REGISTERED

SPEED POST

F. No. 372/05/B/2019-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue 21.8.19

ORDER NO.111/19-Cus dated 30-8-2019 OF THE GOVERNMENT OF INDIA, PASSED BY Ms. 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-AppealNo. KOL/CUS(A/P)AA/72/2019 dated 01.02.2019, passed by the Commissioner of Customs (Appeals), Kolkata.
APPLICANT	:	**Mr. Sajjad Ali**, Kolkata
RESPONDENT	:	Commissioner of Customs, Kolkata

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ORDER

A Revision Application No. F. No. 372/05/B/2019-R.A..dated 18.02.2019 has been filed by Mr. Sajjad Ali (hereinafter referred to as the applicant) against the Order No. KOL/CUS(A/P)AA/72/2019 dated 01.02.2019, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the order of the Additional Commissioner of Customs, Kolkata, absolutely confiscating the foreign currency equivalent to Rs. 32,07,500/- and imposing an equal penalty of Rs. 32,07,500/- on the applicant has been upheld.

2. The revision application has been filed mainly on the ground that the Commissioner (Appeals) has erred by not allowing the goods to be released on redemption fine by absolutely confiscating foreign currency which is not in the nature of prohibited goods and a higher penalty has been imposed on the applicant.

3. The brief facts leading to this case are that the applicant was intercepted at the Kolkata Airport while trying to illegally export foreign currency, US Dollars 50,000/-, equivalent to Indian Rs. 32,07,500/-. The said currency was concealed in A.C. Adaptors to escape detection. He failed to produce any licit documents in support of his acquisition, possession/or legal exportation of the currency recovered from him. The original adjudicating authority confiscated the currency absolutely under Section 113 (d) and 113 (e) of the Customs Act, 1962 read with FEMA, 1999 and Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and imposed an equal penalty of Rs. 32,07,500/- on the applicant under Section 114 of the Customs Act, 1962. Being aggrieved, the applicant appealed to the Commissioner (Appeals) who upheld the order-in-original. The applicant has filed the present revision application against the aforesaid order-in-appeal.

4. A personal hearing was granted on 26.08.2019. Sh. Shovendu Banerjee, Advocate, appeared on behalf of the applicant. He reiterated the grounds of revision already pleaded in their revision application. He contended that currency is not a "prohibited" item. He further contended that Commissioner (Appeals) has absolutely

confiscated the currency and imposed equal amount of penalty. The applicant is a carrier who had done this for a commission on behalf of the actual owner of goods. The owner of the impugned currency is Mr. Siku as per the statement tendered by the applicant under Section 108 of Customs Act, 1962. Option of redemption should have been given to the applicant and penalty imposed is on the higher side. Considering the financial condition of the applicant, penalty should be dropped or reduced. He submitted two judgements in his defence, Government of India's order in the case of Mr.Chellani Mukesh [2012(276)ELT 129 (GOI)] and CESTAT's judgement in the case of Mr. Kamara Kaid Mohammed Vs Commissioner of Customs (Prev.), Mumbai [2003(162)ELT 237(Tri. Mumbai)]. Since nobody appeared for the respondent and no request for personal hearing was also received from them, the case is being taken up for disposal on the basis of facts on record.

5. The government has examined the matter. The applicant has undeniably attempted to illegally export foreign currency out of the country. The Commissioner (Appeals) has referred to various legal provisions in his Order by virtue of which it is absolutely clear that the applicant attempted to illegally export the foreign currency which had not been procured from the authorized sources and hence prohibited. This view is also fully supported by the RBI Master Circular No. 10/2013-14 dated 01/07/2013. Various judicial pronouncements have been relied upon by the Commissioner (Appeals) to support his view that the prohibited foreign currency is liable for confiscation.

6. The applicant has not disputed the order of the Commissioner (Appeals) to the extent of confiscation of foreign currency. However, he has challenged the order to the extent that the foreign currency should have been released on payment of redemption fine and reasonable penalty etc. In RBI's Master Circular No. 10/2013-14 dated 01.07.2013 it is stipulated that:

"Taking out foreign exchange in any form, other than foreign exchange obtained from an authorized dealer or a money changer is prohibited unless it is covered by a general or special permission of the Reserve Bank."

Also, Sub Section (1) of Section 125 of Customs Act, 1962 reads as under:

"Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Actor under any 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."

As per Section 125 of Customs Act the option to redeem confiscated goods is available to the owner of the said goods if he is known. In the subject case the identity of the owner is known. Therefore, the adjudicating authority has rightly confiscated the prohibited goods recovered from the applicant without giving an option for redemption since the applicant is not the owner of the goods and was a mere carrier working on the basis of commission.

7. Reliance is placed on the 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 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 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 Government upholds decision of the lower authorities in the light of provisions of Section 125 of the Customs Act, 1962 read with RBI Master Circular No. 10/2013-14 dated 01.07.2013 which clearly prohibits taking out foreign exchange in any form other than foreign exchange obtained from an authorized dealer unless it is covered by a general or special permission by RBI.

8. The case laws referred by applicant cannot be relied upon since the facts and circumstances are different. In the case of Sh. Chellani Mukesh, the offending currency was a small amount of Indian rupees whereas in the case of Mr. Kamara

Kaid Mohammed, a Yemen national, the applicant was able to produce an exchange certificate to prove the legit nature of the currency attempted to be exported.

9. As per Section 114 of the Customs Act, penalty up to 3 times of the value of the prohibited goods can be imposed. Therefore the penalty imposed equivalent to the value of the prohibited goods is reasonable on a person who has indulged in a serious offence of procuring huge foreign currency illegally and attempted to export the same out of the country in gross violation of the provisions of FEMA read with Customs Act, 1962.

10. Considering these facts and the nature of offence committed by the applicant, the government does not find any reason to interfere with the order-in-appeal. Accordingly, the revision application filed by the applicant is rejected.

(Mallika Arya)
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Mr.Sajjad Ali,
Son of Wahid Ali,
Vill-37/5B, Kabitirtha Sarani(Watgunje Street),
Khidirpore, Kolkata-700023.
West Bengal, Pin-743263.

ORDER NO. 1019-Cus dated 30-8-2019

Copy to:-

1. Commissioner of Customs (Airport & Admin), NSCBI Airport, Kolkata-770 052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
3. P.S. to A.S.
4. Guard File
5. Spare copy

ATTESTED

(Ashish Tiwari)
Assistant Commissioner