IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 60 OF 2006

The Commissioner of Customs } Appellant
versus
Rajinder Nirula and Anr. } Respondents

Ms. P. S. Cardozo for the appellant.
None for the respondents.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- OCTOBER 27, 2016

P.C. :-

1. This appeal of the revenue was listed for directions. With the consent of the revenue's counsel, we have taken it for final hearing. On the last occasion and today, we have heard the counsel at some length and with her assistance, we have perused the appeal, including the impugned order.

2. The appeal was admitted on the three substantial questions of law, which have been framed on 14th June, 2007.

3. The revenue approached this court aggrieved and dissatisfied with the fact that the two respondents were apprehended by the officials of the revenue intelligence on 1st August, 2002 at Chatrapati Shivaji International Airport,

Mumbai. One of them was to travel by Air India flight from Mumbai to Ahmedabad as a domestic passenger in the international flight, whereas, the other was in transit in the midst of his journey from Bangkok to Dubai via Mumbai. An amount of US $ 70,000/- (Rs.35 lakh in Indian currency) and four mobile phones valued at Rs.20,000/- were seized from them. A show cause notice was issued *inter alia* alleging that foreign currency was being attempted to be exported out of India in contravention of the provisions of sections 5 and 7 of the Foreign Exchange Management Act, 1999 read with section 11(1) of the Customs Act, 1962. That was liable for confiscation under the provisions of section 113(d), (e) and (h) of the Customs Act, 1962. The order-in-original directed confiscation of this currency without any option for redemption and also imposed penalty of Rs.3,00,000/- each on these two persons. Being aggrieved and dissatisfied, they filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and which has been allowed by the impugned order.

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 vs. Union of India*[1]. It also relied upon its own order passed in the case of *Pankaj Jagda*[2].

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,

1 **2003(151) ELT 39 (Del.)**
2 **2004(171) ELT 125 (Tri. Mum.)**

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.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**