

REGISTERED

SPEED POST



F. No. 380/06/B/2017-R.A.  
372/07/B/2017-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... 9/10/18

ORDER NO. <sup>193-194/2018-Cus</sup> Cus dated 5-10-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R. P. SHARMA, 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(A/P)/AA/27/2017 dated 19/01/2017 passed by Commissioner of Customs (Appeals), Kolkata.

APPLICANT : 1. Addl. Commissioner of Customs, (Airport), Kolkata.  
2. Sh. Rajesh Upadhyaya, West Bengal.

RESPONDENT: 1. Sh. Rajesh Upadhyaya, West Bengal.  
2. Addl. Commissioner of Customs, (Airport), Kolkata.

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## ORDER

Revision Applications Nos. 380/06/B/2017-R.A. dated 6/4/2017 and 372/07/B/2017-R.A. dated 20.04.2017 have been filed by the Commissioner of Customs (hereinafter referred to as the first applicant and second respondent) and Sh. Rajesh Upadhyay (hereinafter referred to as the second applicant and first respondent) against the Order No. KOL/CUS(A/P)/AA/27/2017 dated 19/01/2017, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the order of the Joint Commissioner of Customs, Kolkata, confiscating absolutely the foreign currency equivalent to Rs. 36,45,000/- and imposing a penalty of Rs. 36,45,000/- lakhs on the first respondent has been modified to the extent that the foreign currency has been allowed to be redeemed on payment of redemption fine of Rs. 7.4 lakhs and the penalty on the respondent has been reduced to Rs. 3.7 lakhs.

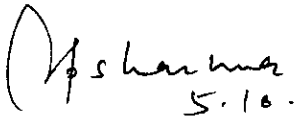
2. A personal hearing was held on 09.08.2018 which was attended by Sh. Barinder Singh, Consultant, on behalf of the second applicant and the first respondent who mainly stressed that the first respondent was eligible to take USD 2000/- without any intimation to Customs and to that extent he should be given relief in redemption fine and penalty. He also pleaded that otherwise the Order-in-Appeal is correct and the Revision Application of the revenue is unwarranted. However, no one appeared for the revenue and no request has been received for a personal hearing on any other date from which it is implied that they are not interested in availing any hearing in the matter.

3. The government has examined the matter and observes that the Revenue has challenged the Commissioner(Appeals)'s order mainly for the reason that the foreign

● currency which were being illegally exported out of India cannot be given back on payment of redemption fine and the same should have been absolutely confiscated as was ordered by the Additional Commissioner. The government observes that the Commissioner (Appeals) has clearly held in his order that foreign currency is prohibited goods and has been correctly confiscated by the adjudicating authority. However, he has allowed redemption of the foreign currencies on payment of fine by exercising his discretionary power conferred under Section 125 of the Customs Act, 1962 and by relying upon several case laws as cited in his order. The Government also finds that the above Section does not place a complete ban on allowing the redemption of even prohibited goods and redemption of such foreign currencies has been allowed in several case in past also by the Government as well as various courts for which some of the examples are available in the case laws relied upon by the Commissioner (Appeals) in his order. Therefore, the Government does not accept the revenue's objection with regard to Order-In-Appeal allowing redemption of foreign currencies on payment of fine and penalty and accordingly the revenue's revision application is not found maintainable. As regards the case of the second applicant that redemption fine and penalty have been imposed on higher side, his contention is merely that the Commissioner (Appeals) has not considered the free limit of USD 2000 which can be taken by a passenger out of India as per RBI Notification No. 6/2000-RB dated 3/5/2000. However, the government does not find any force in this argument as the present case is not regarding carrying of USD 2000 alone and instead the applicant attempted to illegally take out USD 60,000 out of the country without following the due procedure. Therefore, the offence committed by the applicant has to be considered in totality and cannot be

segregated to give him the benefit of USD 2000 while he was caught taking huge amount of foreign currencies. Even otherwise the redemption fine of Rs. 7.40 lakhs for the confiscated foreign currencies is more than reasonable even if USD 2000 is not considered for this purpose. The penalty amount is also manifestly just and fair by taking into account the grave offence perpetrated by the applicant. Hence, no interference from the government is warranted in the Order-in-Appeal.

5. In view of the above discussions, the revision applications filed by the Revenue as well as the second applicant are rejected.

  
5.10.18  
(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. The Addl. Commissioner of Customs, (Airport & Admn.),  
Custom House, Kolkata.
2. Mr. Rajesh Updhyay,  
S/o Ramlakhan Updhyay, 2 No. Airport Gate, North 24 Pargana,  
West Bengal, Pin-700079.

ORDER NO. 193-194/18 -Cus dated 5-10-2018

Copy to:-

1. The Principal Commissioner of Customs, (Airport), NSCBI Airport, Kolkata.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001.
3. P.S. to Additional Secretary.
4. Guard File

ATTESTED



(Ashish Tiwari)  
Assistant Commissioner