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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd December, 2019

+ **W.P.(C) 12110/2019**

RAJU SHARMA AND ANR. Petitioners

Through: **Mr. Sunil Kumar, Adv.**

versus

UNION OF INDIA AND ORS. Respondents

Through: **Mr. Rajesh Gogna, CGSC** for
respondent nos. 1 and 2

Mr. Amit Bansal, SSC with **Mr. Aman
Rewaria** and **Ms. Vipasha Mishra,**
Advs. for respondent no. 3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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23.12.2019

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. 49609/2019 (exemption)

Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 12110/2019

1. Aggrieved by Order No. 04/19-COS dated 21st August, 2019, passed by the Revisionary Authority in the Government of India, under Section 129DD of the Customs Act, 1962 (hereinafter referred to as “the Customs Act”), the present writ petition has been filed by Raju Sharma and Surender Gupta, the respondents in the said Revision Application.

2. The issue in controversy is narrow, and a brief overview of the facts would, therefore, suffice.

3. Petitioner no. 1 Raju Sharma was intercepted, by the officers of the Customs, when he was about to board Flight no. EK517, for Dubai on 6th February, 2015. Personal search of Petitioner No. 1 resulted in the recovery of, *inter alia*, Indian currency of ₹4 lacs and 40 Dirhams. The foreign currency, being within the permissible limit for carriage abroad, was returned to Petitioner no. 1. As Petitioner no. 1 was unable to produce any document, evidencing licit possession of the Indian currency of ₹4 lacs, the said currency was seized by the Customs officials under Section 110 of the Customs Act, purportedly as they had reason to believe that it was liable to confiscation under Section 113 of the Customs Act read with the provisions of Foreign Exchange Management Act, 1999 (hereinafter referred to as “FEMA”).

4. Investigations followed. The petitioners waived, in writing, issuance of show cause notice and, consequently, personal hearing was fixed, before the Assistant Commissioner, Customs (AC), on 19th July, 2016.

5. The Chartered Accountant, who appeared on behalf of Petitioner No. 1, during personal hearing, pleaded ignorance of law.

6. The case was adjudicated by the AC *vide* Order-in-Original No. 133/2016-17 dated 2nd August, 2016. The AC held that, as per the Foreign Exchange Management (Export & Import of Currency) (Amendment)

Regulations, 2014 read with the provisions of the FEMA, Petitioner no. 1 was entitled to carry, out of India, Indian currency upto ₹25,000/-. Even while accepting that the currency, in possession of Petitioner No. 1, belonged to him, the AC found that the provisions of the Customs Act had, nevertheless, been contravened, rendering the Indian currency, to the extent it was in excess of ₹25,000/-, liable to confiscation under Section 113 of the Customs Act. It was also found that, as Petitioner No. 1 was carrying the currency on the directions of Petitioner No. 2, both the petitioners were liable to penalty, under Section 114 of the Customs Act.

7. Resultantly, the AC ordered confiscation of the excess Indian currency of ₹3,75,000/- under Section 113 of the Customs Act, but permitted redemption, thereof, on payment of redemption fine of ₹50,000/- within one month. Individual penalties of ₹25,000/- each were also imposed on the petitioners.

8. The Revenue appealed, against the aforesaid Order-in-Original dated 2nd August, 2016, of the AC, to the Commissioner of Customs (Appeals) (hereinafter referred to as “the Commissioner (Appeals)”). The only issue pressed by the Revenue, before the Commissioner (Appeals), was that the AC ought not to have allowed release of the Indian currency to the petitioners on payment of redemption fine and penalty. The contention of the Revenue has been recorded, thus, in the aforesaid Order-in-Appeal:

“The Appellant Department has contended that the pax/Respondent-1 had unambiguously stated and admitted in his voluntary statement that the impugned Indian currency recovered from his possession was given to him by Respondent-2 with a direction to carry it to Dubai hence Respondent-1 was not the owner of the currency but carrier of the currency on the direction of the Respondent-2. Hence,, the Respondent-1 is not the owner of

the Indian currency and hence, the offer of redemption of seized currency was not warranted in the impugned order.”

9. *Vide* Order-in-Appeal No. CC (A) CUS/D-I/Airport/355/2018 dated 12th September, 2018, the aforesaid appeal of the revenue was dismissed by the Commissioner (Appeals). The Commissioner (Appeals) held that, even in the case of prohibited goods, redemption could be permitted under Section 125 of the Customs Act. The Commissioner (Appeals) opined that no occasion arose for interference with the discretion exercised by the AC in allowing redemption of the currency seized from Petitioner no. 1. Apropos another submission, advanced before him, to the effect that Petitioner No. 1 was only a carrier of the currency, and not the owner thereof, and redemption could be allowed only to the owner of the seized goods, the Commissioner (Appeals) found that, as Petitioner No. 2 had been traced and was present before him, redemption of the currency could be given to Petitioner No. 2.

10. The matter was carried further by the Revenue by way of Revision Application under Section 129DD of the Customs Act before the Revisionary Authority.

