

REGISTERED  
SPEED POST



F. No. 375/04-A/B/2017-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 23/10/19

Order No. 30/19-Cus dated 23-10-2019 of the Government of India passed by Mrs. Mallika Arya, 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. CC(A)Cus/D-I/Air-1280/2015 dated 30.09.2015, passed by the Commissioner of Customs (Appeals), New Delhi.

APPLICANT : Nishant Aggarwal, New Delhi

RESPONDENT: Commissioner of Customs, New Delhi

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**ORDER**

A Revision Application No. 375/04-A/B/2017 dated 06/02/2017 has been filed by Mr. Nishant Aggarwal (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air-1280/2015 dated 30.09.2015, passed by the Commissioner of Customs (Appeals), New Delhi, wherein the order of the Additional Commissioner of Customs, New Delhi, absolutely confiscating the foreign currency of US \$ 2,00,000 equivalent to Indian Rs. 1,22,70,000/- (One crore, twenty two lakhs seventy thousand only) and imposing a penalty of Rs. 25,00,000/- (Twenty five lakh only) on the applicant had 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. Personal hearing was fixed on 06.12.2018. No one from the applicant or the respondent's side appeared for Personal hearing on the said date. Another date for Personal hearing was fixed on 18.09.19 which has been adjourned vide applicant's request letter dated 18.09.2018 wherein he requested for any other date in second week of October. Another date for Personal hearing was fixed on 10.10.2019. Sh. Harish Kohli, Advocate appeared on behalf of the applicant and he contended that the applicant was carrying 2 Lakh US dollars and requested for release of currency on imposition of redemption fine and personal penalty, since foreign currency is not prohibited for export. No one from respondent's side appeared for Personal hearing. The case is being taken up for final disposal.

4. The Government has examined the matter. It is observed that the foreign currency was recovered from the applicant which was found concealed in specially made cavities in books and in the pocket of the applicant's jeans. It is also not disputed by the applicant that he did not declare the said currency to Customs officers and he did not have any document or evidence showing lawful possession of the impugned currency or any permission to export the same. The currency so concealed by him was not deliberately declared to the proper officer of the Customs

under Section 77 of the Customs Act, 1962. From this act of the applicant it is clearly evident that the applicant undeniably attempted to illegally export the foreign currency which is undoubtedly prohibited goods. *Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, states that no foreign currency can be send out of India or brought into the country without the permission of the Reserve Bank of India.* As per Foreign Exchange Management (export and Import of Currency) Regulations, 2000, read with Foreign Exchange Management (possession and Retention of Foreign Currency) Regulations, 2000, *any person may take out of India foreign currency notes, bank notes and foreign currency travellers cheques not exceeding US\$2000 or its equivalent in aggregate.* As per the provisions of Section 113 (e) of Customs Act, 1962 any goods which are concealed in a package and brought into the customs area for exportation are liable for confiscation.

Hon'ble Madras High Court in the case of Commissioner of Customs (AIR) Chennai-I vs. Samynathan Murugesan, 2009 (247) E.L.T. 21 (Mad.) wherein relying on the definition of 'prohibited goods' given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi [2003(155) ELT 423 (SC)] the Honourable Court has held as under:-

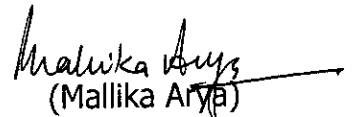
*"In view of meaning of the word "prohibition" as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold that the imported gold was 'prohibited goods' since the respondent is not an eligible passenger who did not satisfy the conditions".*

Commissioner (Appeals) in his order 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 by virtue of which it is absolutely clear that attempt to export foreign currency which had not been procured from the authorized sources is not allowed and thus the same is prohibited. Therefore the impugned foreign currency seized from the applicant attempted to be exported in violation of the

provisions of FEMA,1999, read with Customs Act, 1962 and rules made thereunder will fall in the category of prohibited goods liable for confiscation. The applicant has also not disputed the order of the Commissioner (Appeal) to the extent of confiscation of foreign currency but has challenged it only on the ground that the foreign currency should have been released to him on payment of redemption fine and penalty etc. However, the government does not find this contention tenable 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 the confiscated prohibited goods. Hence the orders of the lower authorities regarding absolute confiscation of the huge quantum of foreign currency is legally sustainable. The applicant's reliance on several decisions is found to be of no relevance to facts and circumstances of the present case.

5. Regarding applicant's other argument that huge penalty has been imposed on them under Section 114 of the Customs Act. Penalty up to 3 times of the value of the goods attempted to be exported illegally can be imposed under Section 114 of the Customs Act, 1962. Whereas in this case a penalty of Rs. 25 Lakh has been imposed which is reasonable taking in view the nature of offence. Considering these facts, the government does not find any fault in the order-in-appeal.

6. Accordingly, the revision application filed by the applicant is rejected.

  
(Mallika Arya)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

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ORDER NO. 30/19-Cus dated 23/10-2019

Copy to:-

1. The Commissioner of Customs, I.G.I. Airport, New Delhi- 110037.
2. The Commissioner of Customs (Appeals), New Customs House, Near I.G.I. Airport, New Delhi- 110037.
3. Sh. Harish Kohli (Advocate), 1667, Outram Lines, G.T.B. Nagar, Delhi- 110009
4. P.S. to A.S.
- ✓ 5. Guard File
6. Spare copy
- 7.

ATTESTED

*Md*  
23/10/19

(Nirmala Devi)  
Section Officer (RA)