



W.P.No.140 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.140 of 2023

Maddi Narayana

.. Petitioner

VS

1. Additional Secretary,
Government of India,
Ministry of Finance,
14, Hudco Vishala Buildings,
B Wing,
6th Floor,
Bhikaji Cama Place,
New Delhi - 110 066.

2. The Principal Commissioner of customs,
Commissionerate - I,
New Custom House,
Air Cargo complex,
Meenambakkam,
Chennai - 600 027.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the files relating to the order passed in Order No.305/2022 in F.No.373/179/B/2016-RA, dated 30.09.2022 and to quash the same with a direction to the first respondent to release the goods on redemption fine mandated under Section 125 of the Customs Act, 1962 or to remand back the case to the First Respondent.



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For Petitioner : Mr.T. Chezhiyan
For Respondents : No appearance for R1
Mr.K.S. Ramaswamy,
Junior Panel Counsel for R2

ORDER

By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr.K.S. Ramaswamy, learned Junior Panel Counsel accepts notice for the 2nd respondent.

3.The only point that arises for consideration in this writ petition is whether the Original Authority has exercised his discretion correctly by rejecting the petitioner's application filed under Section 125 of the Customs Act, 1962 seeking for redemption of Indian and Foreign currencies confiscated from the petitioner by paying fine.

4. Section 125 of the Customs Act, reads as follows :-

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 1[or, where such owner is not known, the person from whose possession or custody such goods have



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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) or Section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, "[no such fine shall be imposed].

Provided further that], 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.

Explanation.--For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]



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5. The petitioner contends that foreign and Indian currencies confiscated being a restricted item, they are entitled for redemption as per the provisions of Section 125 of the Customs Act, 1962. It is also his case that even for prohibited goods, an applicant can seek for redemption of the said prohibited item by paying a fine as per the provisions of Section 125 of the Customs Act.

6. Admittedly, the petitioner was carrying excess Indian and foreign currencies while travelling to Dubai from Chennai and the same has been confiscated as per the provisions of the Indian Customs Act, 1962. Thereafter, the petitioner has sought for redemption as per the provisions of Section 125 of the Customs Act, which has been rejected by the Original Authority on the ground that in India, the petitioner had a declared Income of only Rs.6,00,000/- annually and therefore, it is not possible for the petitioner to carry Indian and foreign currencies worth Rs.58,29,225/- .

7. Aggrieved by the same, the petitioner has also filed statutory appeal before the Commissioner of Customs (Appeals), under Section 129A of the Customs Act, 1962 and the order of the Original Authority



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was confirmed by the Commissioner of Customs (Appeals) in his order dated 04.07.2016.

8. Aggrieved by the same, the petitioner has also filed a revision under Section 129-DD before the revisional authority viz., 1st respondent herein, who has also confirmed the orders passed by the Original Authority as well as the Appellate Authority.

9. Aggrieved by the impugned orders of the Original Authority, Appellate Authority and the revisional Authority, the petitioner has filed this writ petition.

10. A counter affidavit has also been filed by the 2nd respondent stating that the petitioner had carried excess Indian and foreign currencies in violation of Regulation 5 of the Foreign Exchange Management (Export and Import Currency) Regulations, 2015 and therefore, being prohibited goods, the question of granting redemption to the petitioner under Section 125 of the Customs Act, 1962 will not arise. According to them, the authorities have exercised their discretion judiciously while rejecting the petitioner's application under Section 125 of the Customs Act, 1962 and therefore, the question of interfering with the said orders under Article 226 of the Constitution of India will not arise.



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11. The learned counsel for the petitioner relied upon the following authorities in support of his contention that the discretion has not been exercised judiciously by the Original Authority before rejecting the petitioner's application filed under Section 125 of the Customs Act, 1962 seeking for redemption of the confiscated Foreign and Indian currencies.

a) Union of India vs. Rostam Parvaresh reported in 2011 SCC Online Bom 1955

b) Raju Sharma and another vs. Union of India and Others reported in 2019 SCC Online Del 12237

c) Commissioner of Customs v. Atual Automations Pvt. Ltd., reported in 2019 (365) E.L.T. 465 (S.C.)