11. *Vide* the impugned order dated 21st August, 2019, the Revisionary Authority allowed the Revision Application of the revenue and set aside the Order-in-Appeal dated 12th September, 2018 (*supra*), of the Commissioner (Appeals). The Revisionary Authority noted the only contention, as advanced before him by the Revenue, as being that redemption of the currency ought not to have been granted to Petitioner No. 1, as he was only the carrier of the currency and not the owner thereof. Observing that, as the owner of the currency, i.e., Petitioner No. 2 was known, redemption of the

currency could not have been granted to Petitioner No. 1, the Revisionary Authority, *vide* the impugned order, set aside the Order-in-Appeal of the Commissioner (Appeals), to the extent it permitted redemption of the currency on payment of redemption fine and penalty.

12. Aggrieved thereby, the petitioners have approached this Court by way of the present writ petition.

13. The contentions of the Revenue as advanced before the Revisionary Authority (as recorded in the impugned order), as well as the decision of the Revisionary Authority, thereon, defeat comprehension. It is undisputed that Petitioner No. 2 is the owner of the seized currency. Both the petitioners were before the AC, the Commissioner (Appeals), and the Revisionary Authority. The only issue agitated before the Revisionary Authority, by the Revenue, was that redemption of the currency ought not to have been granted to Petitioner No. 1, as he was only the carrier and not the owner, thereof. The impugned order of the Revisionary Authority, quite surprisingly, sets aside the Order-in-Appeal of the Commissioner (Appeals) by accepting this contention. The Revisionary Authority has held that, as the owner of the goods, i.e., Surender Gupta (Petitioner No. 2) was known, redemption of the currency could not have been granted to Petitioner No. 1.

14. Legally speaking, there can be no cavil with this proposition, inasmuch as Section 125 of the Customs Act requires redemption to be granted to the owner of the goods and, if the owner of the goods is not known, to the person from whose possession the goods were seized. For ready reference, Section 125 of the Customs Act is reproduced as under:-

“125. Option to pay fine in lieu of confiscation—

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging 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, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under the clause (i) of sub-section (6) of that section in respect of the goods, which are not prohibited or restricted, the provisions of this section shall not apply:

Provided that further without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”

15. The owner of the currency being Surender Gupta (Petitioner No. 2), there could, undisputedly, be no question of releasing the currency to Petitioner No. 1. We are, however, completely at a loss as to how, on this ground, the Revisionary Authority could allow the Revision Application of the Revenue. Both the petitioners were before him. A reading of the Order-in-Original of the AC does not indicate that option to redeem the currency had been granted, by the AC, to Petitioner No. 1. The Order-in-Appeal of

the Commissioner (Appeals) makes the matter clear by observing that, as the owner, i.e., Petitioner No. 2, was known, redemption of the currency could be granted to Petitioner No. 2. In this backdrop, it is impossible to understand how the Revisionary Authority set aside the said order, by holding that redemption of the currency could not be granted to Petitioner No. 1.

16. At the cost of repetition, it may be noted that both the petitioners were before the Revisionary Authority. Even if, for a moment, it were to be assumed that the Revisionary Authority read the orders of the authorities below as allowing the redemption of the currency to Petitioner No. 1, all that he was required to do to remedy the situation, was to substitute the said direction by permitting redemption of the currency to Petitioner No. 2. There was no occasion, whatsoever, for the Revisionary Authority to set aside the Order-in-Appeal, wholesale, thereby rendering the seized currency irredeemable, even by Petitioner No. 2.

17. Both the petitioners are before this Court as well. We, in the circumstances, queried of Mr. Amit Bansal, learned Sr. Standing Counsel appearing for the Customs authorities, as to why redemption of the currency could not be granted to Petitioner No. 2. Mr. Amit Bansal, with his customary fairness, did not object to the suggestion, and candidly conceded that, if the redemption of the currency was permissible, Petitioner No. 2 could certainly be permitted to redeem the currency.

18. At the same time, Mr. Amit Bansal sought to contend, the actual grievance of the Revenue before the Revisionary Authority, was that the

seized currency was “prohibited”, redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated. This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, in such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of ₹50,000/-, no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). Exercise of discretion, by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motives¹. No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine of ₹50,000/-. The Commissioner (Appeals) rightly refused to interfere with the said decision, and the Revisionary Authority, in an order which reflects total non-application of mind, chose to reverse the said decision.

19. We are unable to sustain the order of the Revisionary Authority. We uphold the decision of the Commissioner (Appeals) as well as the order of the AC, which stands affirmed thereby. The seized currency shall, therefore, forthwith be returned to Petitioner No. 2.

¹ Mangalam Organics Ltd. v. UOI (2017) 7 SCC 221

20. In view of the above discussions, the present writ petition is allowed in the above terms, with no order as to costs.

CM APPL. 49608/2019 (stay)

In view of the order passed in the writ petition, this application is disposed of.

DECEMBER 23, 2019
r.bararia

CHIEF JUSTICE

C.HARI SHANKAR, J.



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