IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

S. No.	STAY APPLICATION No.	APPEAL No.	APPELLANT	RESPONDENT	IMPUGNED ORDER No.
1	C/STAY/70398/2018	C/71237/2018-CU[DB]	Commissioner of Customs (Prev.), Lucknow	Shri Abu Zaid, Prop. M/s Ghulam Rasool Travel	O-I-A No.347-351-CUS/APPL/LKO/2018 dated 29.06.2018 passed by Commissioner (Appeals), GST, Customs & Central Excise, Lucknow
2.	C/STAY/70397/2018	C/71236/2018-CU[DB]	-do-	Shri Bharat Gauba, MD, M/s Ambey Forex Pvt. Ltd.	-do-
3.	C/STAY/70399/2018	C/71238/2018-CU[DB]	-do-	Shri Irfan Ahmad. Marketing Executive, M/s Goodluck Enterprises	-do-
4.	C/STAY/70400/2018	C/71239/2018-CU[DB]	-do-	Shri. Rajesh Singh	-do-
5.	C/STAY/70435/2018	C/71294/2018-CU[DB]	-do-	Shri Nitya Nand Chaubey	-do-

Appearance:

Shri Mohd. Altaf, Assistant Commissioner, (A.R.) for Appellant

Shri Nitya Nand Chaubey (Self) & for Respondent
(In Appeal No.C/ 71294/ 2018)
Request for Adjournment

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 20/02/2019

FINAL ORDER NO.**70340-70344 / 2019**

Per: Archana Wadhwa

After rejecting the stay petition filed by the Revenue for staying the operation of the impugned order of Commissioner (Appeals) vide which relief stands granted to the respondents and after rejecting the request for adjournment made by the respondents, we proceed to decide the appeals itself, inasmuch as a short issue is involved. Accordingly, we have heard learned A.R. appearing for the Revenue and have gone through the impugned order.

2. As per facts on record, on receiving information from the police that they have caught certain persons carrying foreign currency in their Wagon- R vehicle, the custom officers approached the said police station and brought the said respondent to customs office, Varanasi for further inquiry. Shri Nitya Nand Chaubey in his statement dated 26.02.2016 deposed that he was Manager of M/s Ambey Forex Pvt. Ltd., Varanasi and has collected the said foreign currency from various sources. He also submitted that the other two persons i.e. Shri Rajesh Singh and Shri Manoj Kumar Pandey were innocent and did not know about the said currency. He further explained that he had adopted wrong practice for dealing in Forex. In his statement dated 12.04.2016 he deposed that the foreign currency in question was procured

by him from M/s Gulam Rasool Travels, M/s Chaurasia Krishi Bhandar and M/s Goodluck Enterprises.

3. Subsequently investigations were further carried out and statements of various persons were recorded on the basis of which a show cause notice was issued proposing confiscation of the seized foreign currency and the seized Wagon-R vehicle along with imposition of penalties upon various noticees. The said show cause notice culminated into an order passed by the Original Adjudicating Authority confiscating the foreign currency as also the vehicle and imposing penalties of varying amount on the respondent.

4. The said order of the Original Adjudicating Authority was appealed against before Commissioner (Appeals), who allowed the appeals by observing as under:-

> *"It is also clear that the said foreign currency was obtained in violation of the provisions of Section 11 of the Customs Act, 1962 read with section 3 of FEMA 199 and brought into India by way of smuggling…."*
>
> *However, in the entire show cause notice as well as the impugned order there is no findings as to who smuggled the impugned currency into India? And when & how was the same smuggled into India?*
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> *9. Section 111 of the said Act, under which the impugned foreign currency has been confiscated, provides for confiscation of improperly imported goods. Thus, unless the improper importation is proved with evidence, the said section is not applicable, there is no evidence on record to prove that the impugned foreign currency was improperly imported. Mere improper procurement, if at all, in contravention of FEMA, will not attract Section 111 of the said Act. Hon'ble Tribunal in the case of CC vs L. Rajkumar , reported at 2014 (312) ELT 99 (Tri.-Chennai), in para 15, has held as under:*
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> *"The above section {i.e. section 111(d)} makes it amply clear that the goods are liable to confiscation under Customs Act if the goods are imported or attempted to be imported contrary to any prohibition under Customs Act or under any other law for the time being in force. So the*

prohibition imposed under Customs Act or any other law for the time being in force referred therein has to be a prohibition on import. The prohibition in FeMA on trading and possession of foreign currency will not come within the scope of Section 111(d) because this section deals with import and prohibition on import and no other prohibition…"

10. There is no evidence on record to prove improper importation of the impugned foreign currency. Therefore, the same cannot be confiscated under section 111(d) of the said Act. Consequently, there is also no ground to confiscate the impugned Indian currency and the Wagon-R vehicle and to impose penalty under section 112 of the said Act on the noticees. Thus, the impugned order is not sustainable and the same is set aside."

As is seen from above, the Appellate Authority has extended the benefit to the respondent by observing that the mere possession of foreign currency cannot result in application of the provisions of the Section 111 of the Customs Act and the Revenue is under an onus to prove that the said foreign currency was smuggled into the country. He also appreciated the respondent's stand that foreign currency is not one of the notified items under Section 123 of the Customs Act and as such onus to prove their smuggled nature is on Revenue. In the absence of any evidences to that effect, he set aside the order of the Original Adjudicating Authority.

4. We note that in their memo of appeal, Revenue has not advanced any evidence to show that the foreign currency, in question, was smuggled into the country. As such, we, fully agree with the Commissioner (Appeals) that in the absence of such evidences, confiscation of the same cannot be uphold, neither penalties can be imposed

upon respondents. Accordingly, we find no infirmity in the impugned order and reject the Revenue's appeal.

5. Stay petitions also gets disposed of.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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