

REGISTERED  
SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

---

F.No. 371/179 & 180/B/2019-RA / 3704 Date of Issue : 18.09.2022

---

ORDER No. 262-263 /2022-CUS (WZ)/ASRA/ DATED. 13.09.2022.  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS  
ACT, 1962.

---

**F.No. 373/179 & 180/B/WZ//2019-RA**

Applicants : (1). Shri. Ramesh Assandas Lalchandani  
(2). Shri. Shankar Manikamal Bhatia.

Respondent : Commissioner of Customs, Custom House, Marmagoa,  
Goa - 403 803.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal No.  
GOA-CUSTM-000-APP-091 & 092-2018-19 dated  
19.03.2019 through F.No. A-16 & 17/CUS/GOA/2018-  
19 passed by the Commissioner (Appeals), CGST &  
CUSTOMS, GOA.

**ORDER**

These two revision applications have been filed by (i). Shri. Ramesh Assandas Lalchandani and (ii). Shri. Shankar Manikamal Bhatia (hereinafter referred to as Applicants or alternately, as Applicant no. 1 or Applicant No. 2) against the Orders-in-Appeal No. GOA-CUSTOM-000-APP-091 & 092-2018-19 dated 19.03.2019 through F.No. A-16 & 17/CUS/GOA/2018-19 passed by the Commissioner (Appeals), CGST & CUSTOMS, GOA.

2(a). Brief facts of the case are that the applicant no. 1 who was bound for Dubai via Muscat by Oman Air Flight No. WY-0210 & WY0603 both dated 08.01.2018 was intercepted by Customs Officers on 08.01.2018 at the departure hall at Dabolim International Airport, Goa. To query whether he was carrying any foreign / Indian currency / contraband either on his person or in baggage, the applicant no. 1 had replied in the negative. A search of his checked in baggage led to the recovery of two packets wrapped in paper which had been concealed in the false bottom layer of the bag having zip. The packets were opened and the undermentioned assorted currency were recovered.

Table No. 1.

Foreign Currency	Denomination	Nos. of Notes	Total	Grand Total
Bahrain Dollar	20	11	220	500
	25	10	250	
	5	6	30	
UAE Dirham	1000	6	1000	1230
	50	1	50	
	20	1	120	
	10	6	40	
	5	4	20	
US DOLLARS	100	4	60000	60000

2(b). Thereafter, the applicant no. 1 informed that applicant no. 2 who was a domestic passenger was supposed to hand over some Indian Currency to him after completing the check-in formalities. Accordingly, applicant no. 2 was intercepted and from the examination of the poly bag carried by him, a bundle

containing 250 notes of Indian currency in denomination of Rs. 2000, totally amounting to Rs. 5,00,000/- were recovered.

2(c). The bank realisation value of the aforesaid assorted foreign currency in Indian rupees was Rs. 38,13,524/-

2(d). Thus, in all Rs. 43,13,524/- were recovered from the applicants. i.e. foreign currency equivalent to Rs. 38,13,524/ from applicant no. 1 and Indian currency of Rs. 5,00,000/- from applicant no. 2.

2(e). Applicant no. 1 admitted that the foreign currency belonged to his nephew and he had carried the same for a monetary consideration. Investigations carried out revealed that applicant no. 1 was a frequent traveller having travelled abroad on 78 occasions in the past 6 years. Also, applicant no 1 was involved in a case detected by Customs, Bengaluru.

2(f). Applicant no. 2 admitted that the Indian currency did not belong to him and that he had carried the same for a monetary consideration. Investigations carried out revealed that applicant no. 2 was a frequent traveller having travelled abroad on 24 occasions in the past 3-4 years.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, Marmagao, Goa vide his Order-In-Original No. 14/2018-19-ADC(CUS) dated 03.12.2018 issued on 06.12.2018 through F.No. 11/01/2018-R&I(AIU)/Adj ordered for the absolute confiscation of the foreign currency equivalent to Rs. 38,13,524/- and Indian Currency of Rs. 5,00,000/-, totalling Rs. 43,13,524/- under Section under Section 113 (d) of the Customs Act, 1962 readwith Foreign Exchange Management (Export and Import of Currency) Regulation Act, 2015. Penalties of Rs. 6,00,000/- and Rs. 50,000/- were imposed on applicant 1 & 2 respectively under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicants filed an appeal with the Appellate Authority viz, Commissioner (Appeals), CGST & Customs, Goa, who vide his Orders-in-Appeal No. GOA-CUSTOM-000-APP-091 & 092-2018-19 dated

