

REGISTERED

SPEED POST



F. No. 372/22/B/2017-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI-GAMA-PLACE,
NEW DELHI-110 066

Date of Issue...7.12/18

Order No. 210/18-Cus dated 4-12-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & 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/446/2017 dated 2.5.2017, passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : Mr. Imran Khan, Chhatarpur, Madhya Pradesh

Respondent : Commissioner of Customs (Airport), Kolkata

ORDER

A Revision Application No. 372/22 /B/2017-R.A. dated 10.08.2017 has been filed by Mr. Imran Khan, resident of Housing Board Colony, Chhatarpur, Madhya Pradesh (hereinafter referred to as the applicant) against the Order-in-Appeal No.KOL/CUS(Airport)/AA/446/2017 dated 02/05/2017, 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.1783500/- and imposing an equal penalty of Rs.1783500/- 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 and thereafter on 23.10.18 on the request made by Sh. Arijit Chakrabarti, Advocate, on behalf of the applicant. However, nobody appeared for the applicant on 23.10.18 also and no request for any personal hearing was received from which it is implied that they are not interested in availing any hearing in the matter.

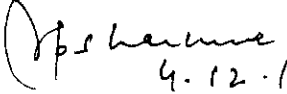
4. The Government has examined the matter and found at the very outset that the revision application presented before the Government was not accompanied by a fee of Rs.1000/- (paid through TR-6 Challan) as mandated in Section 129DD of the Customs Act, 1962, and instead a demand draft of Rs. 1000/- in the name of "Joint Secretary, Government of India, Department of Revenue" was submitted along with revision application. Not finding it a proper method of payment of the required fee, the Demand Draft was returned vide letter No. 372/22/B/17-RA dated 04.09.2017 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 06 days and no application for condonation of delay is received despite Section Officer's letter No.372/22/B/17-RA dated 04.09.2017 requesting him to file application of condonation of delay. Thus the revision application is time barred.

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.


4.12.18
(R.P.Sharma)

Additional Secretary to the Government of India


Mr. Imran Khan, S/o Mr. Mohammed Illiyas Khan,
Housing Board Colony,
Chhatarpur-471001,
Madhya Pradesh

ORDER NO. 210/2018 - Cus dated 04-12-2018

Copy to:-

1. Commissioner of Customs (Airport & Admin), NSCBI Airport, Kolkata-770052.
2. The Commissioner of Customs (Appeals), Kolkata, 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
3. The Joint Commissioner of Customs (AIU), NSCBI Airport, Kolkata
4. P.A. to AS (RA)
5. Guard File ✓
6. Spare copy

ATTESTED


(Ashish Tiwari)
Assistant Commissioner