

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM  
AND  
THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.M.A.NO.2746 OF 2009  
AND  
M.P.No.1 of 2009

Commissioner of Customs (Air),  
Customs House,  
Chennai - 600001.

...Appellant

Vs

1. M/s.Premier Tours & Travels  
(Chennai) Pvt Ltd.,  
579, Anna Salai, 1<sup>st</sup> Floor,  
Chennai - 600006.

2. Customs Excise & Service Tax  
Appellate Tribunal,  
South Zonal Bench,  
Shastri Bhavan Annexe,  
1<sup>st</sup> Floor, 26, Haddows Road,  
Chennai - 600006.

...Respondents

Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962 by setting aside the impugned Final Order No.1403/2008 dated 15.12.2008 passed by Hon'ble CESTAT, Chennai.

For Appellant: Mr.A.P.Srinivas  
Senior Standing Counsel  
For Respondent: No Appearance

JUDGMENT  
(Delivered by T.S.Sivagnanam, J)

This appeal, filed by the appellant under Section 130 of the Customs Act, 1962, is directed against the order dated 15.12.2008 passed by the Customs Excise Service Tax Appellate Tribunal (CESTAT), Chennai in Final Order No.1403 of 2008.

2. The appeal was admitted on 04.12.2009 on the following substantial question of law:

"1. Whether the Tribunal was right in granting the benefit of redemption based on its earlier decisions by ignoring the fact that in the cases cited by CESTAT, the goods confiscated were only foreign currencies and not Travellers Cheques hence the above fact has lost sight of the second respondent?"

3. We have heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the appellants.

4. Though the respondents were initially represented by a counsel, subsequently they withdrew their appearance and the Court had ordered notice, which was not served and therefore, substituted service was ordered and accordingly publication was effected in 'Thinamani', Dharmapuri edition, dated 22.06.2017. Even today, none appears for the respondents.

5. The Tribunal, in the impugned order, rejected the case of the respondents upholding the orders passed by the Authorities stating that the travellers cheques are offending goods and hence liable for confiscation. However, the Tribunal permitted redemption of the travellers cheques, by placing reliance on the decision of the Tribunal in the case of *Saviera Poonolly vs CC, Chennai, 2005* [reported in (192) ELT 263 (Tribunal)]. The said decision has been reversed by the Hon'ble Division Bench of this Court in *Commissioner of Customs vs Saviera Poonolly* [reported in 2014 (310) ELT 231]. The operative portion of the judgment reads as follows:

"9. The dispute raised in this case involves the following substantial questions of law:

"(i) Whether the Tribunal was justified in allowing the redemption of the foreign currency attempted to be exported in violation of the provisions of law?

(ii) Whether the Tribunal was justified in reducing the quantum of penalty?"

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:

"Prohibition on export and import of foreign currency.

5. 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.

13. In view of the above, the Original Authority has ordered absolute confiscation. We find, in the present case, the passenger has concealed the currency of 55,500 US dollars and other currencies, attempted to take it out of India without a special or general permission of the Reserve Bank of India and this is in violation of the Rules. The fact that it was procured from persons other than authorized person as specified under the FEMA, makes the goods liable for confiscation in view of the above-said prohibition. Therefore, the Original Authority was justified in ordering absolute confiscation of the currency. The key word in Regulation 5 is prohibition of import and export of foreign currency. The exception is that special or general permission should be obtained from the Reserve Bank of India, which the passenger has not obtained and therefore the order of absolute confiscation is justified in respect of goods prohibited for export, namely, foreign currency.

14. It is of no avail to plead that the foreign currency upto certain limit is permissible. The Tribunal has misguided itself in holding that upto 25,000 US\$ is permitted to be carried by a passenger while going abroad. This error arose from a misreading of Clause 8 of Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. Rule 5 of the said Rules, speaks about prior approval of the Reserve Bank of India for transaction included in Schedule III. Clause 8 of Schedule III speaks about release of foreign exchange, exceeding US \$ 25,000 to a person irrespective of period of stay, for business travel, or attending a conference or specialized training or for maintenance

expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up. We find that this provision is made under the Foreign Exchange Management (Current Account Transactions) Rules, 2000, which imposes prohibition in respect of Schedule I, restriction in Schedule II transaction, which are to be done on prior approval and Schedule III also come with the rider that prior approval of the Reserve Bank of India should be obtained. Assuming that a person is permitted to carry 25,000 US \$ for business purpose, the fact remains, that the said drawal of the foreign currency should be only from an authorized person in terms of Rule 2 (b) of the Foreign Exchange Management (Current Account Transactions) Rules, 2000. The passenger, in this case, attempted to take the money out of India without a proper declaration and has not obtained from an authorized person, thereby, he has violated the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000. Therefore, the Department was justified in rightly invoking the said provision. The Tribunal, without adverting to the prohibition imposed under Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 has come to the erroneous conclusion that the amount not exceeding 25,000 US \$ may be freely taken out of India. If both the Rules and Regulations are properly applied to the facts of the present case, it will be evident that the first respondent - passenger in this case has clearly violated the provisions of the FEMA, more particularly Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 read with Section 113 of the Customs Act. Therefore, the Tribunal fell into error by setting aside the order of absolute confiscation. Accordingly, we answer the first question in favour of the Revenue."

6. In the light of the observations made by the Hon'ble Division Bench, more particularly, in paragraph 14 of the judgment, we have no hesitation to hold that the Tribunal has

committed an error in permitting redemption of the offending goods. Therefore, the present Civil Miscellaneous Appeal filed by the Department is allowed and the order passed by the Tribunal, in so far as it permits redemption of the offending goods, is set aside and the substantial question of law is answered in favour of the appellant-Department. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS III)

//True copy//

hvk

Sub Assistant Registrar

To

1. Customs Excise & Service Tax  
Appellate Tribunal,  
South Zonal Bench,  
Shastri Bhavan Annexe,  
1<sup>st</sup> Floor, 26, Haddows Road,  
Chennai - 600006.

2. Commissioner of Customs (Air),  
Customs House,  
Chennai - 600001.

+1cc to M/s.A.P.Srinivas, Advocate SR.No.6421

C.M.A.No.2746 of 2009  
and  
M.P.No.1 of 2009

GMR(CO)  
KKV/03/03/2021

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