

SPEED POST



F. No. 372/27/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...23/03/21..

Order no. 131/21-Cus dated 23/03/2021 of the Government of India, passed by Sandeep Prakash, 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. KOL/CUS/(Airport)/AA/ 223/2019 dated 02.04.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Mr. Avtar Singh, Kolkata.

RESPONDENT : The Commissioner of Customs (Airport & Admn.), Kolkata.

ORDER

A Revision Application No. 372/27/B/2019-R.A. dated 25.06.2019 has been filed by Mr. Avtar Singh, Kolkata (hereinafter referred to as the Applicant) against Order-in-Appeal No. KOL/CUS/(Airport)/AA/ 223/2019 dated 02.04.2019, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, AIU, NSCBI Airport, Kolkata bearing No. 83/2018 AC dated 14.12.2018, wherein foreign currency amounting to USD 10000/-, equivalent to Rs.6,32,500/-, has been confiscated absolutely and a penalty of Rs.6,32,500/- under Section 114 of the Customs Act, 1962, has been imposed on the Applicant.

2. Brief facts of the case are that the Applicant, scheduled to depart to Dhaka on 14.09.2017, was intercepted at the NSCBI Airport, Kolkata. On personal search of the Applicant, a total of USD 10,000 was recovered from the pair of socks worn by him. The Applicant could not produce any evidence of lawful acquisition/possession/or legal exportation of the said currency. Another amount of USD 750, in respect whereof documents were produced, was returned to the Applicant. In his voluntary statement dated 14.09.2017, recorded under Section 108 of the Customs Act, 1962, the Applicant stated that he took the currency from Sadar Street, Kolkata and he was going to earn Rs.10,000/- on handing over the same to a person in Bangkok. The said foreign currency was confiscated absolutely by the original authority under Sections 113(d), 113(e) and 113(h) of the Customs Act, 1962 read with Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 and a penalty of Rs. 6,32,500/- was also imposed on the Applicant under Section 114 of

the Customs Act. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal. |

3. The revision application has been filed by the Applicant canvassing that import & export of Indian & foreign currency is not prohibited; that USD 10000 were legally imported as gift/Honorarium during his previous visits abroad; that no corroborative evidence has been brought about to show that the foreign currency was acquired from illegal sources; that he is the owner of the foreign currency; that the currency in question was the unspent amount which he had imported earlier but as he was allowed to take only USD 2000/- with him, the same may be released unconditionally and the remaining USD 8000/- may be released on payment of redemption fine and penalty; that prohibition under FEMA has been rendered nugatory in the absence of a complementary order or regulation under the Customs Act, 1962 requiring a departing passenger to declare the foreign currency carried by him at the time of his/her departure from India.

4. Personal hearing in the matter was fixed on 16.09.2021. No one appeared for the Applicant and no request for adjournment has also been received. However, detailed written submissions for the personal hearing have been filed on 15.09.2021. Shri. Saurabh Das, Superintendent, appeared for the respondent department and supported the orders of lower authorities

5. The Government has carefully examined the matter. It is evident, from the evidence on record, that the foreign currency was recovered from the Applicant,

which was concealed in the pair of socks worn by him. It has been admitted by the Applicant in his statement tendered under Section 108 of the Customs Act, 1962, that he did not declare the currency to the Customs officers at the airport under Section 77 of the Customs Act, 1962, and did not have any documents or evidence showing lawful possession of the currency. The Applicant has, at this stage, claimed that he acquired/possessed the seized US dollars by way of gifts or honorarium and had imported the same during his previous last 2 trips but no evidence has been produced to substantiate this claim. Further, this claim was not made at the time of recording his voluntary statement dated 14.09.2017. Moreover, the currency notes were in continuous serial numbers, viz. MB 11701401B to MB 11701500B, which would not have been the case if the currency was brought in two different trips, as claimed by the Applicant now. Thus, this contention of the Applicant appears to be nothing but an afterthought and is, as such, not acceptable.

6. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, specifies that *"Except as otherwise provided in these regulations, no person shall, without the general or special permission of Reserve Bank, export or send out of India, or import or bring into India, any foreign currency."* Further, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000; any person resident in India could retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate subject to the condition that such currency was acquired by him by way of payment for services outside India or as honorarium, gift, etc. In the present case, the Applicant has not produced any permission from the Reserve Bank

of India for export of foreign currency found in their possession. He has also not shown compliance with the provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2001. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled. The Government further observes that, as per Section 113(d) ibid any goods attempted to be exported, contrary to any prohibition under the Customs Act or any other law, are liable to confiscation. Thus, it is incorrect to contend that in absence of any complementary order or regulation under the Customs Act, the prohibition under FEMA has been rendered nugatory, since parent statute itself makes any goods that are attempted to be exported in contravention of any other law liable to confiscation.

7. The Applicant has contended that the seized foreign currency is not 'prohibited goods'. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "*Any prohibition*" means *every prohibition . In other words all types of prohibition. Restriction is one type of prohibition*". The provisions of Section 113(d) are in pari-materia with the provisions of Sections 111 (d). In the case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, which involved a case of export, the Hon'ble Supreme Court has held that "*if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods*". In its judgment dated 17.06.2021, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has

followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."* In view of the position explained in para 6 above, the conditions subject to which the currency could have been exported, have not been met in the present case. Hence, the seized foreign currency is "prohibited goods".

8. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962, which has been challenged in the instant Revision Application. The Government observes that the option to release 'prohibited goods' on redemption fine is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (supra), the Hon'ble Supreme Court has held *"that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations"*. In the present case, the Applicant acted merely as a carrier of the seized currency. Thus, no case for interference with the discretion exercised by the original authority is made out.

9. It is observed that a penalty of Rs. 6,32,500/- has been imposed on the Applicant which is equal to the convertible value of the foreign currency seized. In the facts and circumstances of the case, specially as the foreign currency has been

absolutely confiscated, the Government finds that a penalty of Rs. 2 lakhs shall meet the ends of justice.

10. The revision application is allowed partly to the extent of reduction in penalty, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

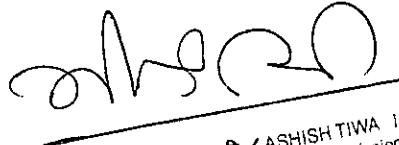
Mr. Avtar Singh, S/o Shri. Harbhahan Singh
85, Diamond Harbour Raod, P.O. Sahpur
Kolkata-700038 (W.B.)

Order No. 19 /21-Cus dated 23/09 2021

Copy to:

1. Commissioner of Customs (Airport), N.S.C.B.I. Airport, Kolkata-700001
2. Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001
3. PA to AS(RA)
4. Guard File.
5. Spare Copy.

ATTESTED



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
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