

Sudhir Kumar vs Directorate Of Revenue Intelligence & ... on 14 May, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, I.S.Mehta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2137/2019

SUDHIR KUMAR

..... Petitioner

Through: Mr. D.S. Chadha, Advocate with Ms.
Harsimaran and Ms. Esha Sharma,
Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE & ANR.

..... Respondents

Through: Mr. Ajit Sharma, Advocate with Mr.
Talha Abdul Rahman, Mr. Ashutosh
Senger and Mr. M. Shaz Khan,
Advocates for DRI.
Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Suhani Mathur,
Advocate for R-2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA
ORDER

% 14.05.2019 CM APPL. 10000/2019 (for exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 2137/2019 & CM APPL. 22498/2019 (for modification of order)

2. The present petition seeks directions to the Respondents, i.e. the Directorate of Revenue Intelligence ('DRI') (R-1) and the Commissioner of Customs (R-2) to return to the Petitioner the foreign currency seized from him way back on 27th September 2013.

3. On the aforementioned date, the Petitioner was going to Dubai, when he was intercepted by the officers of the DRI. He replied in the affirmative to a question whether he was carrying foreign currency equivalent to Indian Rupees 70,00,000. Thereupon, the said foreign currency was seized by the DRI officers.

4. On 21st March 2014, the Petitioner was issued a show cause notice (SCN) which bore the date of 27th September 2013. The Petitioner states that he replied to the SCN on 19th April 2014.

5. Thereafter, on 23rd July 2014 an Order-in-Original was passed by the Additional Commissioner of Customs, whereby, Indian currency of Rs. 12,000/- and foreign currency equivalent to Rs. 6947315/- was confiscated and a penalty was also levied. The Petitioner's appeal was disposed of by the Commissioner of Customs (A) by the order dated 3rd August 2015 permitting redemption of the foreign currency against payment of fine. The penalty was also reduced.

6. The Petitioner's Revision Petition came to be rejected by the Additional Secretary, Government of India, Ministry of Finance by an order dated 1st November 2017. In a communication dated 23rd October 2018 from the Commissioner of Customs to the Additional Director of DRI, it was noted that the order dated 5th June 2018 passed by the Additional Secretary had been accepted by the Competent Authority. It was also noted that the Petitioner had deposited the redemption fine of Rs.12,35,000/- and penalty of Rs. 5,00,000/- on 4th October 2018. It was accordingly requested by the Joint Commissioner of Customs to the DRI that 'since, as per available records, the case was booked by your office and the seized currency is also lying with your office, therefore, it is requested to do the needful for release of the said foreign currency to Sh. Sudhir Kumar (the Pax) under intimation to this office after completion of any other formalities, deemed necessary from your end.'

7. Thereafter, despite, several requests in writing made by the Petitioner to the Additional Director, DRI, the foreign currency was not released leading to the filing of the present petition.

8. On 10th April 2019, while directing notice to be issued to the Respondents, this Court passed a detailed order, the operative portion of which reads as under:

"This court is of the opinion that once finality attached to the order of Commissioner (Appeals) which was confirmed by the Central Government, the question of non-compliance with the order could not have arisen. The disposal of foreign exchange is per se no ground to deny the return of foreign exchange which is available even otherwise with the Central Government. In these circumstances, the respondent DRI is hereby required to ensure compliance with the order, directing release/refund of the foreign exchange - in line with the letter of the Commissioner of Customs dated 23.10.2018 (page 66 of the writ petition) within three weeks failing which, the concerned Additional Director shall be present in court as prima facie inaction appears to be contumacious."

9. An application has been filed on behalf of the DRI stating inter alia that the foreign currency that was seized did not vest with the DRI, but with Customs, and, therefore, the said order dated 10th April 2019 had to be complied with by the Customs Department. It is further pointed out that the Petitioner had to file a redemption application under Section 27 of the Customs Act, 1962, in order to seek refund.

