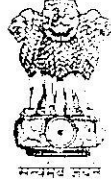


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. F.No. 371/11/B/2022-RA

Date of Issue : 12.2023

28.01.2024

ORDER No. 973/2023-CUS (WZ)/ASRA/MUMBAI DATED 28.12.2023.
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. Bhupendrasingh Moolsingh Deora

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

Subject : Revision Applications filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1071/2021-22 [F.No.S/49-
1372/2020] dated 23.11.2021 [Date of issue:
24.11.2021] passed by the Commissioner of Customs
(Appeals), Mumbai Zone-III.

ORDER

This Revision Application has been filed by Mr. Bhupendrasingh Moolsingh Deora (herein referred to as 'Applicant') against the Order-in-Appeal No MUM-CUSTOM-PAX-APP-1071/2021-22 [F.No.S/49-1372/2020] dated 23.11.2021 [Date of issue: 24.11.2021] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case that on 04.07.2018, the Applicant holding Indian Passport No. R8390897 was intercepted by the officers of Air Intelligence Unit (AIU) , C-Batch, CSMI, Airport, Mumbai when he was scheduled to depart to Dubai after clearing immigration by Jet Airways Flight No. 9W 536. The Applicant was asked whether they were carrying any contraband, foreign or Indian currency either on his person or in his baggage, to which he had replied in the negative. Not being satisfied with the reply, the officers conducted his personal search and search of his baggage, which resulted in the recovery of 1485 foreign currency notes of US\$100 totalling to US\$ 1,48,500, equivalent to Rs. 1,00,35,983/-which were concealed in two black colour cloth pieces wrapped over a cardboard wrapped with black coloured adhesive tapes with aluminium foil.

2.2. The officers took over and seized the recovered foreign currency US\$ 1,48,500/- equivalent to Rs. 1,00,35,983/-as detailed above, in the reasonable belief that the same were being smuggled out of India in violation of the provisions of FEMA, 1999 and relevant regulation issued thereunder read with the Customs Act, 1962. Further, in his statement the Applicant stated that he does not have any legal/ valid purchase documents for the said foreign currency and the seized currencies were not his currencies; Mr. Akshay Rawal gave him which he had to handover to the representatives of Diamond Gems company in Dubai. From the statement it is cleared that that he was aware of the fact that it contained foreign currency in concealed form; that he knew that carrying huge amount of foreign currency without any valid receipt for possession of the same is an offence; that his was his first attempt of

smuggling of foreign currency out of India; that he does not have any licence or any type of authorisation from Reserve Bank of India or any statutory authority to conduct business of foreign exchange and admitted concealment, non-declaration and recovery of the foreign currency.

3. After due process of the 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/SKR/ADJN/65/2019-20 dated 20.02.2020 [Date of issue:28.02.2020] issued through F.No. S/14-6-55/2018-19/ Adjn [SD/INT/AIU/299/2018 AP 'D'] absolutely confiscated the 1485 foreign currency notes of US\$100 totalling to US\$ 1,48,500 equivalent to Rs. 1,00,35,983/- under Section 113 (d), (e) & (h) of the Customs Act, 1962. Penalty of Rs. 15,06,000/- was imposed on Applicant under Section 114(i) 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 Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1071/2021-22 [F.No.S/49-1372/2020] dated 23.11.2021 [Date of issue: 24.11.2021] upheld the order of the Original Adjudicating Authority regarding confiscation of the foreign currency and imposition of penalty on the Applicant.

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 Applicant was carrying this type of goods first time and there is no previous case registered against them and they have claimed the ownership of the seized foreign currency. Foreign currency is not prohibited and its import or export is subject to laws and rules and regulations issued by a competent authority and foreign currency is not notified as 'prohibited' under

the Customs Act, 1962 and FEMA and in view of this, the foreign currencies carried by the Applicant cannot be considered as prohibited goods;

Sugar Mills vs. UOI [1978ELT (J-5.02. That, in a catena of judgements, Tribunals and GOI, in its orders of revision have directed that confiscated currencies be allowed to be redeemed on payment of appropriate fines by the persons from whom they were seized and confiscated. The Applicant has placed reliance on the following cases:

- (i) Felix Dores Fernandes vs Commr. of Customs ACC, Mumbai [2000(118) E.L.T.639(Tri-Mumbai)

