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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. **373/113/B/2020-RA & 380/19/B/SZ/2020-RA** : Date of Issue : 15.08.2022

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ORDER NO. 205-206 /2022-CUS (SZ)/ASRA/MUMBAI DATED 14.07.2022  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,  
1962.

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**(i). F.No. 373/113/B/2020-RA.**

Applicant : Shri. Kalimuthu Natesa Perumal.

Respondent-Dept : Commissioner of Customs, Chennai - I  
Commissionerate, Chennai - 600 027.

**(ii). F.No. 380/19/B/SZ/2020-RA.**

Applicant-Dept. : Commissioner of Customs, Chennai - I  
Commissionerate, Chennai - 600 027.

Respondent-Appl. : Shri. Kalimuthu Natesa Perumal.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
C.Cus.I No. 300/2019 dated 04.12.2019  
[C4/I/196/O/2019-AIR] passed by the Commissioner of  
Customs (Appeals-I), Chennai - 600 001.

ORDER

These revision applications have been filed by Shri. Kalimuthu Natesa Perumal (herein referred to as Applicant or Respondent-Appl.) and the Commissioner of Customs, Chennai – I Commissionerate, Chennai – 600 027 (herein referred to as Applicant – Department or Respondent-Dept.) against the Order-in-Appeal No. C.Cus.I No. 300/2019 dated 04.12.2019 [C4/I/196/O/2019-AIR] passed by the Commissioner of Customs (Appeals-I), Chennai – 600 001.

2. Briefly stated facts of the case are that the applicant, holding Indian passport no. K9304755 bound for Singapore by Air Scoot Flight (TR-579) was intercepted by Customs Officers while he was proceeding to the security hold area at the departure terminal of the Anna International Airport, Chennai after having cleared immigration. Upon the search of his person, INR 46,000/- was found. On examination of his checked-in baggage, assorted foreign currencies of various countries and denominations as listed at Table-01, below were found. The applicant did not possess any documents / permit as required under FEMA for legal export of the impugned foreign currencies and as he had attempted to smuggle the same out of the country by way of concealment and non-declaration to Customs, the same equivalent to INR 77,33,892/- were seized for further investigations.

**TABLE-01.**

Currency	Denomination	No. of Notes	Total Currency	Total Value in INR
EURO	50	300	15000	1176000
EURO	100	513	51300	4021920
USD	20	1	20	1388
USD	50	71	3550	246370
USD	100	292	29200	2026480
SGD	100	16	1600	80160
BRUNEI DOLLAR	50	7	350	17906
BRUNEI DOLLAR	100	23	2300	117668
INR	500	24	12000	12000
INR	2000	17	34000	34000
			<b>TOTAL</b>	<b>7733892</b>

3. After due process of the law, the Original Adjudication Authority (OAA) viz, Jt. Commr. of Customs (Adjudication – Air), Chennai – 600 027 vide Order-In-Original

No. 77/2019-20-Commissionerate-I dated 20.06.2019, confiscated the assorted foreign currency and Indian currency of Rs. 77,33,892/- under Section 113(d), (e) & (h) of the Customs Act, 1962 read with Foreign Exchange Management (Import and Export of Currency) (Amendment) Regulation – 2015 and imposed a penalty of Rs. 8,00,000/- on the applicant under Section 114(i) of the Customs Act, 1962

4. Aggrieved by this order the applicant filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals-I), Chennai – 600 001 who vide his Order-In-Appeal No. C.Cus.I No. 300/2019 dated 04.12.2019 [C4/I/196/O/2019-AIR] allowed the redemption of the foreign currency equivalent to INR 76,87,892/- on payment of redemption fine of Rs. 7,70,000/- under Section 125 of the Customs Act, 1962 to be paid within 120 days from the communication of the order and also reduced the penalty imposed under Section 114(i) of the Customs Act, 1962 to Rs. 3,90,000/- (Rupees Three Lakhs Ninety Thousand only) from Rs. 8,00,000/-. Also, it was held that the applicant was eligible to possess Rs. 25,000/- while leaving India and ordered the release of the same to the applicant. The balance INR of Rs. 21,000/- was ordered to be confiscated.

5. Aggrieved with the above order, the applicant has filed this revision application alleging that the appellate order was neither legal nor proper on the following grounds;

5.01. that the foreign currency carried by the applicant was neither prohibited nor restricted for import /export.

5.02. that the technical flaw of non-declaration of the foreign currency ought not to have led to its confiscation.

5.03. that the applicant was a respectable resident of Singapore and not a carrier and had not come to the adverse notice at any time.

5.04. that the applicant was a chronic cancer patient undergoing treatment.

5.05. that the applicant had placed his financial details before the investigating agency and that he was the owner of the foreign currency.

5.06. that keeping the foreign currency in a folded saree did not tantamount to concealment.

5.07. that the investigation of the call details of the applicant had indicated that he was not a carrier and that nothing adverse had been noticed was recorded in the show cause notice.

