

(2016) 06 KL CK 0032

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35945 of 2008 (D)

Sunny Abraham

APPELLANT

Vs

Joint Commissioner of Customs, Kochi

RESPONDENT

Date of Decision : 09-06-2016

Acts Referred:

Citation : (2016) 340 ELT 82

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : S/Shri P.A. Augustian and T.R. Jagadeesh, Advocates, for the Petitioner; S/Shri Abraham Thomas, John Varghese, SCs and P. Parameswaran Nair, Asstt. Solicitor, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is stated to be a Non-Resident Indian doing business in Muscat. On 12-5-2006 the petitioner had arrived as a passenger from Muscat and, according to the petitioner, since he was not aware of the monetary limit of foreign currency that could be brought to the country, he did not declare the currency carried by him before the customs authority at the time of entry into country. Thereafter, on 18-5-2006 while the petitioner was returning to Muscat, and passing through the security check at the Cochin Airport, the customs authorities queried him as to whether he was carrying any foreign currency, to which he declared that he was carrying US \$ 6500. The customs officer, however, found that he was carrying 6500 US \$ and 2560 Oman Riyal, the total value of which, in Indian rupees, was Rs. 5,81,780/-. Inasmuch as the baggage rules permitted the carriage of only up to 5000 US \$ by a passenger, the customs authority seized the foreign currency. In the adjudication that followed, by Ext. P6 order, the adjudicating authority ordered the confiscation of the Oman Riyals and US Dollars in terms of Section 113 of the Customs Act, read with the provisions of Foreign Exchange Management Act, 1999. The petitioner was however, allowed to redeem the same on payment of

redemption fine of Rs. 3,25,000/-. A penalty of Rs. 1,05,000/- was also imposed on the petitioner. Aggrieved by Ext. P6 order, the petitioner preferred an appeal before the first appellate authority, who upheld the order of the adjudicating authority except in respect of the quantum of redemption fine, which was reduced to Rs. 2,00,000/-. The petitioner, therefore, preferred a revision application before the Government of India. By Ext. P9 order, the revision authority reduced the redemption fine further to Rs. 1,70,000/- and, stating that the personal penalty imposed was on the higher side fixed the personal penalty as Rs. 1,20,000/-, which incidentally is higher than the penalty of Rs. 1,05,000/- that was imposed by the lower authority. In the writ petition the petitioner is aggrieved by Exts. P6, P7 and P9 orders, to the extent they impose a redemption fine and personal penalty on the petitioner.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the petitioner.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and on a perusal of Exts. P6, P7 and P9 orders, I find that the finding of the revision authority in Ext. P9 order with regard to the fixing of redemption fine at Rs. 1,70,000/- is one that takes into account the relevant factors to reduce the redemption fine that was imposed by the lower authority. In my view, the said finding with regard to the redemption fine does not require any interference by this Court in these proceedings under Article 226 of the Constitution of India. As regards the personal penalty imposed on the petitioner, however, I find that the revision authority, while holding that the penalty imposed by the lower authority was on the higher side, and proposing to reduce the same, inadvertently fixed the personal penalty amount at Rs. 1,20,000/-, when the order of the lower authority had imposed a personal penalty of only Rs. 1,05,000/- on the petitioner. Taking note of the fact that the revision authority was convinced of the need for a reduction in the personal penalty on the petitioner, and that the penalty imposed by the immediate lower authority was only Rs. 1,05,000/-, I am of the view that the facts and circumstances of the case justify the reduction of the personal penalty on the petitioner to Rs. 50,000/-. Accordingly, while dismissing the writ petition in its challenge against Exts. P6, P7 and P9 orders, I hold that the petitioner shall be imposed a redemption fine of Rs. 1,70,000/- as contained in Ext. P9 order, but the personal penalty imposed shall stand reduced to Rs. 50,000/-. The excess amount, if any paid by the petitioner pursuant to the orders impugned in the writ petition, shall be refunded to the petitioner within a period of two months from the date of receipt of a copy of this judgment.