

REGISTERED

SPEED POST



F. No. 375/34/B/2017-RA
375/36/B/2017-RA
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. ~~249-250~~/18-Cus dated 26/12/2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Ex Officio 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. CC(A)Cus/D-I/Air-301-302/2017 dated 18/08/2017, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Ms. Shanaz, Delhi.
Ms. Shama, Delhi.

Respondent : Commissioner of Customs (Airport), Delhi

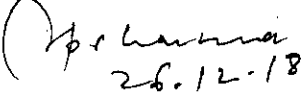
ORDER

Revision Applications Nos. 375/34/B/2017-R.A. and 375/36/B/2017-RA, both dated 20/11/2017 have been filed by Ms. Shanaz and Ms. Shama, Delhi (hereinafter referred to as the applicants) against the Order-in-Appeal No.CC(A)Cus/D-I/Air-301-302/2017 dated 18/08/2017, 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.83,78,114/- (Rs. 40,57,589/- + Rs. 43,20.525/-) and imposing penalty of Rs. 8 lakhs on Ms. Shanaz and Rs. 8.6 lakhs on Ms. Shama, has been upheld.

2. The revision applications have been filed mainly on the ground that the Commissioner (Appeals) has erred by not allowing the redemption of the absolutely confiscated foreign currency as Section 125 of the Customs Act, 1962, stipulates that the option to redeem the seized is to be necessarily given to the owners of the seized goods and a reduction in the amount of penalty is also warranted.
3. A personal hearing was offered on 14.12.2018 which was availed by Sh. S. N. Panda and Sh. Chetan Kumar, Advocates, on behalf of the applicants who reiterated the above ground of revision already pleaded in the revision applications and submitted written submissions to this effect. However, nobody appeared for the respondent 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 it is found that the applicants 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 (Appeals) to support his view that the prohibited foreign currencies are liable for confiscation. The applicants have also not disputed the Order of the Commissioner (Appeal) to the extent of confiscation of foreign currencies, but have 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 Additional 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 of only 20% of the value of the prohibited goods has 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 cleverly concealing them from the Customs authorities in gross violation of the provisions of FEMA and Customs Act. The applicants have 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 applicants, the Government does not find any fault in the Order-in-Appeal.

4. Accordingly, the revision applications filed by the applicants are rejected.


26.12.18
(R.P.Sharma)

Additional Secretary to the Government of India

1. Ms. Shenaz,
T-595, Gali No.11, Gautam Puri,
Delhi-110 053.
2. Ms. Shama,
D-8-D, DDA Flats,
Munirka, New Delhi-67.

ORDER NO. 244-250/18 - Cus dated 26/12/2018

Copy to:-

1. Commissioner of Customs, Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Guard File.
4. PS to AS(RA).

ATTESTED

(Ashish Tiwari)
Assistant Commissioner