19.03.2019 through F.No. A-16 & 17/CUS/GOA/2018-19 upheld the order of the Original Adjudicating Authority and rejected the appeals.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicants have preferred this revision application inter alia on the grounds that;

5.01. the cross-examination had not been granted which was against the principles of natural justice, They have referred to the under mentioned case laws wherein the courts have held that natural justice is required to be followed,

(a). Apex Court order in the State of M.P vs. Chintaman Sadashiva Vaishampayan, AIR 1961-SC-1623,

(b). Lakshman Exports Ltd vs. Coll. C.Excise, 2005-10-SCC-634,

(c). New India Assurance Company Ltd vs. Nusli Neville Wadia & anr, AIR 2008-SC-876

(d). K.L Tripathi vs. State Bank Of India 7 otrs, AIR 1984-SC-273

(e). etc

5.02. the personal search had been carried out before a magistrate / gazetted officer however, examination of the baggage had not been carried out before a magistrate / gazetted officer which is against the provisions of Section 102 readwith Sections 100 and 101 of the Customs Act, 1962. In this connection reliance is placed on the undermentioned case laws' which primarily pertain to Section 50 of the NDPS Act, 1985, the rationale being that the Section 50 of NDPS Act, 1985 is para materia with Section 102 of the Customs Act, 1962.

(a). Apex Court case in Ali Mustafa v/s. State of Kerala, 1994 AIR SCW 4393 where option under Section 50 of NDPS Act, 1985 had not been granted.

(b). Delhi High Court Order in the case of Amarjit Singh 1995 Cri.LJ1623 under Section 50 of the NDPS Act, 1985.

(c). Namdi Fancis Nwazor vs UOI, 1998-8-SCC-534,

(d). Apex Court order in the case of State of Himachal Pradesh vs Pawan Kumar dated 08.04.2005.

(e). Apex Court order in the case of T.P Razak and Naoappan Razak vs. State of Kerala, 1995-2-SCC-385.

(f). etc.

5.03. Panchanama dated 08.01.2018 was illegal and the panchas had been tutored in drawing the panchanama. There is a narration of the

Circulars of RBI in the panchanama which indicates that the same was tutored.

- 5.04. Entire case was based on assumptions and presumptions and case against the applicants had not been proved beyond doubt. The genuine plea made by the applicants that they were the lawful owners of the foreign currency / Indian currency had not been considered.
- 5.05. Retracted statements of the applicants should not be relied upon. The manner of retraction requires to be considered. Applicants have relied upon the undermentioned case laws'
- (a). Mohtesham Mohd. Ismail 2007-220-ELT-3-SC
  - (b). Asstt. Collector of C.Ex, Rajamundry vs. Duncan Agro Industries Ltd JT-2008-8-SC-530
  - (c). Vinod Solank vs. UOI, 2009-233-ELT-157-SC
  - (d). Commr. Of C.Ex, Ahmedabad – II vs. Deora Wires N Machines Pvt. Ltd, 2016-332-ELT-393-Guj.
  - (e). etc.
- 5.06. That the applicant no. 1 had not made any attempt to smuggle out the currency as the alleged attempt had ben incomplete. Applicant no. 1 had not cleared the security check or immigration and had not passed through the Customs Area. They have contended that there was a difference between attempt and preparation and have relied on the following judgements,
- (a). Abhayanand Mishra vs. State of Bihar
  - (b). Narayanswami Pillai vs. Emperor, AIR 1932-MAD-507(B)
  - (c). Mt. Nooibihi vs. State, AIR 1952-J&K-55(A),
  - (d). Apex Court order in the case of State of Maharashtra vs. Mohd Yakub and others, 1983-13-ELT-1637.
  - (e). etc.
- 5.07. Applicant no. 2 was apprehended even before he had checked-in the flight to Mumbai. There was no mention about his air ticket and boarding pass in the panchanama. Emphasis is laid on the undermentioned case laws.
- (a). Narayanswami Pillai vs. Emperor, AIR 1932-MAD-507(B)
  - (b). Mt. Nooibihi vs. State, AIR 1952-J&K-55(A),

