



2024 : DHC : 303-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 04 January 2024**
Judgment pronounced on: 15 January 2024

+ W.P.(C) 11354/2023

OGULJEREN HAJYYEVA Petitioner
 Through: Mr. Pramod Kant Saxena,
 Advocate

versus

COMMISSIONER OF CUSTOMS Respondent
 Through: Ms. Anushree Narain,
 Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present Writ Petition has been filed for directing the execution of the Adjudication Order-in-Original bearing C. No. VIII(AP) 10/P&J/Adj/16/2020/18695-18700 dated 28.01.2020 passed by the Additional Commissioner of Customs, allowing the redemption of the seized foreign currency of the petitioner amounting to USD 18500/-.

2. FACTUAL BACKGROUND

Petitioner is a foreign national of Turkmenistan. She was to depart from T-3, IGI Airport, New Delhi on 18.12.2019 to Turkmenistan by Flight No. T5 532. After she had completed the immigration and boarding formalities, she was intercepted near Flight



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Gate No. 11 of the Departure Hall of T-3, IGI Airport. She was served with notice under Section 102 of the Customs Act, 1962 in the presence of independent Panchas and an interpreter informing therein that her personal search and examination of her baggage was required. She was informed that the same could be conducted in the presence of a Gazetted Officer or any Gazetted Lady Customs Officer. As per her consent, a Lady Customs Officer conducted the personal baggage search of the petitioner which led to recovery of USD 18500/-. Petitioner failed to produce any documentary evidence for the legal possession and export of the recovered foreign currency, said foreign currency was then seized under Section 110 of the Customs Act, 1962. Subsequently, the recovered foreign currency was deposited with Central Bank of India, IGI Airport Branch vide office letter dated 22.08.2019.

3. Show Cause Notice dated 15.01.2020 was served upon the petitioner. In her reply, petitioner stated that she was not having any knowledge of the legal provisions and that the non-declaration and attempt to take the foreign currency out of India was unintentional and that the seized foreign currency may be released and the confiscation or the penal action may be waived off.

4. Adjudication proceedings were conducted by the respondent and vide Order-in-Original bearing C. No. VIII(AP)10/P&J/ Adj/16/ 2020/ 18695-18700, the seized foreign currency i.e. USD 18,900/- equivalent to Indian currency i.e. Rs. 13,07,950/- seized from the petitioner was ordered to be confiscated. However, the petitioner was allowed the redemption of the foreign currency on the payment of



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redemption fine of Rs. 2,60,000/- under Section 125 of the Customs Act with the stipulation that the offer of redemption was valid only for a period of three months from the date of issue of order. In addition, a penalty of Rs. 2,60,000/- was also imposed on the petitioner under Section 114 of the Customs Act.

5. Petitioner through her Power of Attorney addressed a letter dated 02.06.2023 to the Commissioner of Customs for permitting redemption of USD 18,900/- after deducting the penalty/fine. On the failure of the respondent, petitioner preferred the present Writ Petition.

6. **SUBMISSIONS**

The learned counsel for the petitioner has submitted that due to Covid Pandemic and Lockdown in March 2020, petitioner was stranded, all the offices were shut due to which the petitioner could not get her seized foreign currency released. It is submitted that the Hon'ble Supreme Court in *suo-moto* proceedings, had ordered the extension of limitation period in all the matters till 31.03.2022 and that since thereafter petitioner called the respondent's office on phone several times and also sent a letter dated 02.06.2023 for allowing the redemption of her seized foreign currency, but her request has not been accepted.

7. *Per contra*, the learned counsel for the respondents has argued that the adjudicating authority had given an option of redemption of goods to the petitioner upon the payment of redemption fine and such offer of redemption was valid only for a period of three months from the date of issuance of the order. It is submitted that the petitioner did



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not avail the option within the prescribed period of three months or even 120 days as directed under Section 125 of the Customs Act. It is also submitted that even taking into account the order passed by the Hon'ble Supreme Court in *suo-moto* proceedings, redemption period of three months was valid only upto 10.05.2022 (approximately two months from 28.01.2020 to 20.03.2020 and further 40 days from 01.04.2022 to 10.05.2022). It is thus submitted that the statutory limit to avail the redemption has expired, writ petition is therefore liable to be dismissed.

8. **FINDINGS & CONCLUSION**

Section 125 of the Customs Act reads as under:-

“125. Option to pay fine in lieu of confiscation.—

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit: [Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply: Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of



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option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.—For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. Reading of Section 125 (3), makes it clear that an option has to be given to the owner of the goods to pay fine in lieu of confiscation and such option has to be exercised within a period of 120 days from the date of option.

9. Ordinarily the Adjudicating Officer needs to give option to the owner of the goods to pay fine in lieu of the confiscation and if such fine is not paid within a period of 120 days, such option will become void. But the goods seized in the present case are nothing else but foreign currency.

10. The Order-in-Original is not under challenge in the present writ petition. The relevant portion of the order passed by the Additional Commissioner of Customs is reproduced below:-

- I. *I order for confiscation of the seized foreign currency, i.e., 18,900 USD equivalent of INR 13,07,950/- (Rupees Thirteen Lakh seven Thousand Nine Hundred Fifty Only) seized vide seizure memo dated 19.12.2019 under Section 113 of the Customs Act, 1962.*
- II. *I allow the redemption of the Foreign currency on payment of Redemption Fine of Rs. 2,60,000/- under Section 125 of the Customs Act, 1962. The offer of redemption shall remain valid for a period of three months from the date of issue of this order.*



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- III. *I also impose a penalty of Rs. 2,60,000/- on the Noticee-2 under Section 114 of the Customs Act, 1962.*
- IV. *The Redemption Fine and Penalty collectively amounting to Rs.5,20,000/- shall be realized from the total amount of Rs. 13,07,950/- and the remaining amount of Rs. 7,87,950/- shall be released to the Noticee-2.*

11. The seized currency is already with the respondent and in paragraph (iv) of Order-in-Original, there is a clear direction for realization of the redemption fine and the penalty collectively amounting to Rs. 5,20,000/- from the total amount of Rs. 13,07,950/- and for the release of the remaining amount of Rs. 7,87,950/- to the petitioner. Since the currency was already lying with the department and only balance amount was to be released after adjusting the redemption fine and penalty, no further option was to be exercised by the petitioner. The Order-in-Original itself records that Notice No. 2 (petitioner herein), in her reply made a request for the release of the seized foreign currency i.e. USD 18500/-. At best, such request of the petitioner may be considered as an exercise of the option. Even otherwise, as the Order-in-Original directs the redemption fine and penalty to be realised from the total amount and the remaining amount to be released, it would be deemed that the petitioner has paid the redemption fine and penalty on the day of the order. The deemed payment having been made, there is no justification in the respondent's holding that the payment has not been made and the option has lapsed. The action of the respondents is accordingly not sustainable.



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12. In view of the above, we find no justification for not releasing the money in terms of the Order-in-Original dated 28.01.2020. Petition is allowed with a direction to the respondent to release the remaining amount after realizing the redemption fine and penalty from the seized foreign currency within a period of two weeks from today.

RAVINDER DUDEJA, J.

SANJEEV SACHDEVA, J.

January 15, 2024

RM