10. The said application being CM No. 22498/2019 was listed before this Court on 10th May 2019. This Court rejected the prayer for modification of the order dated 10th April 2019 but issued notice only in respect of prayer B viz., that the obligation to comply with the order of this Court was of the Customs.

11. It appears that on 14th May 2019, the Customs addressed a communication to the Additional Director General (ADI) asking the DRI to comply with the order dated 10th April 2019 passed by this Court.

12. This Court has heard learned counsel for the parties.

13. The fact of the matter is that the foreign currency seized from the Petitioner, no longer exists as such. Learned counsel appearing for the DRI states on instructions that the said foreign currency has been disposed of by conversion into Indian currency in terms of Section 150 of the Customs Act, 1962. He has produced a copy of the notification dated 14th February 2006 issued by the Central Board of Excise and Customs. However, the Court notes that paragraph 3 of the said notification requires notice to be issued to the owner of the goods prior to its disposal. In the present case, the case of the Petitioner is that no such notice was received by him before disposal of the foreign currency by conversion into Indian rupees.

14. It is submitted by counsel for both the Customs Department as well as the DRI that the Petitioner should file one more application for release of the Indian rupees equivalent of the foreign currency seized from him.

15. The Court fails to understand why the Petitioner should be made to file repeated applications for this purpose. The orders already passed in the matter are abundantly clear. The Petitioner having complied with his obligations in depositing the redemption fine and penalty, there can be no excuse from the Respondents for not releasing the Indian rupee value of the foreign currency seized from the Petitioner, now that the foreign currency originally seized no longer exists in that form. The Court accordingly directs that the present petition itself will be treated by the Respondents as the application by the Petitioner for release of the Indian rupee equivalent of the foreign currency.

16. Nothing has been shown to this Court to dispute the contention of the Petitioner that he did not receive any notice prior to the conversion of the foreign currency into Indian rupees. Counsel for the Petitioner has placed before the Court the exact amount in Indian rupees that is payable to the Petitioner by converting the foreign currency that was seized from him into Indian rupees by applying the conversion rates as of today i.e. 14th May 2019. The Court finds the plea of the Petitioner that he should be paid the Indian rupees equivalent by applying the conversion rate as of today to be entirely justified in the facts and circumstances of the case.

17. The Petitioner's calculation of the amount payable after applying the conversion rate for the various foreign currencies held by him at the time of confiscation has been handed over to both counsel for the DRI and Customs. The said details submitted in a tabular form read as under:

S.No.		FOREIGN CURRENCY	CONVERSION RATE OF FOREIGN CURRENCIES INTO INDIAN	TOTAL VALUE IN RUPEES
1.	Nepali Currency	5,81,500/-	@ 0.622	3,61,693/-

2.	Shri Lanka Currency	17,84,500/-	@ 0.392	7,04,877/-
3.	Saudi Riyal	3,30,000/-	@ 18.435	60,83,550/-
4.	Qatar Riyal	2,566/-	@ 18.99	48,728/-
5.	UAE Dirham's	1305/-	@ 18.82	2,456/-
6.	Indian Currency			10,000/-
			TOTAL	Rs.72,11,304/-

18. The Court accordingly directs that the Petitioner will appear before Dr. Amandeep Singh, the Additional Commissioner of Customs, IGI Airport, New Delhi on 28th May 2019 at 11:00 a.m. The amount payable will be worked out by applying the conversion rate as of today and paid to the Petitioner in the manner prescribed by law i.e. whether by Demand Draft or a Banker's Cheque. The amount will be handed over to the Petitioner by Dr. Amandeep Singh and an acknowledgment obtained and kept on record. It will be open to the Customs Department to verify the correctness of the above calculations given by the Petitioner. It is however, made clear that the conversion rate applicable would be as that of today i.e. 14th May 2019.

19. If there is any non-compliance with the above directions, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

20. The petition is allowed with the above directions.

21. Dasti.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 14, 2019 nd