5.08. that the department had been silent and had not rebutted the applicant's letter dated 09.11.2019 which contained the details of his claim.

5.09. the applicant has relied upon the undermentioned case laws to buttress his case.

- (a). 1997 (90) ELT 241 (SC) : K.I Pavunny v/s. Asst. Collr. C.Ex, Cochin
- (b). 2017 (352) ELT 53 (Tri-Mumbai) : Gyanchand Jain vs. Commissioner of Customs (Airport), Mumbai.
- (c). 2016 (333) ELT 60 (HC-Delhi) : Commissioner of Customs v/s. G.O.I.
- (d). 2016 (344) ELT 1154 (HC-Madras) : Commissioner of Customs (AIR), Chennai – I vs. P. Sinnasamy.
- (e). 1999 (112) ELT 772 (SC) : Zunjarro Bhikaji Nagarkar vs U.O.I.
- (f). 2014 (314) ELT 849 (GOI) : Mohd. Zia Ul Haque.
- (g). 200/ (221) ELT 521 (Tri-Kolkata) : Mohan Kumar @ Mohan Prasad vs. Commissioner of Customs, Patna.
- (h). 2018 (361) ELT 959 (GOI) : Mohd. Arif.
- (i). 2017 (346) ELT 9 (BOM) : Commissioner of Customs vs Rajinder Nirula.

In view of the above, the applicant has prayed to the revisionary authority to reduce the redemption fine and penalty ordered in the Order-in-Appeal No C.Cus.I No. 300/2019 dated 04.12.2019 [C4/I/196/O/2019-AIR] passed by the appellate authority or to pass any other order as deemed fit.

6. Aggrieved with the above order, the applicant-department has filed a revision application alleging that the appellate order was neither legal nor proper for the following grounds;

6.01. that the respondent was not in possession of any valid document / permission issued by the competent authorities for legal export of foreign currency as required in terms of para 2.7 of Foreign Trade Policy any goods, export or import of which is restricted under ITC (HS) can be exported or imported only in accordance with an authorization or in terms of a public notice in this regard.

6.02. that the respondent had not declared the foreign currency possessed by him as required under Section 77 of the Customs Act, 1962.

6.03. that the respondent was a frequent traveller and was well aware of the provisions of law.

6.04. that the respondent had not given a hint of his financial background and had not furnished any documentary evidence for accumulation of foreign currency at the time of investigation and mere claiming ownership of the foreign currency without documentary proof would be fatal to the case.

6.05. that the allegation of the appellate authority that the department had failed to prove how the foreign currency has been brought in had been clearly detailed at para 24 (iii) of the OIO and it was a settled preposition of law that though the penalty proceedings under the Customs Act, 1962 are quasi-judicial in nature, the department was not required to prove its case beyond reasonable doubt, as is sufficient, if guilt was attributed to the charged person is established on a preponderance of probabilities. Supreme Court in Collector of Customs, Madras v/s D. Bhoomi : 1983 ELT 1546 (SC) had held is all that is required to be established is such a degree of probability that a prudent man may on its basis, believe in the existence of the act in the issue.

6.06. that the allegation of appellate authority regarding written submission / retraction not having been discussed in the OIO was not correct as the same are mentioned at paras 23(i) to (1v) of the OIO and are also discussed at paras 24,25 & 26.

6.07. the respondent-appl had not satisfied the requirement under Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 which required general permission or special permission of the RBI to export or to send out of India any foreign currency.

6.08. the order passed by the appellate authority would have the effect of making smuggling an attractive preposition where the passenger upon getting caught retains the benefit of redeeming the offending goods which clearly works against deterrence.

6.09. the applicant-department has relied upon the following case laws to buttress their case,

(a). 2015 (320) ELT 368 (HC-Del) : Ramkumar v/s. Commissioner of Customs.

(b). 2009 (244) ELT 49 (HC-BOM) : UOI vs. Mohamed Aijaj Ahmed This case has been upheld by the Apex Court. 2010 (253) ELT E83 (SC).

(c). W.P.no. 34102 of 2003 – Madras High Court in the case of S.Faisal Khan vs. Jt. Commr.

(d). RA order no. 1108/2018 dated 03.12.2018 in case of Shri. Jang Bahadur filed by the department.

~~9e). 1997 (90) ELT 241 (SC) : K.I Pavunny vs Asstt. Collector.~~

The Applicant-department has prayed to the revisionary authority to set aside the order of the appellate authority or to pass any other order as deemed fit.

6. Accordingly personal hearings in the case through the online video conferencing mode were scheduled for 03.12.2021 or 09.12.2021. On 09.12.2021, Shri. B.Kumar advocate for the applicant appeared online and submitted that the applicant was not a carrier. He informed that a written submission is being made in the matter and requested to maintain the appellate order.

