

REGISTERED
SPEED POST



F.No. 372/22/B/2019-RA
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...24/9/21.....

Order No. 193/21-Cus dated 24-9-2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject: Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. Kol/Cus(Airport)/AA/129/2019 dated 15.02.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant: Sh. Hanuman, Deoria, U.P.

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

ORDER

A Revision Application No. 375/22/B/2019-RA dated 01.05.2019 has been filed by Sh. Hanuman, Deoria, U.P. (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Kol/Cus(Airport)/AA/129/2019 dated 15.02.2019, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the Order-in-Original No. 175/2018ADC dated 23.08.2018 passed by the Additional Commissioner of Customs, Air Intelligence Unit, NSCBI Airport, Kolkata, vide which foreign currency of USD 14,000/- equivalent to Rs. 8,90,400/-, was confiscated absolutely by the original authority, under section 113(d) and 113 (h) of Customs Act, 1962. A penalty of Rs. Rs. 8,90,400/- under section 114 of Customs Act, 1962, was also imposed, which has been upheld in appeal.

2. Briefly stated, the Applicant was intercepted at NSCBI Airport, Kolkata, on 22.05.2017, as he was about to depart to Bangkok. On his personal search, foreign currency of USD 14,000/- was recovered which was concealed by wrapping them with newspaper and pasting the same to the lower portions of his legs. The original authority ordered for absolute confiscation and imposition of penalty on the Applicant, as above. 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, mainly, on the grounds that the Applicant had not received the Show Cause Notice issued to him by the department; that only one personal

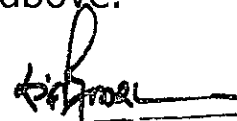
hearing was granted (on 23.05.2018) to him which he could not attend due to some medical exigency; that USD 13,000/- were purchased legally and the remaining USD 1000/- were within the permissible limit in terms of FEMA notification; and that foreign currency is not a prohibited item and hence should have been allowed on payment of redemption fine

4. Personal hearing, in virtual mode, was held on 23.09.2021. Ms. Harsimrn S. Kaur, Advocate, appeared for the Applicant and reiterated the contents of revision application. She highlighted that the Show Cause Notice was not received by them and only one opportunity for personal hearing was granted to them. Hence, the original authority has decided the case in violation of the principles of natural justice. As such, the matter may be remanded to the original authority. Sh. Saurabh Das, Superintendent supported the orders of lower authorities. Upon being asked, Sh. Das stated that nothing is available on record to indicate the reasons for granting only one opportunity for personal hearing by the original authority.

5. The Government has carefully examined the case. As per Section 124 of the Customs Act, 1962, no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; and such person is given an opportunity of making representation in writing as well as a reasonable opportunity of being heard in the matter. Further, as per Section 122A *ibid*, the adjudicating authority shall give opportunity of being heard to a party in a proceeding and may grant time, from time to time, to the

parties and adjourn the hearing provided that no such adjournment can be granted more than three times to a party during the proceeding. The Government observes that, in the present case, it is the contention of the Applicant that the Show Cause Notice dated 03.11.2017 was not received by him. It is also evident from the Order of the original authority that only one opportunity for personal hearing was granted, i.e., on 23.05.2018. In these circumstances, it is clear that subject Order-in-Original has been passed without following the principles of natural justice and the aforesaid provisions of the Customs Act. Therefore, the Government holds that it will be in the interest of justice to remand the matter to the original authority for de-novo consideration after following the principles of natural justice and in accordance with the provisions of the Customs Act.

7. In view of the above, the Orders of the lower authorities are set aside and the revision application is allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Hanuman, S/o Sh. Om Prakash,
Vill-Sidhria, Post PS. Bhaluani,
Deoria, Uttar Pradesh – 274182.

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Copy to:

1. The Commissioner of Customs (Airport & Admin.), NSCBI Airport, Kolkata – 700052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700001.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner(RA)