

REGISTERED

SPEED POST



F. No. 380/108/B/2016-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...26/3/18

ORDER NO. 43/18-Cus dated 23-3-2018 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 Application filed, under section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. CC
(A) CUS/Airport/162/2016 dated 31/03/2016 passed
by Commissioner of Customs (Appeals), NCH, Near
IGI Airport, New Delhi.

APPLICANT : Commissioner of Customs, New Delhi

RESPONDENT: Mohd. Arif, New Delhi

ORDER

A Revision Application No. 380/108/B/2016-R.A. dated 06/06/2016 has been filed by the Commissioner of Customs (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. CC (A)CUS/Airport/162/2016 dated 31/03/2016 whereby the order of the Additional Commissioner of Customs, New Delhi, confiscating absolutely the foreign currency equivalent to Rs. 65,02,815/- and imposing a penalty of Rs. 13 lakhs on the respondent has been modified to the extent that the foreign currency has been allowed to be redeemed on payment of redemption fine of Rs. 2 lakhs and the penalty on the respondent has been reduced to Rs. 2 lakhs.

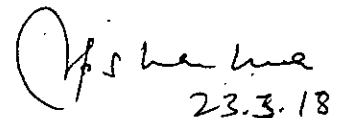
2. A personal hearing was held on 08.03.2018 which was attended by the respondent, Mr. Mohd. Arif and stated that the order of the Commissioner (Appeals) is correct. Further he pleaded that he never visited Dubai, had planned to go to Dubai for the first time to start a hotel business after selling his two properties in Delhi and has only committed mistake of buying foreign currency from unauthorised dealers without having any knowledge of law. However, no one appeared for the applicant 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 found that the revision application has been filed mainly on the ground that the Commissioner (Appeals) has erred by allowing the redemption of the absolutely confiscated foreign currency which are prohibited goods, by imposing small redemption fine of Rs. 2 Lakhs only and by drastically reducing the personal penalty on the respondent from Rs. 13

Lakhs to Rs. 2 Lakhs. The respondent, in his reply dated 25/10/2017 or in his submissions during his personal hearing on 08/03/2018, has not denied that he had attempted to illegally export the foreign currencies after having procured the same in India from illicit resources and he has only submitted that he did not have proper knowledge with regard to foreign currencies. Even 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. However, the Government certainly finds that the Commissioner (Appeals) has imposed a very paltry redemption fine of Rs. 2 lakhs against the confiscation of foreign currencies of the value of Rs. 65,02,815/-. The Commissioner (Appeals) has noted in his order that the foreign currencies in this case had been arranged by the respondent by selling his two properties in Delhi. But this fact alone cannot attenuate the gravity of the offence committed by the respondent by not only procuring the foreign currencies from illegal resources in brazen violation of FEMA and various other laws in force but also by attempting to

export the foreign currencies to a foreign country in contravention of Section 77 of the Customs Act, 1962. The Commissioner (Appeals) has overlooked these relevant facts while imposing redemption fine and reducing the penalty from Rs. 13 Lakhs to Rs. 2 Lakhs. Above all, he has not assigned any reason for doing so. Therefore, considering the serious nature of the offence committed by the respondent, the Government accepts the revenue's case that the Commissioner (Appeals) has definitely committed an error by not imposing appropriate redemption fine and penalty. Accordingly, the government considers that it would be just and proper if the confiscated foreign currencies are allowed to the respondent on payment of redemption fine of Rs. 7 Lakhs and personal penalty of Rs. 5 Lakhs.

4. In terms of the above discussion, the revision application filed by the revenue is allowed.


23.3.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

The Commissioner of Customs,
Terminal-3, IGI Airport,
New Delhi 110 037

ORDER NO. 43/2018 - Cus dated 23-3-2018

Copy to:-

1. Mohd. Arif, 3618, Near Golcha Cinema, Darya Ganj, New Delhi-110 002.
2. The Commissioner of Customs (Appeals), (P), New Custom House, New Delhi-37
3. P.S. to A.S.
4. Guard File
5. Spare copy

ATTESTED


(Ashish Tiwari)
Superintendent