IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE

TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH – KOLKATA

REGIONAL BENCH-COURT NO.2

Customs Appeal No. 75538 OF 2021

(Arising out of Order-in-Appeal No. KOL/CUS(AIRPORT)/AKR/98/2021 dated 27.01.2021 passed by the Principal Commissioner Customs (Appeal), Kolkata)

Mr. Pankaj Mittal **.... Appellant**
10 Mohalla Kanhaiya Lal, Ghaziabad-201001.

Versus

The Commissioner of Customs (Airport & Administration) Kolkata **.... Respondent**
Custom House, 15/1 Stand Road, Kolkata-700001.

Appearance:

Shri S. K. Verma, Advocate for the Appellant

Shri Manish Mohan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 75458/2022

Date of Hearing: 17.06.2022
Date of Decision: 10 August 2022

Per: P. ANJANI KUMAR

The appellant Shri Pankaj Mittal, was intercepted when he was about to board SG 83 to Bangkok on 13.11.2018; On search hand bagged Indian currency of Rs.1,86,500/- and Thai Baht of 8000/- was recovered; it appear to the department that the amounts were more than the permissible limit in terms of notification no. FEMA 6(R)-RB-2015 dated 29.12.2015; the permissible amount of currency of Rs.25,000/- was returned to the appellant and balance of Indian currency of Rs.1,61,500/- and Thai Baht of 8000/- were detained. The same was seized on 02.05.2019. A show cause notice dated

09.05.2019 was issued to the appellant. Vide O-I-O dated 18.11.2019 Assistant Commissioner of Customs confiscated the seized currency and imposed a penalty of Rs. 89,500/- on the appellant under Section 114 of the Customs Act, 1962. On an appeal preferred by the appellants Learned Commissioner (Appeals) vide order in appeal dated 27.01.2021 upheld the order of the lower authority. Hence, this appeal.

2. Learned Counsel for the appellant submits that the appellant being a layman, was not aware about the limitation of the Indian currency to be carried while going abroad; he has given the details of currency available with him truthfully when intercepted by the Customs Officers; the Customs Officers have not recorded his statement and have not given a copy of the detention memo dated 12.11.2018; the same was seized on to 05.02.2019 without his presence; show cause notice was given without any copies of the documents relied upon; the said currency seized from the appellant was derived out of his personals savings.

3. Learned Counsel for the appellants that the show cause notice is misconceived as the issuing authority is not a proper officer under FEMA Act, 1999; therefore, he did not open for the officers to invoked Section 47 of the FEMA Act, 1999; the proceedings were initiated against the appellants solely on the basis of the attempted exports of currency beyond the permissible limits without appreciating the fact that the said currency was not exported; confiscation is bad in law as the appellant had purchased and possessed a foreign currency legally; department has gravely eared in proposing confiscation of the currency without appreciating that special act shall prevail for the general act and therefore, seizure of the currency is bad in law. Learned Counsel for the appellants relies on

(i) Final Order No. 50008/2022 dated 04.01.2022 by Principal Bench in Customs Appeal No. 50001/2019

(ii) S. Radhakrishnan & Ors. 2007 (212) E.L.T. 436 (Tri.-Chennai)

(iii) Mrs. Suman Budhia (Agarwal) Order dated 01.06.2001 (Tri.-Kolkata)

(iv) Vasant Kumar Khakkhar Order dated 27.09.2019 in Customs Appeal Nos. 313, 314/2010 (Tri.-Mumbai)

(v) Decision dated 26.09.2013 by High Court of Madras in CMA No. 762/2006 and CMP No. 3035/2006

4. Learned Authorized Representative for the Department reiterates the findings in the Order-in-Original and Order-in-Appeal. He further submits that the issue being related to baggage the appeal should lie before the competent authority and not before the Tribunal. He relies on order of Kerala High Court dated 22.01.2021 in Customs Appeal Nos. 13 and 14 of 2020 and Supreme Court decision in the case of Rajgrow Impex LLP and Ors. in SLP 14633-14634 of 2020 and 1037 of 2021 and submits that the impugned goods may not be released.