5.03. That Section 125 of the Customs Act, 1962 vests the power to grant redemption of confiscated goods and the adjudicating authority has the discretion to give an option of redemption fine in case of prohibited goods but for other goods, it is mandatory to give the option of redemption of goods on payment of fine. The Applicant has placed reliance on the following cases in support of their contention:

- (i) Kishin Shewaram Loungani vs Commissioner of Custom, ACC, Mumbai[2002(140) E.L.T.225(Tri-Mumbai)
- (ii) T.Soundrarajan vs. Commissioner of Custom, Chennai [2008(221)E.L.T.258(Tri-Chennai)
- (iii) Yakub Ibrahim Yusuf vs - Commissioner of Custom, Mumbai [2011(263)E.L.T.685(Tri-Mumbai) and cases relied upon in the order

5.04. That in a common law system, judges are obliged to make their rulings as consistent as reasonably possible with previous judicial decisions on the same subject. Under the doctrine of stare decisis, a lower court must honour findings of law made by a higher courts and it binds courts to follow legal precedents set by previous decisions;

5.05. That while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court and other High Court are always required to be borne in mind. The Applicant has relied upon the following case laws in support of their contention:

- (i) Hargovind Das vs Collector of Customs [1992(61) E.L.T 172(S.C)
- (ii) Commissioner of Customs vs. Rajinder Nirula, (Bombay High Court 2017(346)/E.L.t.9(Bom).
- (iii) Commissioner of Customs(Pre) West Bengal vs India Sales International, [2009(241)E.L.T.182(Cal)

5.06. That under the doctrine of stare decisis, a lower court should honour findings of law made by the higher court that is within the appeals path of case the court hears and precedent is a legal principle or rule that is created by a court decision. This decision becomes an example, or authority for judges deciding similar issues later. That while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind;

5.07. That the AA failed to read the judgements relied upon by the Applicant in their entirety, the legal issues and the factual matrix involved therein and the context in which the observations were made and the said judgements were passed;

5.08. That a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case as carefully scanned and the contentions raised by the Applicant may be taken into consideration while adjudicating the case;

5.09. That the Applicant is from a respectable family and law abiding citizen and has never come under any adverse remarks

Under the circumstances the Applicant prayed for a reasonable order for the redemption of the currency on payment of reasonable fine and penalty.

6. Personal hearing in the case was scheduled for 19.10.2023. Shri N.J.Heera, Advocate appeared for the hearing on behalf of the Applicant on the scheduled date and submitted that the Applicant was carrying some amount of foreign currency. He further submitted that the currency was not concealed and the Applicant was not a habitual offender. He requested to release of the foreign currency on payment of reasonable fine and penalty.

7. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized foreign currencies were not declared by the Applicant to the Customs at the point of departure. Applicant, when asked whether they were carrying foreign/Indian currency on their person or in their baggage had replied in the negative. It is subsequent to the examination of their baggage that the foreign currencies which were concealed in two black colour cloth pieces wrapped over a cardboard wrapped with black coloured adhesive tape with aluminium foil, were recovered. The Applicant admitted Further, in his statement the the currency did not belong to him and agreed to carry the same for a monetary consideration. The Applicant could not provide sufficient evidence that the seized foreign currency was obtained from legitimate / authorized sources. Also, the fact that the foreign currency was procured from persons other than authorized persons as specified under FEMA, makes the goods liable for confiscation in view of the prohibition imposed in Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the confiscation of the foreign currency was justified as the Applicant were carrying foreign currency in excess of the permitted limit and no declaration as required under section 77 of the Customs Act, 1962 was filed. Therefore. the Government finds that the confiscation of the seized foreign currency was justified on the ground of concealment and also as both the Applicant could not account for

the legal procurement of the currency and that and no declaration as required under section 77 of the Customs Act, 1962 had been filed by the Applicant.

9. 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, 2015 have been violated by the Applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Original Adjudicating Authority has applied the ratio of the judgement of the Madras High Court in the case of Apex Court in the case of Commissioner of Customs, Chennai v/s. Savier Poonolly [2014(310) E.L.T. 231 (Mad)].

10. Government notes that as per records of the case, the Applicant were intercepted when they were proceeding towards the boarding gates and after crossing the Customs counter at departure. Government also notes that the Applicant used to travel Dubai 03 times before the interception. Despite the same, to say that he was not aware of the provisions of law is far from the realms of probability. The fact however remains that the Applicant had failed to declare the foreign currency to the Customs at the time of departure.

