

REGISTERED  
SPEED POST



F. No. 380/27/B/2018-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 21/8/19.

ORDER NO. 04/19 - Cus dated 21-8-2019 OF THE GOVERNMENT OF INDIA, PASSED BY SMT MALLIKA ARYA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC (A)CUS/D-I/Airport/355/2018 dated 12/09/2018, passed by Commissioner of Customs (Appeals), NCH, Near IGI Airport, New Delhi.

APPLICANT : Commissioner of Customs (Airport & General), New Delhi

RESPONDENT: 1. Raju Sharma  
2. Surender Gupta

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**ORDER**

A Revision Application No. 380/27/B/2018-R.A. dated 18/09/2018, has been filed by the Commissioner of Customs, New Delhi (hereinafter referred to as the "applicant") against the Order No. CC(A)CUS/D-I/Airport/355/2018 dated 12/09/2018, issued by the Commissioner of Customs (Appeals), whereby the order No. 133/2016-17 dated 02.08.2016 of the Assistant Commissioner of Customs, IGI Airport, New Delhi, releasing the Indian currency equivalent to Rs. 3,75,000/- on payment of redemption fine of Rs. 50,000/- and the penalty of Rs. 25,000/-, on each of the respondent has been upheld.

2. The revenue has filed the revision application mainly on the ground that the Indian currency recovered from Mr. Raju Sharma was procured by him in India without any documents and hence he cannot be allowed to take the recovered Indian currency out of India. Moreover Raju Sharma was only a carrier, the said Indian currency cannot be released on payment of Redemption fine.

3. A personal hearing was held on 16.08.2018 which was attended by Mr. Raju Sharma and Mr. Sunil Kumar, Advocate, on behalf of respondent and submitted written submissions dated 16/08/2019 to emphasise that revenue's revision application is not tenable as the goods are bound to be released on payment of fine and penalty. They also reiterated their submissions on the revision application of the department. Besides above, the respondent has also filed an application under Section 110A of the Customs Act, 1962 for provisional release of the goods.

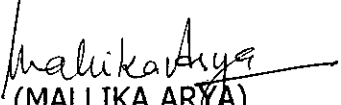
However, no one appeared on behalf of revenue and no request has been received for a personal hearing on any other date. Therefore, I take up the case for final disposal.

3. The government has examined the matter and found that the revision application has been filed mainly on the ground that the Commissioner (Appeals) has erred by allowing the goods to be released on payment of redemption fine as Raju Sharma was only the carrier of the goods and not the owner of goods. The only issue to be decided here is as to whether the seized Indian currency can be released on payment of fine to a carrier of the impugned goods. As per the provisions of the Section 125(1) of the Customs Act, 1962 "*the confiscated goods can be released on payment of fine 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*". It is on record that Sh. Raju Sharma was merely a carrier and not the owner of the goods. He, himself has accepted this fact in his statement before the Customs authorities and that the owner of the goods is Sh. Surender Gupta. The Government finds that as the owner of the goods is known in this case the adjudicating authority and Commissioner (Appeals) have not decided the case as per the provisions of Customs Act and erred by releasing the goods on payment of redemption fine. In this context, reliance is placed on the following judgement of High Court of Bombay in the case of Union of India Vs. Aijaj Ahmad – 2009(244)ELT 49 (Bom.). In this case, the Bombay High Court while deliberating on option to be given to whom to redeem the goods has held in para 3 of the judgment as follows:-

"3. In the instant case, according to the respondent himself the owner was Karimuddin as he had acted on behalf of Karimuddin. The question of the Tribunal exercising the jurisdiction u/s 125 of the Customs Act and remit the matter to give an option to the respondent herein to redeem the goods was clearly without jurisdiction."

The aforesaid judgement has been subsequently upheld by the Hon'ble Supreme Court [2010(253) ELT A83 (SC)]. Therefore, the Government accepts the revenue's contention and set aside the order of Commissioner (Appeals) to the extent of allowing release of confiscated goods on imposition of redemption fine. However, Government upholds the Order-in-Appeal regarding imposition of penalty of Rs. 25,000/- each on both the respondents i.e. Sh. Raju Sharma and Sh. Surender Gupta. The request of the respondent to release the goods on provisional basis becomes redundant in the light of the above.

4. In terms of the above discussion, the revision application filed by the revenue is allowed.

  
(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

The Commissioner of Customs (Airport & General)  
Terminal-3, IGI Airport,  
New Delhi- 110037

Order NO. Cus dated 2019

Order NO. 04/19 - Cus dated 21-8-2019

Copy to:-

1. The Commissioner of Customs(Appeals), New Custom House, New Delhi-37
2. The Assistant Commissioner of Customs (Review), IGI Airport, New Customs House, New Delhi- 110037
3. Mr. Raju Sharma S/o late Mr. Radha Krishan, R/o H.No. 119, Sector-14, Karnal , Haryana
4. Mr. Surender Gupta, R/o 2249, Sector-7, Karnal, Haryana
5. Mr. Sunil Kumar, Advocate, 433 Lawyers Chambers Block, Dwarka Court complex, Sector-10, New Delhi- 110075
6. P.S. to A.S.
7. Guard File
8. Spare copy

ATTESTED

*N.D.*  
21/8/19

(NIRMALA DEVI)  
Section Officer