

(2009) 04 DEL CK 0528
In the Delhi High Court
Case No : Writ Petition (C) 4931 of 1994

Ajit Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Customs Act, 1962 — Section 108, 113, 114(1), 124, 129DD

Citation : (2009) 04 DEL CK 0528

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Shweta Singh, for R.M. Bagai, for the Appellant; K.K. Sharma, for the Respondent

Judgement

Sanjiv Khanna, J.—Petitioner, Mr. Ajit Singh is an Afghan national. On 6th September, 1992 he was intercepted with foreign exchange equivalent to US\$ 10,343.00 and INR 841 at the international airport at Delhi before boarding a flight to Dubai. The break-up of foreign currency found in the possession of the petitioner is as under:-

Srl. No. Amount 1. Saudi Riyals 28,600 2 UAE Dirhams 2,425 3. Pound Sterling 1,074

2. The foreign currency was seized and statement of the petitioner was recorded u/s 108 of the Customs Act, 1962 (hereinafter referred to as the Act, for short).

3. Show Cause notice dated 22nd January, 1993 u/s 124 of the Act was issued to the petitioner. Petitioner pleaded not guilty and replied to the said show cause notice. Additional Collector of Customs vide Order dated 30th August, 1993 confiscated the entire foreign exchange and Indian currency of Rs. 841/-. In addition, personal penalty of Rs. 50,000/- was also imposed on the petitioner. Appeal filed by the petitioner was dismissed by Collector of Customs (Appeal), I.G. Airport vide Order dated 13th October, 1993.

4. The petitioner preferred a Revision Petition u/s 129DD of the Act to the

Government of India but the same stands rejected vide impugned Order dated 15th June, 1994. Thus, confiscation of the entire currency and penalty of Rs. 50,000/- imposed on the petitioner stand confirmed.

5. Learned Counsel for the petitioner has raised two contentions before me. It is submitted that the authorities below have not considered the contention of the petitioner relating to exchange rate fluctuation and secondly, foreign exchange to the extent of US\$ 10,000.00 could not have been confiscated. It is submitted that even if there was default of non- declaration, it was to the extent of foreign exchange equivalent to US\$ 343.00 and not the entire amount equal to US\$ 10,343.00. 6. In the statement of the petitioner recorded u/s 108 of the Act immediately after the search at the airport, the petitioner had stated as under:-

I did not declare this foreign currency. I left Kabul 8 months earlier to Delhi because the conditions are very bad there due to fighting. Therefore, I had to leave Kabul and obtain permit No. RC31934/Afghan/Delhi in the year 1992 dated 4.5.92 for living here. After coming to India, I have been going to Dubai three-four times per month approximately. I take to Dubai ready-made garments from India and some times bring textiles from Dubai to India. I had brought currency of US Dollars 10,343 recovered from me today from my brother for buying textiles here. Bank rate was low. So, I was taking the same back. I had never taken foreign currency out of India earlier. (emphasis supplied) 7. The Additional Collector of Customs in his order dated 8th September, 1993 observed that the petitioner had made 11 visits to Dubai during the last 3 months 12 days prior to 6th September, 1992. He rejected the contention of the petitioner that he was a tourist and in his order dated 30th August, 1993 has observed as under:-

In the absence of any proof that the noticee was engaged in any legitimate export business and that he had documentary or otherwise proof of legal acquisition/possession and export of Indian and or foreign currency, it is established that the noticee attempted to improperly export the currency, seized on 6.9.92, adopting the *modus-operandi* that he being a holder of Afghani passport is entitled to importation/exportation of currency without declaration upto an amount equivalent to 10,000 US Dollars. Therefore, the seized currency are liable to confiscation under the provisions of Section 113(d) of the Customs Act, 1962 and for such an act of the noticee he is liable for a penalty under the provisions of Section 114(1) of the Customs Act, 1962.

8. Collector of Customs (Appeals) in his order dated 13th October, 1993 held that the petitioner was a foreign national and explanation given by the petitioner was vague and his contention that he had brought the foreign currency from abroad was unsubstantiated and incorrect. It was held that the onus to establish that he had brought the foreign currency into India was on the petitioner.

9. The petitioner had relied upon certificate dated 13th November, 1993 issued by Al Misbah Exchange, Dubai certifying that the petitioner- Mr. Ajit Singh holder of Afghan passport was issued foreign currency as detailed therein on 26th

August, 1992. The said certificate was not dealt with by both Additional Collector of Customs and Collector of Customs (Appeals). I may note that these two authorities have not quoted and referred to specific evidence that the petitioner had purchased foreign currency in India but have proceeded on the basis that the onus was on the petitioner to show source of the said foreign currency and presumed that he had probably bought the said foreign currency in India. The Joint Secretary, Government of India, while disposing of the revision petition for the first time considered the certificate of the petitioner and his contention that he had made frequent travels abroad for business purposes and these were legitimate visits. The Joint Secretary while dismissing the revision petition has given his reasoning as under:-

After going through the records of the case, Government observe that the certificate of Al Misbah Exchange itself belies party's contention that the quantum of foreign exchange seized went beyond US\$ 10,000 limit due to exchange rate fluctuations; for apart from the currency said to have been converted 200 US Dollars were also seized. Thus the excess beyond US\$ 10,000 was not on account of rate fluctuation. Even otherwise the lower authorities have given good reasons to disbelieve the story with which the Government agree. The applicant is unemployed and his frequent visits abroad for short durations (11 times to Dubai in three months) tell a different story.

The application being without merit is rejected.

10. The findings given by the Joint Secretary, Government of India, are contradictory to some extent. On one hand, the certificate has been referred to and then observed that as per the certificate, the quantum of foreign exchange seized was beyond US\$ 10000. While making the said observation, the Joint Secretary has not taken into consideration the buying and selling rates and exchange rate fluctuation. Moreover, it is the exchange rate prevailing on the date when the petitioner had come to India, i.e. 27th August, 1992, which is relevant. As on the said date any foreign national could bring in India foreign currency equal to US\$ 10,000. Further, the Joint Secretary should have also examined and considered whether the entire amount of US\$ 10,343 should be confiscated and accordingly penalty should be imposed. In the second portion of the order dated 15th June, 1994 passed by the Joint Secretary, he has merely observed that the reasons given by the lower authorities are good and the petitioner was unemployed and had made frequent visits abroad. The second finding may not be relevant if the petitioner was entitled to bring foreign exchange upto US\$ 10,000 into India without declaration. Moreover, the order is cryptic and does not examine the pleas and the contentions of the petitioner.

11. In these circumstances, I allow the present writ petition and quash the order dated 15th June, 1994 passed by the Central Government and remand the matter back to the Central Government to pass a fresh order after examining the contentions of the petitioner.

12. The petitioner will furnish his latest address for service to the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue within four weeks and fresh order will be passed after issuing notice to the petitioner at his new address. The Central Government will decide the revision petition independently and without being influenced by any observations made in this order.

The writ petition is accordingly disposed of. No costs.