

(2000) 08 DEL CK 0136
In the Delhi High Court
Case No : CWP No. 4831 of 2000

Mohd. Ayaz

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Customs Act, 1962 — Section 125

Citation : (2003) 151 ELT 39

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : K.G. Seth, for the Appellant;

Final Decision : Partly Allowed

Judgement

Arijit Pasayat, C.J.—Order passed by Government of India, Ministry of Finance, Department of Revenue, while dealing with an application u/s 129DD of the Customs Act, 1962 (in short, the Act), is subject-matter of challenge in this writ petition. By the said order, in terms of Section 125 of the Act, the Revisional Authority allowed redemption of the foreign currencies confiscated on payment of Rs. 55,000/- as fine.

2. A brief reference to the factual aspect would suffice. Petitioner who was to travel to Dubai by PIA flight was intercepted when he was proceeding to board the flight. On being asked as to whether he was carrying any foreign currency, petitioner stated that he was carrying less than US\$ 5,000. On search, assorted foreign currencies of value equivalent to US\$ 5234 (equivalent to Rs. 2,23,251/- in Indian currency) were recovered. He admitted that on his arrival on 7-10-99 he had not declared possession of the same. His Explanation was that he was under the impression that the amount was less than US\$ 5,000. Additional Commissioner of Customs, IGI Airport, New Delhi passed a spot adjudication order dated 29-10-1999 directing confiscation of the recovered foreign currencies and a penalty of Rs. 5,000/- was also imposed. The matter was carried in appeal to the Commissioner of Customs (Appeals).

3. It was urged before the said appellate authority that means read was not established there was voluntary declaration and Therefore there should be exoneration. Reliance was placed on an order of Government of India No. 587/96, dated 2-8-1996 in the case of Irshad Hussain to substantiate the plea that confiscation and levy of penalty were not called for. The appellate authority observed that after complying with the procedure of Section 102 of the Act personal search was made and Riyals and Dirhams collectively amounting equivalent to Rs. 2,23,251/- were recovered. Petitioner is a frequent, traveller.

4. Though he claimed to be a non-resident Indian (in short, NRI), he cannot be termed to be an NRI in law. It was found that valuation of foreign currencies was done in accordance with the exchange rate in force. There was no material to show that wrong rates were applied. The conclusion of the original authority were held to be in order and appeal was dismissed. In the revision, stands taken before the first appellate authority were reiterated. Re-visional Authority found that the petitioner's plea about the voluntary declaration was not factually correct. He was intercepted when he was about to board the flight and disclosure was a calculated reply, Revisional Authority found that if the contention of the petitioner that the said foreign currency was imported when he arrived on 7-10-1999 is accepted, it does not mean that he can export the same without declaration. Petitioner admitted that he was well versed with rules relating to foreign currency in India. It was noticed that no material for wrong valuation was pressed for consideration. It was also found that the petitioner's claim that he was NRI was not tenable. The order cited by the petitioner was of no assistance to him as the party in that case was an NRI. In the instant case, the petitioner had failed to establish so, however, the revisional authority allowed redemption of foreign currencies on payment of fine of Rs. 55,000/-.

5. Learned Counsel for the petitioner submitted that in view of the petitioner's bona fide belief that the amount was less than US\$ 5,000, the authorities were not justified in their conclusion. Further, they should have held the petitioner to be NRI.

6. Finally, it was submitted that considering the amount involved, redemption fine is heavy. Counsel for UOI, however, submitted that the authorities have taken note of all relevant facts.

7. In a case of this nature, where factual findings have been re corded about lack of bona fides, NRI status which we find to be unassailable, there is practically very little scope for interference with the conclusions arrived. But we find substance in the plea of the learned counsel for the petitioner about the quantum of fine being on the higher side. What would be the appropriate fine is to be decided on facts of each case. In the peculiar circum stances, we feel that redemption fine of Rs. 25,000/- would meet the ends of justice considering the value of currencies seized. Writ petition is accordingly disposed of.