- 5.08. The seizure of the currencies was illegal as there had been no attempt to smuggle the same and therefore, absolute confiscation is not sustainable.
- 5.09. The investigating agency had suppressed the retraction filed by the applicants and had not rebutted the same.
- 5.10. Further statements of the applicants after their arrest, incriminating themselves in the offence of smuggling cannot be relied upon.; that confession of co-accused cannot be relied upon against other accused; that CDR should not have been relied upon.
- 5.11. the financial capacity of the applicants cannot be a factor to prove allegation as carriers.
- 5.12. a case against applicant no. 1 in the past cannot be a ground for making allegation in the present case.
- 5.13. Foreign currencies are not prohibited goods.
- 5.14. that there was no requirement on the part of applicant no. 1 to show any documents to prove licit possession of the foreign currencies.
- 5.15. that the OIA was not an order on merits and not a speaking order. Cases laws of Apex Court, various high courts, Tribunals etc relied upon by the applicants had not been considered by the AA.
- 5.16. the applicants have contested the reliance placed by AA in the case of Commr. Of Customs vs. Savier Poonolly passed by the Hon'ble Madras High Court. The applicants have stated that this case is not applicable to their case, as in the subject case the passenger had been intercepted after he had cleared through the immigration and Customs. Whereas, in their case, they had not completed the security and had not crossed the immigration and Customs. The applicants have contested the application of the ratio of this decision to their case.
- 5.17. that the currency is restricted item not prohibited and the authority ought to have allowed the applicant to redeem the same as per Section 125 of the Customs Act, 1962. The applicants have placed reliance on the undermentioned case laws;
  - (a). Philip Fernandes vs. Commr. Of Customs, Mumbai Airport 2002-146-ELT-180-Tri-Mumbai.
  - (b). Felix Dores Fernandes vs. Commr. Of Customs, 2008-118-ELT-639-Tri-Mumbai,
  - (c). Prem Kumar vs. Customs, 2016-334-ELT-498-(Del),
  - (d). UOI vs. Harish Muljimal Gandhi, 2016-340-ELT-(BOM),

(e). Md. Liakat Ali vs. Commr. Of Customs (Prev), Kolkata 2008-222-ELT-295-Tri-Mumbai.

The applicants have prayed to the Revision Authority to set aside the OIA and release the currencies, to set aside the penalties imposed on them and for dropping the proceedings against them.

6. Personal hearing through the online video conferencing mode was scheduled for 23.08.2022. Shri. Prakash Shingarani, Advocate, appeared for hearing on 23.08.2022 on behalf of the applicant. He submitted that the foreign currency belonged to the applicant, there is no dispute on ownership of currency. He further submitted that absolute confiscation is excessive and harsh. He requested for release of the currency on nominal fine and penalty.

7. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized foreign currency and Indian currency had been recovered from the possessions of applicant no. 1 and 2 respectively. Further, in their statements the applicants had admitted the possession, carriage and recovery of the foreign currency. Applicants were unable to show that the impugned foreign and Indian currency in their possession was procured from authorized persons as specified under FEMA. The fact remains that the applicants were in possession of foreign / Indian currencies which was way above the permissible limit. Thus, it has been rightly held by the lower adjudicating authority that in the absence of any valid document for the possession of the foreign currency, the goods become liable for confiscation in view of the prohibition imposed in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 which prohibits export and import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the confiscation of the foreign currency was justified.

