

REGISTERED

SPEED POST



F. No. 372/27/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...7/12/18.

ORDER NO. <sup>206/2018-Cus</sup> Cus dated 3-12-2018 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/163/2017 dated 09/03/2017,  
passed by the Commissioner of Customs (Appeals),  
Kolkata.

APPLICANT : Zamir Ahmed Khan, Kolkata

RESPONDENT : Commissioner of Customs, Kolkata

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## ORDER

A Revision Application No. 372/27/B/2017-R.A. dated 08/09/2017 has been filed by Mr. Zamir Ahmed Khan (hereinafter referred to as the applicant) against the Order No. KOL/CUS(A/P)AA/163/2017 dated 09/03/2017, 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. 30,92,460/- and imposing an equal penalty of Rs. 30,92,460/- 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 redemption of the absolutely confiscated foreign currency which is not prohibited goods and a heavy penalty has been imposed on the applicant.

3. A personal hearing was offered on 05/10/2018 which was availed by Sh. Arijit Chakrabarti, Advocate, on behalf of the applicant and he reiterated the grounds of revision already pleaded in their revision application. He also relied upon the decisions in the cases of Commissioner of Customs Vs JS (RA) [2016 (333) ELT 60 (Del)], Sunny Abraham Vs Joint Commissioner of Customs [2016(340) ELT 82 (Ker)], Commissioner of Customs Vs Rajinder Narula [2017(346) ELT 9(Bom)] and Mohd. Ayaz Vs Union of India [2003(151) ELT 39(Del)], in support of his contentions. However, nobody appeared for the respondent and no request for any personal hearing was also received from which it is implied that they are not interested in availing any hearing in the matter.


4. The Government has examined the matter and found at the very outset that the revision application presented before the Government was not accompanied by a fee of Rs.1000/- (paid through TR-6 Challan) as mandated in Section 129DD of the Customs Act, 1962, and instead a demand draft of Rs. 1000/- in the name of "Joint Secretary, Government of India, Department of Revenue" was submitted along with revision application. However, Demand Draft was returned vide letter no. 372/27/B/17-RA dated 07/11/2017 by the Section Officer with a request to pay the fee through TR-6 Challan only. The Demand Draft could not be considered as proper payment of fee as JS (RA) is not having any bank account for receiving such fee and

is not even authorised for doing so. However, no response was received from the applicant subsequently. Thus the required fee remained unpaid and the mandatory condition of payment of the fee along with revision application is not complied in this case. Consequently the revision application filed by the applicant in breach of the above statutory condition cannot be considered to have been filed properly and no authority has been empowered to condone noncompliance of this condition. Accordingly, the revision application is liable for rejection on this ground alone. Besides above, it is also noticed that the revision application is filed after a delay of 81 days and the same is justified by the applicant on the ground that they had earlier wrongly filed an appeal before CESTAT, Kolkata, which was rejected vide order dated 01/08/2017. The government finds that under Section 129DD (2) of the Customs Act, 1962, it can condone the delay up to 3 months only where it is satisfied that the person was prevented by a sufficient cause in filing the revision application within the normal 3 months. However, filing of the appeal before a wrong platform cannot be considered as a sufficient cause for condonation of such delay as is envisaged in aforesaid section as Section 129A read with Section 129DD of the Customs Act do not leave any doubt that CESTAT is not an appellate authority for any matter relating to import or export of a baggage. Further, the applicant did not make any prompt effort to rectify their earlier mistake and still took more than a month in filing the revision application on 08/09/2012 despite the CESTAT had rejected their wrong appeal on 01/08/2017 itself. Thus the revision application is hit by time limitation also.

5. Further, the government finds that the revision application is not maintainable on its merit also as the applicant undeniably attempted to illegally export the foreign currencies which are undoubtedly prohibited goods. The Commissioner (Appeal) has already referred to various legal provisions of FEMA, 1999, the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, Section 2(33) of the Customs Act, 1962 and Section 113 of the Customs Act in his Order by virtue of which it is absolutely clear that attempt to export the foreign currencies which had not been procured from the authorized sources was not allowed and thus the same was prohibited. This view is also fully supported by the RBI Master Circular No. 10/2013-14 dated 01/07/2013 and various decisions relied upon by the

Commissioner (Appeal) to support his view that the prohibited foreign currencies are liable for confiscation. The applicant has also not disputed the order of the Commissioner (Appeal) to the extent of confiscation of foreign currencies, but has challenged it only on the ground that the foreign currencies should have been released to them on payment of redemption fine and penalty etc. However, the government does not find this contention convincing as in case of prohibited goods the adjudicating officers have been vested with the discretion under Section 125 of the Customs Act to give or not to give an option to the concerned passenger to redeem such confiscated prohibited goods which have been exercised by the Joint Commissioner as well as Commissioner (Appeals) for not allowing the applicant to redeem the confiscated foreign currencies in the present case. Thus the orders for absolute confiscation of the foreign currencies are found to be within four corners of Section 125 and no fault can be attributed in these orders in the revisionary proceedings. The applicant's reliance on several decisions is also found to be of no relevance as in none of these decisions it has been held that foreign currency is non-prohibited goods and could be exported freely even if procured from illegal channels. The government is also not impressed by the applicant's other argument that huge penalty has been imposed on them under Section 114 of the Customs Act as under this section penalty up to 3 times of the value of the prohibited goods can be imposed. Whereas in this case a penalty equivalent to the value of the prohibited goods has only been imposed which is apparently reasonable on a person who indulged in a serious offence of procuring the huge foreign currencies illegally first and then attempted to export the same by suppressing from the Customs authorities in gross violation of the provisions of FEMA and Customs Act. The applicant has also not given any convincing reason to justify any further reduction in the penalty amount imposed by the adjudicating officers. Considering these facts and the nature of offence committed by the applicant, the government does not find any fault in the order-in-appeal.

4. Accordingly, the revision application filed by the applicant is rejected.

  
(R. P. SHARMA)

3-12-18

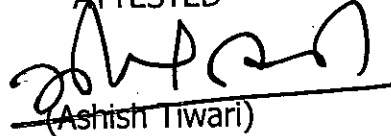
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Zamir Ahmed Khan, S/o Munis Ahmed Khan,  
MI-1, Housing Estate,  
Karim Bux Row, P.O. Casipur, Kolkata-700002  
ORDER NO. 206/2018- Cus dated 3-12-2018

Copy to:-

1. Commissioner of Customs (Airport & Admin), NSCBI Airport, Kolkata-770 052.
2. The Commissioner of Customs (Appeals), 3<sup>rd</sup> 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