7. The applicant has filed for condonation of delay. Applicant has stated that the OIA was received by him on 09.12.2019. They were required to file the revision application within 3 months i.e. by. 08.03.2020. Considering, the further extension of 3 months which can be condoned, the applicant was required to file the revision by 06.06.2020. However, the applicant had filed the revision application on 26.06.2020. The applicant has attributed the reason of delay as they were communicating with the department for the release of the currency for which the time period granted by the appellate authority was 120 days. The department had replied only on 18.05.2020 and subsequent, to the receipt of this letter wherein it was informed that the department had gone in review against the order passed by the appellate authority, they filed the revision application. The Government notes that due to the outbreak of Covid – 19 pandemic in March, 2020, the Hon'ble Supreme Court in M.A no. 665 of 2021 (initial order) had extended the period of limitation for any suit, appeal, application or proceeding and had held that the period

from 15.03.2020 till 02.10.2020 shall stand extended. The revision application filed by the applicant on 26.06.2020 falls within this extended period, hence the Government condones the delay.

8. Government has gone through the facts of the case. Government finds that there is no dispute that the seized foreign currency was not declared by the Applicant (i.e. Shri. Kalimuthu Natesaperumal) to the Customs at the point of departure. Further, in his statement he admitted the possession, carriage, concealment, non-declaration and recovery of the foreign currencies and Indian currency and also revealed that the foreign currency was handed over to him by another person and he had carried the same for a monetary consideration. Investigations revealed that the person named by the applicant had denied that the foreign currency belonged to him or was handed over to the applicant by him. Thus, source of currency had remained unaccounted.

9. Also, the fact that the foreign currency was procured from persons other than authorized persons as specified under FEMA, makes the goods liable for confiscation in view of the prohibition imposed in Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the confiscation of the foreign currency was justified as the applicant was carrying foreign currency in excess of the permitted limit and no declaration as required under section 77 of the Customs Act, 1962 was filed. The Government finds that allegation of retraction of the statement of the applicant has been dealt with in the Order-In-Original and does not require to be reiterated.

10. The Government finds that the applicant had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. Hence, the Government finds that the conclusions arrived at by the lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 has been violated by the applicant

is correct and therefore, the absolute confiscation of the foreign currency ordered, is justified. In doing so, the original adjudicating authority has applied the ratio of the judgement of the Apex Court in the case of Sheikh Mohd. Umar v/s. Commissioner of Customs, Calcutta [1983(13) ELT 1439 (SC)] wherein it is held that non-fulfilment of the restrictions imposed would bring the goods within the scope of "prohibited goods".

11. Government finds that the case of Commissioner of Customs v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad)] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

*10. On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.*

*11. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :*

*5. "Prohibition on export and import of foreign currency. -*

*Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.*

*7. Export of foreign exchange and currency notes. -*

*(1) An authorized person may send out of India foreign currency acquired in normal course of business.*

*(2) any person may take or send out of India, -*

*(i) cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;*

*(ii) foreign exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder*

*.....*  
*12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.*

12. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s.



Raj Grow Impex has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, 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. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

13. The Government finds that the lower adjudicating authority has used its discretion correctly in not releasing the foreign currency (i.e. release on redemption) which is consistent with the provisions of Section 125 of the Customs Act, 1962. The applicant initially had disowned the currency and had admitted that he was merely acting as a carrier for monetary consideration. Later on, he stated that the foreign currency belonged to him. But the applicant-department has stated that no tangible evidence for possession of such a large amount was found with the applicant. The original adjudicating authority has dealt with the same in detail in the OIO. Investigations had concluded that there was no proof indicating that the foreign currency had been generated out of legal dealings. Quantity, unaccounted source, manner of keeping, non-declaration and applicant being merely a carrier are factors relevant for using discretion not to allow goods to be released on redemption fine. For the aforesaid reasons, the Government is inclined to set aside the appellate order and restore the original order passed by the OAA.


14. The Government finds that the personal penalty of Rs. 8,00,000/- imposed on the applicant by the Original Adjudicating Authority is well justified and is commensurate with the omission and commission committed by the applicant.

15. The Government finds that the appellate authority has rightly ordered for the return of the INR in excess of Rs. 25,000/- and has absolutely confiscated the balance INR of Rs. 21,000/-.

16. In view of the aforesaid, the Government finds that only the return of INR 25,000/- which was found within the permissible limit is proper and the remaining part of the Order granting the redemption of the foreign currency on payment of a fine is set aside.

17. The Government restores the Order-in-Original and upholds the absolute confiscation to the extent of foreign currency valued at INR 76,87,892/- and penalty of Rs. 8,00,000/- as proper.

18. Revision application filed by the applicant is rejected and the Revision application filed by the Applicant-department is allowed in above terms.

  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 205-206/2022-CUS (SZ) /ASRA/ DATED 14.07.2022

To,

1. Shri. Kalimuthu Natesa Perumal, B L K 442 Ang MO KIO Avenue 10 # 08-1215, Singapore-560 442.
2. Commissioner of Customs, Chennai - I Commissionerate, Meenabakkam, Chennai - 600 027.

3.

Copy to:

1. Shri. B.Kumar, Conusltant : B.K Associates, 117/55, Egmore High Road, Egmore, [Near P.T School], Chennai - 600 008.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.