8.1. Applicants have pointed out several procedural issues relating to cross examination, examination of baggage, drawl of panchanama, retraction of statements, etc. All these issues have been examined in light of evidences on record. Undisputed fact remains that currency was recovered from the applicants. Minor procedural infractions cannot be used to alter this vital fact.

8.2. Applicants have contended that their baggage was checked before security check up, before immigration check up and before they could make up any declaration to Customs. Applicants have pleaded that the case against them had been made prematurely before they could make a declaration. The Government finds that the applicants had not taken any general or special permission of the RBI to carry the foreign / Indian currency and had attempted to take it out of the country. Hence, the Government finds that the conclusions arrived at by the lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 have been violated by the applicants is correct.

9. Government finds that the ratio of the judgement of the Apex Court in the case of Sheikh Mohd. Umar v/s. Commissioner of Customs, Calcutta [1983(13) ELT 1439 (SC)] wherein it is held that non-fulfilment of the restrictions imposed would bring the goods within the scope of "prohibited goods" is applicable in this case.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s. Raj Grow Impex has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such*



*discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

11. In a similar case, Bombay High Court in case of Commr. Of Customs vs. Rajinder Nirula [2017(346)ELT-9 (Bom)] while upholding the release of the foreign currency on redemption fine by Cestat, observed that

- “4. The only contention raised before us and equally before the Tribunal is that the seized goods are currency and should not have been allowed to be released by paying a fine. The seizure is of foreign currency and which was attempted to be smuggled out of India without any authorisation. The Tribunal has seriously erred in law in granting the relief.*
- 5. After having perused the order of the Tribunal, we find that the Tribunal came to the conclusion that the confiscated foreign currency should be redeemed. In that regard the Tribunal relied upon a judgment of the High Court of Delhi in the case of Mohd. Ayaz v. Union of India - 2003 (151) E.L.T. 39 (Del.). It also relied upon its own order passed in the case of Pankaj Jagda - 2004 (171) E.L.T. 125 (Tri.-Mum.).*
- 6. We do not find any merit in the learned counsel’s argument that the course adopted by the Tribunal was impermissible. The definition of the term “goods” includes currency and negotiable instruments [see Section 2(22)(d)]. When the power of redemption is exercised, what the law postulates is that there is an option to pay fine in lieu of confiscation. Section 125(1) of the Customs Act, 1962 provides that whenever confiscation of any goods is authorised by this Act, the officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay, in lieu of confiscation, such fine as the said officer thinks fit.*
- 7. In these circumstances, we do not find that there was any error or lack of power. The seized currency was released and by imposing penalty. In the present case, the Tribunal, therefore, was justified in holding that since the foreign currency is redeemed on payment of fine, the penalty also deserves to be scaled down or reduced. This is essentially a finding of fact rendered after consideration of the materials on record. We do not think that the Tribunal was in error in adopting the course that it has adopted. We do not find any merit in the appeal. It is dismissed”.*

12. In a case of confiscation of Indian Currency, Delhi High Court in the case of Raju Sharma v/s. Union of India [2020(372) ELT 249 (Del.)] while allowing release of Indian currency observed,

*“18. .... the actual grievance of the Revenue before the Revisionary Authority, was that the seized currency was “prohibited”, redemption thereof ought not to have been allowed at all, and the currency ought to have been absolutely confiscated. This submission directly flies in the face of Section 125 of the Customs Act whereunder, while allowing the redemption, in the case of goods which are not prohibited, is mandatory, even in the case of goods, which are prohibited, it is open to the authorities to allow redemption thereof, though, in such a case, discretion would vest with the authorities. The Commissioner (Appeals), while rejecting the appeal of the revenue, correctly noted this legal position, and observed that, as the AC had exercised discretion in favour of allowing redemption of the seized currency, on payment of redemption fine of ` 50,000/-, no occasion arose to interfere therewith. We are entirely in agreement with the Commissioner (Appeals). Exercise of discretion, by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motives [Mangalam Organics Ltd. v. UOI - (2017) 7 SCC 221 = 2017 (349) E.L.T. 369 (S.C.)]. No illegality, much less perversity, is discernible in the decision, of the AC, to allow redemption of the seized currency on payment of redemption fine of ` 50,000/-. The Commissioner (Appeals) rightly refused to interfere with the said decision, and the Revisionary Authority, in an order which reflects total non-application of mind, chose to reverse the said decision.*

