

REGISTERED

SPEED POST



F. No. 380/14/B/2018-R.A.
375/68/B/2018-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... 4/11/18.

ORDER NO. ^{243-244/2018.} *de* Cus dated 24/12/2018 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 Applications filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air-162/2018 dated 11/05/2018, passed by the Commissioner of Customs (Appeals), Delhi.

APPLICANT : 1. Commissioner of Customs, Delhi.
2. Sh. Rajinder Pal Singh, Delhi.

RESPONDENT: 1. Sh. Rajinder Pal Singh, Delhi.
2. Commissioner of Customs, Delhi.

ORDER

Revision Applications Nos. 380/14/B/2018-R.A. dated 14/08/2018 and 375/68/B/2018-R.A. dated 01.08.2018 have been filed by the Commissioner of Customs (hereinafter referred to as the first applicant and second respondent) and Sh. Rajinder Pal Singh (hereinafter referred to as the second applicant and first respondent) against the Order No. CC(A)Cus/D-I/Air-162/2018 dated 11/05/2018, passed by the Commissioner of Customs (Appeals), Delhi, whereby the order of the Additional Commissioner of Customs, Delhi, confiscating absolutely the foreign currency equivalent to Rs. 22,53,150/- 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. 4.5 lakhs and the penalty on the second applicant has been reduced to Rs. 3 lakhs.

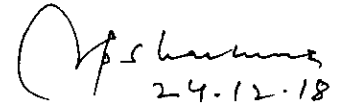
2. A personal hearing was held on 14.12.2018 which was attended by Sh. Darshan, Advocate, on behalf of the second applicant and the first respondent who reiterated the grounds already stated in their revision application and submitted written submissions also. As regards the revision application filed by the department, Sh. Darshan emphasized that the order-in-appeal is just and proper and the Revision Application of the revenue is unwarranted. However, no one appeared for the revenue and no request has been received for a personal hearing on any other date 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 ordered by the Additional Commissioner. The Commissioner (Appeals) has clearly held in his order that foreign currency is prohibited goods and has been correctly confiscated by the adjudicating authority. However, he has allowed redemption of the foreign currencies on payment of fine by exercising his discretionary power conferred under Section 125 of the Customs Act, 1962 and by relying upon several case laws as cited in his order. The Government also finds that the above Section 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, he has not adduced any convincing reason for reducing the fine and penalty. The offence committed by the applicant is also quite serious in nature as he was caught taking huge amount of foreign currencies without having any licit document or evidence in support of its lawful possession and a deterrence is required in such cases. Even otherwise the redemption fine of Rs. 4.5 lakhs for the confiscated foreign currencies is more than reasonable and does not warrant any reduction. 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.

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


24.12.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Commissioner of Customs, NCH
Delhi.
2. Mr. Rajinder Pal Singh,
S/o Mr. Kartar Singh,
B-4, B-Block, Pandav Nagar, Delhi-110 092.

ORDER NO 243-244/18 - Cus dated 24/12/2018

Copy to:-

1. The Additional Commissioner of Customs, IGIA, New Delhi.
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi
3. P.S. to Additional Secretary.
4. Guard File

ATTESTED

(Ashish Tiwari)
Assistant Commissioner