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SPEED POST**



**F.No. 373/97/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. 25/2/14

Order No. 36/14-cus dated 21-02-2014 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. 324/2013-Air dated 28-02-2013 passed by the Commissioner of Customs (Appeals), Custom House, Chennai.

Applicant : Shri Shantilal Sankarlal, c/o Shri T. Chezhiyan, advocate, No. 8, Eldams Road, Alwarpet, Chennai-18.

Respondent : Commissioner of Customs, Meenabakkam Airport, Chennai.

ORDER

This revision application is filed by applicant Shri Shantilal Sankarlal, c/o Shri T. Chezhiyan, advocate, No. 8, Eldams Road, Alwarpet, Chennai against the Order-in-Appeal No. 324/2013-Air dated 28-02-2013 passed by the Commissioner of Customs (Appeals), Chennai, with respect to Order-in-Original No. 708/2012 Air dated 18-10-2012, Chennai passed by the Assistant Commissioner of Customs, Air Port, Chennai.

2. Brief facts of the case are that the applicant bound for Bangkok was found to be carrying US \$ 3800 and Indian currency Rs. 2,00,000 collectively valued at Rs. 400906/-. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962 except Indian currency Rs. 7500, which was released being permissible. A penalty of Rs. 5,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962.
3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who set aside the order of absolute confiscation of foreign currency US \$ 3800 and allowed release of the said foreign currency. However the absolute confiscation of Indian currency of Rs. 200000/- was upheld.
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 appellate authority namely the Commissioner of Custom (Appeals), Chennai did not consider the points put forth before him that Indian currencies are not prohibited and liable for absolute confiscation.
 - 4.2 It is submitted that though there is no law stated in the order under which the Indian currencies are liable for confiscation. Assuming it is liable for confiscation, the same has to be released on redemption fine, since Indian currencies are not prohibited.

4.3 Indian currencies exceeding Rs. 7500/- is only restricted and not prohibited. It is submitted that under section 125 of the Customs Act, 1962, it is mandatory to give option of redemption. In the judgment of tribunal in Yakub Ibrahim Yusuf V. Commissioner of Customs, Mumbai reported in 2011 (263) ELT 685 (Tri.-Mum.) wherein it has been categorically held that goods such as arms and ammunition, Narcotic drugs, Obscene articles which would harm the society alone is prohibited.

4.4 The Revision authority, in a recent decision has rendered release of Indian currencies in a case report in 2012 (276) ELT 129 (GOI). Hon'ble authority has categorically held in paragraph-8 of the said order that how absolute confiscation of Indian currency is not sustainable after discussing various cases.

4.5 Similarly the Hon'ble Tribunal has released the Indian currencies in a reported cased in 2005 (191) ELT 291 (Tri.- Chennai).

The applicant finally pleaded to release the Indian currency on payment of redemption fine.

5. Personal hearing held in this case 17-02-2014 was attended by Shri T. Chezhiyan, 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, it is observed that the applicants while going abroad did not declare the said Indian currency before Customs as required under section 77 of Customs Act, 1962 and was carrying Indian Currency in excess of permissible limits in violation of regulation 3(1)(a) of Foreign Exchange Management (Export and Import of Currency) Regulation 2000 read with section 77 and 11 of Customs Act, 1962, rendering the said currency liable for confiscation under section 113(d).

Therefore, order for confiscation of Indian Currency under section 113(d) (h) (i) of Custom Act, 1962 and imposition of penalty under section 114 of Customs Act, 1962 cannot be assailed. Commissioner (Appeals) has upheld the absolute confiscation of said currency.

8. Applicant has pleaded that said Indian currency may be released on payment of redemption fine in lieu of confiscation under section 125 of Customs Act, 1962 and cited various case laws in support of his defence.

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/- 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. In this case the Order-in-Original was passed on 30-07-2010 after a gap of only 4 months. Government also notes that in another adjudication orders Order-in-Original Nos. 671/10-AIU to 675/10-AIU dated 30-07-2010 and 766/10 & 767/10-AIU dated 14-08-2010, by Deputy Commissioner of Customs Airport, Chennai has released Indian currency on redemption fine/personal penalty. These orders are upheld vide Order-in-Appeal No. C.Cus 62 to 68/2011 dated 08-02-2011. By ordering absolute confiscation of Indian currency in this case in similar circumstances is not proper as the principle of consistency and uniformity in orders is violated.

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/- which was attempted to be illegally exported.

9. The applicant has cited some case laws in support of his argument that the currency should have been released on imposition of redemption fine. It is a fact on record that there are no special circumstances for absolute confiscation of the impugned currency. As such Government is not averse to allow redemption of the said currency on payment of redemption fine under section 125 of Customs Act, 1962. Hence, Government allow the impugned Indian currency to be released on payment redemption fine of Rs. 50,000/- in lieu of confiscation under section 125 of Customs Act, 1962 for home consumption. As regards the pleading of the applicant to reduce penalty, Government observes that the penalty imposed by the Adjudicating authority is bare minimum and the same is upheld. The impugned Order-in-Appeal is modified to this extent.

10. The revision application is disposed off in above terms.

11. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Shri Shantilal Sankarlal,
c/o Shri T. Chezhiyan, advocate,
No. 8, Eldams Road, Alwarpet, Chennai-13.

ATTESTED



(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए./ Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 36/14-Cus Dated 21.02.2014

Copy to:

1. The Commissioner of Customs, Custom House, Chennai-1
2. The Commissioner of Customs (Appeals), Custom House, 33 Rajaji Salai, Chennai-600001.
3. The Assistant Commissioner of Customs, Air Cargo Complex, Chennai-600001.
4. Shri T. Chezhiyan, advocate, No. 8, Eldams Road, Alwarpet, Chennai-18.
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy

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(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)