12. It is not in dispute that under Section 125 of the Customs Act, 1962, an option to pay a fine in lieu of confiscation can be sought even for prohibited goods. The judgments relied upon by the learned counsel for the petitioner referred to supra dealt with cases, where discretion was exercised in favour of the applicant by the Original Authority under Section 125 of the Customs Act, 1962 by granting redemption, which was not interfered with by the High Court.



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13. But in the instant case, the Original Authority, the Appellate Authority as well as the Revisional Authority viz., the 1st respondent herein have concurrently held that the petitioner is not entitled for redemption of the confiscated foreign and Indian currencies.

14. The Original Authority has passed a detailed order for rejecting the petitioner's application. The reasons given by them are as follows :-

30. The passenger has claimed that the currency belonged to him and that he was taking it out of India to invest as a partner in a restaurant in Dubai. Hence, I specifically note that the total value of currency seized (Foreign Currency & Indian Currency) amounts to Rs.58,29,225/- and he himself has stated in his statement under Section 108 of Customs Act, 1962 that he was an Income Tax assessee with an annual income of Rs.6 lakhs. A person having an annual income of Rs.6 lakhs claiming to own almost 10 times of the same in currency for export without any explanation to the source of Additional source of funding definitely does not look plausible. The passenger even till date has also not been in a position to explain or show evidences as to how he owns the said money and how and where he procured the said currency. Hence, it has to be taken that he does not own the money that he was carrying the currency on behalf of some one else.

15. The Original Authority has exercised its discretion based upon the aforesaid reasons and held that the petitioner is not entitled for



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redemption of the confiscated Indian and foreign currencies as per the provisions of Section 125 of the Customs Act, 1962.

16. The Appellate Authority viz., the Commissioner of customs (Appeals) has also confirmed the findings of the Original Authority by his order dated 04.07.2016. Thereafter, the petitioner has preferred a revision as per the provisions of the Customs Act, 1962 before the 1st respondent, who has also rejected the said revision by confirming the findings of the Original Authority as well as the Appellate Authority.

17. Admittedly, the petitioner has carried Indian and foreign currencies by violating Regulation 5 of Foreign Exchange Management (Export and Import Currency) Regulations 2015, which reads as follows :-

***"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".***



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18. Admittedly, the confiscation order passed in respect of foreign and Indian currencies seized from the petitioner has also attained finality.

Therefore, it is clear that the petitioner has violated the Regulation 5 of Foreign Exchange Management (Export and Import Currency) Regulations 2015. Under Section 125 of the Customs Act, 1962 it is a discretionary power. Having exercised the discretion by giving sound reasons, the question of interference by this Court exercising powers under Article 226 of the Constitution of India in respect of the orders, which have been challenged in this writ petition will not arise. This Court is not an Appellate Court and only when the orders challenged are perverse, the question of interference with regard to those orders will arise. The reasons given by authorities for rejecting the petitioner's application under Section 125 of the Customs Act are sound and justifiable.

19. In the decisions relied upon by the learned counsel for the petitioner, those are decisions where discretion was exercised and the relief was granted to the person whose goods were confiscated by the Original Authority but in the instant case it is not so. Here is a case, where all the three authorities, who have passed the orders, which have been impugned in this writ petition have consistently held that the



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petitioner is not entitled for redemption. When it is not in dispute that the petitioner has violated Regulation 5 of Foreign Exchange Management (Export and Import Currency) Regulations 2015 and that too when the confiscation order has attained finality and that too when the impugned orders are not perverse, this Court while exercising powers under Article 226 of the Constitution of India has to necessarily reject this writ petition as it is bereft of any merit.

20. For the foregoing reasons, this writ petition is dismissed. No costs.

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Index:Yes/No
Neutral Citation:Yes/No
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To
1. Additional Secretary,
Government of India,
Ministry of Finance,
14, Hudco Vishala Buildings,
B Wing,
6th Floor,
Bhikaji Cama Place,
New Delhi - 110 066.



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2. The Principal Commissioner of customs,
Commissionerate - I,
New Custom House,
Air Cargo complex,
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Chennai - 600 027.

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