11. Government finds that the case of Commissioner of Customs, Chennai v/s. Savier Poonolly [2014(310) E.L.T. 231 (Mad)] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

10. On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since

deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.

11. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :

5. "Prohibition on export and import of foreign currency. -

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

7. Export of foreign exchange and currency notes. -

(1) An authorized person may send out of India foreign currency acquired in normal course of business.

(2) any person may take or send out of India, -

(i) cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii) foreign exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder

....."

12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has

been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

12. 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."

13. In the Revision Application, request for release of the foreign currencies has been made, relying on a number of cases wherein the redemption of currency being taken abroad is justified. In this regard, the Government finds that the Original Adjudicating Authority has passed a cogent and judicious Order wherein contentions raised by the Applicant in the Revision Application have been dealt with in great detail at the first stage itself. The case of the Applicant has been thoroughly examined against the relevant provisions of the Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, Liberalised Remittance Scheme of RBI, etc. It has been rightly held by

the Original Adjudicating Authority that a passenger can carry Indian / foreign currency provided he fulfils the conditions specified in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and that any currency carried in violation of the restrictions imposed and non-declaration or mis-declaration thereof would render such currency liable to confiscation and the passenger would render himself liable to penalty for his / her act or omission and commission. Further, the Original Adjudicating Authority has held that the Applicant had not complied with the conditions as laid down under Regulation 5 and 7(2)(b) of the Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 and thus, had violated the restrictions imposed under the said Regulations, and by concealing the foreign currency in the baggage between their personal effects, no declaring the same, had not obtained permission from RBI and not drawn the foreign currency from an authorized dealer and thus the seized foreign currency was rendered as 'prohibited goods' and liable for confiscation under Section 113(d), (e) and (h) of the Customs Act, 1962 and for this act of omission and commission, the Applicant had rendered himself liable to penalty under Section 114(i) of the Customs Act, 1962.

14. Government finds that every allegation made in the Revision Application and case laws cited referred have not been considered, etc have been dealt with cogently by the Original Adjudicating Authority and have been deliberated upon and negated, point-wise. The Original Adjudicating Authority and the Appellate Authority has discussed various contentions of the Applicant in the Order-in-Original.


15. Government notes that the quantity of the foreign currency is substantial and the same was concealed in the baggage of the Applicant among their personal effects. Applicant was unable to produce the evidence that the foreign currency had been sourced by him from licit channels and had not complied

with the statutory provisions. A case has been made out that the Applicant being a regular traveller, was aware of the provisions of law but feigned ignorance of the law, which is no excuse for the violations committed by him and his accomplice and had attempted to smuggle out the foreign currency without declaring the same. Had the Applicant not been intercepted, they would have gotten away with the foreign currency. Government finds that considering that a large amount of foreign currency was being concealed in the baggage and recovered therefrom, currency remained unaccountable, Applicant being a frequent traveller, thus discretion used by OAA to absolutely confiscate the currencies is appropriate and judicious. Government finds that in this case, the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 has been applied appropriately by the original adjudicating authority which has been upheld by the Appellate Authority. Government finds that the Appellate order rejecting the appeal and upholding the confiscation of the foreign currency by the original adjudicating authority is legal and judicious and the Government is not inclined to interfere in the same.

16. The Government finds that the personal penalty of Rs. 15,06,000/- imposed on the Applicant under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

17. In view of the above, the Government upholds the MUM-CUSTOMS-PAX-APP-1071/2021-22 [F.No.S/49-1372/2020] dated 23.11.2021 [Date of issue: 24.11.2021] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and does not find it necessary to interfere in the same.

18. The Revision Applications are dismissed as being devoid of merit.


(SHRAWAN KUMAR)

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

ORDER No. 973/2023-CUS (WZ)/ASRA/MUMBAI DATED 28.12.2023

To,

1. Mr, BhupendraSigh Moolsingh M. Deora ,407, Shri Krushna Apartment, Saurashtya Colony, L.H.Road, Surat City, Gujarat-395006
2. 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 ,41,Mint Road, Opp.G.P.O Fort,Mumbai -400001.
3. Sr. P.S to AS (RA), Mumbai
3. File Copy.
4. Noticeboard.