5. Heard both sides and perused the records of the case. Regarding the submission that the issue is not maintainable, we find that as per Section 2 (22) of the Customs Act, 1962, goods include (a) vessels, aircrafts and vehicles (b) stores (c) baggage (d) currency and negotiable instruments and (e) any other kind of movable property. It can be seen that baggage and currency are listed separately thereby treating the same to be different. We understand that Customs Act, 1962 intends to recognize currency and negotiable instruments distinctly and differently few baggage. Therefore, an appeal concerning the seizure of currency is very much appealable before this Tribunal. We find that Principal Bench, vide Final Order No. 50283/2022, held that such appeals of seizure of currency are maintainable before the Tribunal. Similar opinion was given in (i) Vinod KR. Shaw 2003 (154) E.L.T. 205 (Tri.-Kolkata) (affirmed by Kolkata High Court in appeal no. 12/2003) and (ii) Rajesh Kumar Ishwar Parikh Customs Appeal No. 10501 of 2019 decided on 11.12.2020. Therefore, we have no hesitation to hold that the appeal is maintainable before the Tribunal.

6. In the instant case the appellant was found in position of Indian currency and Thai Baht in excess of the permissible limit under FEMA notification no. FEMA 6 (R)/ RB-2015 dated 29.12.2015 under FEM (Export and Import of currency) Regulations, 2015. The appellant's contention is that the money was legally procured from his savings; he was not aware of the rules and regulations pertaining to export of currency; when he was intercepted, he truthfully declared the currency available with him; his statement was not recorded immediately; relied upon documents for not provided along with show cause notice.

7. We find that it is not the case of the appellant that he has declared upfront the currency in his position while he was travelling Abroad and

the currency he carried was within limits prescribed under the notification. We find that in terms of the Regulation as discussed above Indian Currency over and above Rs.25,000/- is not permissible to be taken outside India. We find that as far as the Customs Act is concerned, knowledge or otherwise are not material for rendering the goods liable for confiscation. We find that in terms of Section 1139(d) of the Customs Act, 1962

> *Section 113 D – any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.*

In view of the above, the currency was attempted to the exported and was brought within the limits of customs area contrary to the restrictions and prohibitions imposed by the Customs Act or any other law for time being in force, is liable for confiscation. In the instant case all the criteria mentioned therein are satisfied. Regulation 3 of Foreign Exchange Management (export and import of currency) Regulations, 2015, provides that

"3. Export and Import of Indian currency and currency nots:-

(1) Save as otherwise provided in these regulations, any person resident in India,

a. May take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount into exceeding Rs.25,0000/- (Rupees Twenty Five Thousand Only) per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time;

b…

c…..

Therefore, it is clear that the activity of the appellant was an attempt to export currency over and above the limit. Therefore, the provisions of Section 113 of the Customs Act, 1962 and Section 114 of the Customs Act are attracted.

8. Coming to the issue of allowing redemption of the confiscated goods, we find that the original authority as well as the appellate authority have ordered absolute confiscation of the currency and have imposed penalty under Section 114. We find that learned Authorized Representative relied upon the cases, as cited above, and submits that the goods may not be released on payment of redemption fine. We find that the cases cited therein are not comparable. In the instant case, the issue involves an individual who is travelling Abroad for his personal work. No business dealing are alleged or indicated. It is not the case of the Department that the appellant was aware of the provisions of the

Rules and Regulations. Though by virtue of provisions of the customs act goods came to be liable for seizure, they cannot be equated with goods which were impugned in the cases cited above. In this circumstances the observation of the Apex Court in the case of Rajgrow Impex LLP and Ors. (supra) comes into play. It was held that the discretion has to be exercised judicially and, for that matter, all the facts and all the relevant surroundings factors as also the implication of exercise of discretion either way have to be properly weighed and balanced decision is required to be taken. In the facts and circumstance of the case as discussed above we find that absolute confiscation is not warranted. Any punishment needs to be commensurate with the offence. Looking into the facts of the case and the submission of the appellants we are inclined to accept that the impugned currencies can be permitted to be redeemed on payment of suitable fine and penalty, further reason, should be reasonable.

9. In view of the discussion above the appeal is partly allowed as follows:-

(i) INR of 1,61,500 and Thai Baht of 8000/- are allowed to be redeemed on payment of a fine, of Rs. 10,000/-, in lieu of confiscation.

(ii) Penalty imposed under Section 114 of the Customs Act, 1962 is reduced to Rs.5000/-.

(Order pronounced in the open court on 10 August 2022.)

Sd/

(P. K. Choudhary)
Member(Judicial)

Sd/

(P. Anjani Kumar)
Member (Technical)

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