

REGISTERED
SPEED POST



F. No. 380/17/B/2017-R.A.
372/18/B/2017-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.....

ORDER NO. ^{208-209/18-Lus} Cus dated 4-12-2018 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/387/2017 dated 13/04/2017 passed by Commissioner of Customs (Appeals), Kolkata.

APPLICANT : 1. Addl. Commissioner of Customs, (Airport), Kolkata.
2. Sh. Hare Ram Singh, Howrah.

RESPONDENT: 1. Sh. Hare Ram Singh, Howrah.
2. Addl. Commissioner of Customs, (Airport), Kolkata.

ORDER

Revision Applications Nos. 380/17/B/2017-R.A. dated 13/6/2017 and 372/18/B/2017-R.A. dated 19.07.2017 have been filed by the Commissioner of Customs (hereinafter referred to as the first applicant and second respondent) and Sh. Hare Ram Singh (hereinafter referred to as the second applicant and first respondent) against the Order No. KOL/CUS(A/P)/AA/387/2017 dated 13/04/2017, 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. 27,18,450/- and imposing a penalty of Rs. 5 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. 5.4 lakhs and the penalty on the respondent has been reduced to Rs. 2.7 lakhs.

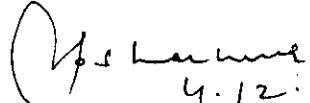
2. A personal hearing was fixed for 23.10.2018 which was not availed by the first applicant as well as the second applicant. Instead, a letter dated 20/10/2018 was received from Sh. Barinder Singh, Consultant, on behalf of the second applicant and the first respondent stating that they accept the Government of India's order Nos 193-194/2018-Cus dated 05/10/2018 in the case of Sh. Rajesh Upadhyaya wherein a similar issue has been dealt with and hence they do not want to press for any relief sought in the revision application filed by them. Accordingly he also sought exemption from appearing in this case. However, in his above letter he has prayed that the revision application filed by the revenue may be rejected since the Order of the Commissioner (Appeals) is legally proper. But no such response was received from the first applicant and even no request for a personal hearing on any other

date was also received 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 it is observed 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 earlier ordered by the Joint Commissioner. While the Commissioner (Appeals) has also clearly held in his order that foreign currency is prohibited goods, he has allowed redemption of the foreign currencies on payment of fine by relying upon several case laws to support his decision to release confiscated foreign currencies. The Government also finds Section 125 of the Customs Act, 1962, dealing with the issue relating to release of such goods, 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. But 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 Euro 27,000/, USD 10,000 and Indian Rs. 69,000/-, concealed in a specially made pocket in his baggage, 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. 5.40 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. The present case is squarely covered by government's earlier order in the case of Sh. Rajesh Upadhyaya to which the second applicant has also agreed to as per their letter dated 20/10/2018.

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


4.12.18

(R. P. SHARMA)
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. The Addl. Commissioner of Customs, (Airport & Admn.),
Custom House, Kolkata.
2. Mr. Hare Ram Singh,
S/o Chandrama Singh,
22, Bijay Kumar Mukherjee Road, Salkia, Howrah 711 106

ORDER NO.208-209/18-Cus dated 4-12-2018

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.

ATTESTED

(Ashish Tiwari)
Assistant Commissioner