redemption fine which was attempted to be illegally exported.

9. Government notes that ratio of above said case laws are applicable to the instant cases. As such the request of applicants to release the Indian currency on payment of redemption fine in lieu of confiscation under section 125 of Customs Act, 1962 merits acceptance. Government allows the said Indian currency to be redeemed on payment of redemption fine of Rs. 12000/- in lieu of confiscation under section 125 of Customs Act, 1962. The personal penalty appears harsh and the same is reduced to Rs. 5000/-. The impugned Order-in-Appeal is modified to above extent.

10. Revision Application is disposed off in above terms.

12. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Mr. Amritlal
C/o S.S. Arora Advocate,
B-1/71, Safdarjung Enclave,
New Delhi-110029.

ATTESTED

Order No. 96/14-Cus Dated 21.04.2014

Copy to:

1. The Commissioner of Customs, 15/1 Strand Road, Custom House, Kolkata-700001.
2. The Commissioner of Customs (Appeals), 15/1 Strand Road, Custom House, Kolkata 700001.
3. The Assistant Commissioner of Customs (Airport), NSCBI Airport, Custom House, Kolkata.
4. Mr. Amritlal, PAI Gait Rai Ghungi Ward No. 5, Pundri Kaithal-136026 (Haryana).
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

NDDM

(Nirmala Devi)

Section Officer (REVISION APPLICATION)

(निर्मला देवी / NIRMALA DEVI)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi