

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Customs Miscellaneous Application No.70113 of 2020

(On behalf of appellant)

in

Customs Appeal No.70269 of 2020

(Arising out of Order-in-Appeal No.104-CUS/APPL/LKO/2020 dated 29.05.2020 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Arun Kumar

.....Appellant

(R/o Chowk Bazaar, Post-Shohratgarh,
District-Siddharthnagar, U.P.-272205)

VERSUS

Commissioner of Customs (Preventive),

Lucknow

....Respondent

(3/194, Vishal Khand, Gomti Nagar, Lucknow)

APPEARANCE:

Shri Shubham Agarwal, Advocate for the Appellant

Shri Sarweshwar T. Khairnar, Authorised Representative for the
Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO. - 70014/2023

FINAL ORDER NO. - 70020/2023

DATE OF HEARING : 07 August, 2023

DATE OF DECISION : 07 August, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.104-CUS/APPL/LKO/2020 dated 29.05.2020 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow. By the impugned order Commissioner (Appeals) has held as follows:-

"6. I have gone through the case record. The contention of the department is that foreign currency imported from Nepal is in violation of Notification No.9/96-CUS-NT dated

22.01.1996 which prohibits import of any third country goods from Nepal to India. The respondent has also admitted that the impugned foreign currencies were improperly imported from Nepal. Therefore, the foreign currencies are liable for absolute confiscation. Thus, the Department has correctly argued that redemption of the impugned foreign currencies was not proper. In view of the above, the impugned foreign currencies are absolutely confiscated. The impugned order is modified in above manner and the appeal is allowed."

2.1 Appellant was intercepted by the officer of SSB near border Pillar No.556 (53), when he was coming from Nepal into India and was handed over to the Customs Authorities alongwith seizure and apprehension memo dated 10.03.2019.

2.2 From his possession some foreign currencies i.e. 5825 Yuan, 10,600 US Dollar, 3495 Dirham, 2100 Euro were recovered by SSB and seized as per the seizure memo dated 10.03.2019.

2.3 In his statement dated 11.03.2019 he stated that he works for Western Union firm at Shohratgarh and its proprietor is his mother. He collected the aforesaid foreign currencies from foreigners for commission. He was bringing the said currencies from Taulihawa, Nepal to exchange the same from the authorized money exchanger in India. He could not produce any document related to aforesaid foreign currencies.

2.4 In view of the above, customs officers of LCS-Khunwa, seized the said foreign currency under section 110 Customs Act, 1962 on reasonable belief that the recovered foreign currency total valued at Rs.10,38,380/- (Rupees Ten Lacs Thirty Eight Thousand Three Hundred Eighty only) was liable for confiscation under section 111 of the Customs Act, 1962. As the same was brought from Nepal into India in contravention of Foreign

Exchange Management Act, 1999 and Foreign Trade Policy 2015-2020 by Panchnama dated 11.03.2019.

2.5 The appellant waived the requirement of show cause notice and personal hearing on 05.07.2019 and requested for adjudication of the case. He also stated that he is ready to pay any penalties that are imposed on him by the adjudicating authority.

2.6 The matter was adjudicated by the Additional Commissioner Customs, Lucknow vide order No.08/ADC/2019 dated 30.07.2019 holding as follows:-

"In light of above, I observe that the said seized goods are freely importable up to a certain limit not exceeding US\$5,000/-(US Dollars five thousand) or its equivalent. Therefore, I find that the said seized goods are liable to be released on payment of redemption fine under Section 125 of the Customs Act, 1962 along with applicable duty & charges, if any.

The above details also make it clear that Shri Arun Kumar was caught while he was smuggling the recovered and seized foreign currencies from Nepal into India, therefore he is liable to penalty under Section 112 (b) of the Act for the reasons discussed above.

Whether the seized vehicle is liable for confiscation of motor cycle or not:

Motor Cycle (TVS) bearing Regn No. UP-55-V-3282 valued at Rs.30,000/- was used in the transportation of the said currency is also liable for confiscation under Section 115 of the Customs Act, 1962.

Accordingly, I order as under:

ORDER

i. I order to confiscate of the seized foreign currencies amounting to Rs.10,38,380/- under Section 111 (d) of the Customs Act, 1962. I however give an option under Section 125 of the Customs Act, 1962, to redeem the goods for home consumption on fine of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) along with applicable duty and charges, if any, to its lawful owner against the confiscation of the said goods.

ii. I order confiscation of the seized motor cycle (TVS) bearing Regn No. UP-55-V-3282 valued at Rs.30,000/- under Section 115 (2) of the Act. However, I give an option under Section 125 of the Customs Act, 1962, to redeem the said vehicle on a redemption fine of Rs.3,000/- (Rupees Three Thousand Only) under Section 125 of the Customs Act, to its lawful owner.

iii. I impose penalty of Rs.30,000/- (Rupees Thirty Thousand only) upon Shri Arun Kumar S/o Sadanand R/o Chowk bazar, Post Shoharatgarh, Siddharth Nagar under Section 112 (b) of the Customs Act, 1962. "

2.7 Revenue being aggrieved by the above order filed the appeal before Commissioner (Appeals). Commissioner (Appeals) as vide the impugned order allowed the appeal filed by the Revenue against the option of redemption given to the appellant by the Original Authority and have held that seized foreign currency is liable for absolute confiscation under Section 111 (d) and confiscated the same absolutely.

2.8 Aggrieved appellant filed this appeal before the Tribunal.

3.1 I have heard Shri Shubham Agarwal learned Advocate appearing for the appellant and Shri Sarweshwar T. Khairnar Authorized Representative appearing for the Revenue.

3.2 Arguing for the appellant learned counsel submits that the appellant do not dispute any of the findings recorded by the

original authority in respect of the confiscation of the seized currencies, vehicle and the penalty imposed. His only grievance is against the impugned order whereby the order allowing the redemption against fine has been converted into an order of absolute confiscation. He relies on following decisions wherein it has been held that the seized currency needs to be allowed for redemption on payment of redemption fine.

- Rajinder Nirula [2017 (346) ELT 9 (Bom)].
- T Soundrajan [2008 (221) ELT 258 (T-Chennai)].

3.3 Arguing for the revenue learned authorized representative while reiterating the findings recorded in the impugned order submits that:

- As per Notification No.9/96-Cus (NT) dated 22.01.1996, the import of the goods of third country origin through Nepal was totally prohibited.
- As per Section 2 (22) of the Customs Act, 1962, the currencies are included in the definition of the goods.
- Thus in terms of Notification No.9/96-Cus (NT), import of foreign currencies from Nepal is totally prohibited and therefore the order of Commissioner (Appeal) cannot be faulted with.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 The only issue that needs to be decided in this appeal is whether the seized foreign currencies collectively valued at Rs.10,38,380/- is liable for absolute confiscation or should have been given the option of redemption against the redemption fine of Rs.1,50,000/-.

4.3 Original authority as in his order referred to RBI Circular ETC stating as follows:-

"In light of above, I observe that RBI/2015-16/310 A.P. (DIR Series) Circular No.45/2015-16[(1)/6(R)] dated 04.02.2016 provides the permissible limit for import of foreign exchange into India. The relevant portion of the said Circular is reproduced as under:-

Import of Foreign Exchange into India

A person,

i. may send into India without limit foreign exchange in any form other than currency notes, bank notes and travelers cheques;

ii. may bring into India from any place outside India without limit foreign exchange (other than unissued notes) subject to the condition that such person makes, on arrival in India, a declaration to the Customs authorities in Currency Declaration Form (CDF). It shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or travelers cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousand) or it equivalent and/ or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US\$5,000 (US Dollars five thousand) or its equivalent."

On the basis of the above circular he concluded that the foreign currency seized can be allowed to be redeemed against redemption fine. Revenue being aggrieved by this finding challenged the impugned order only to the extent of allowing the currency to be redeemed against payment of redemption fine of Rs.1,50,000/-.

4.4 Commissioner (Appeals) has referred to the Notification No.9/96-Cus(NT) dated 22.01.1996 which prohibits the import of any third country goods from Nepal to India. He holds that

currency being covered by the definition of goods as per section 2(22) of the Customs Act, 1962 currency also falls under the category of goods. Hence holding that as this seized foreign currency is prohibited it is liable for absolute confiscation and hold accordingly.

4.5 Section 2 (22) of the Customs Act, 1962 reads as follows:

(22) "goods" includes -

(a)

(b)

(c)

(d) currency and negotiable instruments; and

(e);

There is no dispute about the fact that in terms of the definition of the "goods" as per section 2 (22) *ibid*, foreign currency is included in the definition of goods. The order of Commissioner (Appeal) cannot be faulted to this extent.

4.6 However the issue for consideration is whether this foreign can be absolutely confiscated for being imported contrary to the prohibitions imposed by Notification No.09/1996-Cus (NT) dated 22.01.1996. The text of the Notification is reproduced below:

"G.S.R. 43 (E).—In exercise of the powers conferred by Sub-Section (I) of Section 11 of the Customs Act, 1962 (52 of 1962) and in supersession of the Notification No. 76/F. No.80/83/65-LC1, dated the 19th June, 1965 published in the Gazette of India vide No. GSR 848 dated the 19th June, 1965, the Central Government, being satisfied that for the prevention of smuggling it is necessary so to do, hereby prohibits the import from Nepal to India of goods which have been exported to Nepal from countries other than India :"

From the perusal of the above it is quite evident that the above notification in general prohibits the importation through Nepal, the goods of third country origin. Foreign Exchange management Act, 1999 (FEMA) is *"An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India."* From the above it is quite evident that FEMA is a specialized act, dealing specifically with Foreign Exchange. Section 47 of the FEMA reads as follows:-
"47. Power to make regulations.—

(1) The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for,—

(a) ...

(b) ...

(c) ...

(d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;

(e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

(f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;

(g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;

(ga) export, import or holding of currency or currency notes;

(h) any other matter which is required to be, or may be, specified.

In exercise of the powers conferred by clause (g) of sub-section (3) of Section 6, subsection (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), Reserve Bank has made Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. The said regulations provide as follows:

"6. Import of foreign exchange into India:-

A person may -

(a) send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques;

(b) bring into India from any place outside India without limit foreign exchange (other than unissued notes),

provided that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations;

*provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveler's cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of **foreign currency notes brought in by such person at any one time does not exceed US\$ 5,000 (US Dollars five thousands) or its equivalent.***

8. Export and import of currency to or from Nepal and Bhutan:- Notwithstanding anything contained in these regulations, a person may –

(1) take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs.100 in either case), provided that an individual travelling from India to Nepal or Bhutan can carry Reserve Bank of India notes of Mahatma Gandhi (new) Series of denominations Rs.200/- and/or Rs.500/- up to a total limit of Rs.25,000;

(2) bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs.100 in either case);

(3) take out of India to Nepal or Bhutan, or bring into India from Nepal or Bhutan, currency notes being the currency of Nepal or Bhutan.

10. Reserve Bank's power to restrict export or import of currency: -

Notwithstanding anything contained in these regulations, the Reserve Bank, may, in public interest and in consultation with the Central Government, restrict the amount of Indian currency notes of Government of India and/or of Reserve Bank, and/or foreign currency, on case-to-case basis, that a person may bring into or take outside India and prescribe such conditions as it may deem necessary."