*19. We are unable to sustain the order of the Revisionary Authority. We uphold the decision of the Commissioner (Appeals) as well as the order of the AC, which stands affirmed thereby. The seized currency shall, therefore, forthwith be returned to Petitioner No. 2”.*

13. The Government finds that the applicants had been intercepted in the departure hall. i.e. in other words, they had not crossed the immigration and Customs counters at the airport. This point was raised by the applicants before the lower authorities and the respondents had not controverted the same. It is clear that at the point of interception, the applicants had not crossed the immigration and Customs counters and were in the departure area. In this case, the interception of the applicants had taken place before the applicants had crossed the Immigration and Customs counters. Government finds that the charge against the applicants that they had harboured an intent to export the currency without declaring the same to

Customs had not been conclusively established. Government notes that the applicants should have been allowed to cross the Customs and immigration areas before their interception which would then have revealed true intentions to declare the currencies in their possession or otherwise. In the said situation, Government finds that the absolute confiscation of the currencies is not justified. The Government finds that the exhaustive list of the case laws etc cited by the applicants in their revision application on various procedural aspects have earlier all been dealt with at great length by the lower authorities. The issues of legal procurement, substantial quantity of currencies, retraction of statements, frequent traveller etc have been appropriately dealt with. Minor infraction in procedures can not vitiate the proceedings where recovery of offending goods from the possession of the applicants is undisputed. Considering the afore-stated facts, Government is inclined to set aside the order of absolute confiscation passed by the appellate authority and considers granting an option to the applicants to redeem the currencies on payment of a suitable redemption fine as the same would be more reasonable and fair.

14.1. Applicants have also pleaded that penalties imposed on them are harsh. Facts of the case as discussed above brings out that the personal penalty of Rs. 6,00,000/- imposed on the applicant no. 1 under Section 114(i) of the Customs Act, 1962 is a bit harsh and merits reasonable reduction.

14.2. Government finds that the personal penalty of Rs. 50,000/- imposed on the applicant no. 2 under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

15. In view of the above, the Government modifies the impugned order of the Appellate authority in respect of the foreign currency and Indian currency seized from the applicants. The assorted foreign currencies equivalent to Rs. 38,13,524/- pertaining to applicant no. 1 is allowed to be redeemed on

payment of a fine of Rs. 7,50,000/- (Rupees Seven lakhs fifty thousand only). The Indian currency of Rs. 5,00,000/- recovered from applicant no. 2 is allowed to be redeemed on payment of a fine of Rs. 1,00,000/- (Rupees One Lakh only). The penalty of Rs. 6,00,000/- imposed on applicant no. 1 under section 114(i) of the Customs Act, 1962 is reduced to Rs. 4,00,000/- (Rupees Four lakhs only). The penalty of Rs. 50,000/- imposed on the applicant no. 2 under Section 114(i) of the Customs Act, 1962 is appropriate.

16. The two Revision Applications are disposed of on above terms.

  
( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 262-263/2022-CUS (WZ/SZ)/ASRA/ DATED 13.09.2022.

To,

1. Shri. Ramesh Assandas Lalchandani, S/o. Shri. Assandas Kaiyantomal Lalchandani, R/o. - Flat No. 404, Purab - Panchim Apartments, Nehru Chowk, Ulhasnagar, Thane - 421 002.
2. Shri. Shankar Manikamal Bhatia, S/o. Shri. Manikamal Khubchand Bhatia, R/o. - Flat No. 401, Inder Lok Society, Hospital Road, Ulhasnagar, Thane - 421 002.
3. Commissioner of Customs, Custom House, Marmagoa, Goa - 403 803.

Copy to:

1. Shri. P.K Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Noticeboard.