Though Regulation 8, specifically provides for the manner in which Indian, Nepalese and Bhutanese Currency is to be dealt, the said section is totally silent about Other Foreign Currencies and which are to be dealt as per the provisions of Regulation 6 and 10. In view of these specific provisions which have been made in regards to Foreign Currency, the reliance placed by the Commissioner (Appeal) on a general notification No.09/1996-Cus (NT) for holding the currencies to be absolutely prohibited as per this notification is not justified. The import and possession of these should have been dealt in accordance with the provisions of the above regulations read with the Circulars issued by the

Reserve bank of India from time to time. It is settled law that "generalia specialibus non derogant ". In case of Santhosh Maize & Industries Ltd. [2023 SCC OnLine SC 764.], Hon'ble Supreme Court has observed:

"24. Law is well settled that if in any statutory rule or statutory notification two expressions are used - one in general words and the other in special terms - under the rules of interpretation, it has to be understood that the special terms were not meant to be included in the general expression; alternatively, it can be said that where a statute contains both a general provision as well as a specific provision, the latter must prevail."

4.7 Thus I do not find any merits in the findings recorded by the Commissioner (Appeals) as the possession of foreign currency in India is governed by the provision of the FEMA and the RBI Circulars issued from time to time. Original Authority has stated as above has referred to the RBI Circular No.45/2015-16[(1)/6(R)] dated 04.02.2016 provides the permissible limit for import of foreign exchange into India and the on the basis of that he has concluded that seized foreign currency is liable for confiscation but needs to be given an option for redemption.

4.8 The Regulation 6 and RBI Circular referred above do permit the importation of the Foreign Currency, the said importation is subject to restrictions to the extent that the appellant was required to make declaration of the Currency which he carries if the same is in excess of US\$ 5000/- or equivalent. Appellant has failed to make any such declaration, and hence these currencies have been imported in contravention of the provisions of Regulation 6 read with RBI Circular and have to be held confiscable under Section 111 (d) holding the same to be prohibited.

4.9 Thus in respect of the currency which is above the value of US \$ 5,000/- or equivalent needs to be confiscated by the Authorities. As importation of such currencies has been made

without any declaration to the Customs or any authority the same will be prohibited and would be liable for absolute confiscation under section 111(d) of Customs Act.

4.10 As the total value of seized Foreign Currency imported in one go exceeds the value of US\$ 5000/- the entire currency becomes liable for confiscation. However, currency up to US \$ 5,000 (US Dollars Five Thousand only) should have been allowed for redemption under section 125 (2) of the Customs Act.

4.11 Counsel for the appellant has relied upon the decision as follows:-

I. Commissioner of Customs vs. Rajinder Nirula 2017 (346) E.L.T. 9 (Bom.).

II. T. Soundrarajan vs. Commissioner of Customs, Chennai 2008 (221) E.L.T. 258 (Tri.-Chennai).

Both the cases are in respect of the persons who were trying to get the foreign currency exported out of India, hence are distinguishable from the present case which is of importation of currency.

4.12 The case for my consideration is the case of importation of the foreign currency without filing proper declaration to the authorities. Such currencies which are imported in violation of the various provisions of FEMA and other directive of RBI are meant for illegal activities including terror financing in the country and needs to be dealt with severely. I am of the view that the currencies which are in total violation of the RBI Circular should be absolutely confiscated whereas which falls within the permissible limits as per the RBI Circular be allowed on payment of redemption fine. Appellant have already paid redemption fine of Rs.1.5 lakhs (Rupees One Lac Fifty Thousand only). Accordingly, I allow the foreign currency up to the total value of US \$ 5,000 (US Dollars Five Thousand only) to be redeemed to

the appellant against the above redemption fine. The remaining seized foreign currency is ordered to be absolutely confiscated.

4.13 There is no serious challenge by either side to the quantum of penalty imposed on the appellant for his act of omission and commission leading to confiscation of foreign currency. Though I find the penalty imposed by the original authority to be low. I am not interfering with the order of lower authority as Revenue has never challenged the same.

5.1 In view of the above, impugned order is partially modified as stated above. Appeal is partially allowed in above terms.

5.2 Miscellaneous application is also disposed of.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS