

SPEED POST



F. No. 380/9/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 22/2/21

ORDER NO. 45/2021 - Cus dated 19-02-2021 of the Government of India, passed by Sandeep Prakash, 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/Air/51-52/2018 dated 23.02.2018, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037.

APPLICANT : Commissioner of Customs, IGI Airport, Delhi.

RESPONDENT : Mr. Gagan Deep Singh & Smt. Harpreet Kaur

ORDER

A Revision Application No. F. No. 380/9/B/2018-R.A dated 12.04.2018 has been filed by the Commissioner of Customs, IGI Airport, T-3, Delhi (hereinafter referred to as the applicant) against Order-in-Appeal No. CC(A)/CUS/Air/51-52/2018 dated 23.02.2018, passed by the Commissioner of Customs (Appeals), Delhi wherein Order-in-Original passed by Joint Commissioner of Customs, IGI Airport, New Delhi bearing No. 37/JC/U.S//2016 dated 31.10.2016, absolutely confiscating the assorted foreign currency, totally equivalent to Rs. 57,90,143/-, under Section 113 of the Customs Act, 1962, has been set aside. Further, the Commissioner (Appeals) ordered that the foreign currency can be released on payment of redemption fine of Rs. 11,00,000/- and Rs. 2,50,000/- to Sh. Gagan Deep Singh and Smt. Harpreet Kaur, respectively, under Section 125 of the Customs Act, 1962. Besides, the penalty imposed under Section 114 of the Customs Act, 1962, on Smt. Harpreet Kaur has been reduced to Rs. 1,50,000/- from Rs. 5,00,000/-. The penalty imposed on Sh. Gagan Deep Singh was upheld.

2. Brief facts of the case are that Sh. Gagandeep Singh and Smt. Harpreet Kaur (Respondent 1 & Respondent 2, respectively), who were scheduled to depart to Bangkok by Flight 6E41 on 17.02.2014, were handed over to Customs by CISF officials with the information that the respondents were carrying assorted foreign currencies. On examination/personal search, assorted foreign currencies equivalent to Rs. 46,37,643/- and Rs. 11,52,500/- was recovered from Respondent 1 & 2, respectively. Respondent 1 is the son of Respondent 2. Respondents in their statements dated 17.02.2014 stated that the foreign currency was given to them by one Mr. Preet Pal for handing over the same to his father in Bangkok. In return, they were promised a sum of Rupees Fifty Thousand plus air tickets to carry the foreign currency to Bangkok. It was further stated

that, they were not aware of the address of Preet Pal's father but he (Preet Pal's father) was to receive them at the Bangkok airport.

3. The Revision Application has been filed on the ground that the order of the Commissioner (Appeals) is erroneous. The export of foreign currency is prohibited and can not be released on payment of redemption fine. The revision application in Para No. 14.7 states as follows **"the very fact of non-compliance of the conditions of export renders such goods liable for confiscation and for absolute confiscation in the facts and circumstances of the case."** Further, the Appellate Authority failed to appreciate that the respondents were carrier and under the provisions of Section 125 of the Customs Act, 1962, the goods can be released only to the owner of the goods. The appellate authority has reduced the penalty on Smt. Harpreet Kaur to Rs.1,50,000/- on lakhs arbitrarily without giving any cogent reason to substantiate the relief.

4. Personal hearing in the matter was fixed on 08.01.2020, 23.01.2020 and 08.02.2021 which was not attended by the respondents. A last and final opportunity was granted to the respondents on 18.02.2021. However, vide e-mail dated 18.02.2021, another adjournment has been requested. As ample opportunities have already been granted to the respondents to present their case, the request for another adjournment is denied. Sh. R.P. Bairwa, Superintendent, appeared for personal hearing, on behalf of the applicant, on 08.02.2021. He stated that the respondents had in their statements disclosed that the seized foreign currency did not belong to them and was handed over to them by another person. In this light and for the reasons brought out in the revision application, the order of Commissioner (Appeals) allowing the option to redeem the seized foreign currency on payment of redemption fine is not correct.

5. The Government has examined the matter. It is evident, from the evidence on record, that a huge amount of foreign currency was recovered from the respondents, which was concealed by them to evade detection. It is not disputed that they did not declare the currency to the Customs officers at the airport under Section 77 of the Customs Act, 1962 and did not have any documents or evidence showing lawful possession of the currency.

6.1 Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, specifies that "Except as otherwise provided in these regulations, no person shall, without the general or special permission of Reserve Bank, export or send out of India, or import or bring into India, any foreign currency." Further, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000, any person resident in India could retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate subject to the condition that such currency was acquired by him by way of payment for services outside India or as honorarium, gift, etc. In the present case, the respondents have not produced any permission from the Reserve Bank of India for export of foreign currency found in their possession. They have also shown no compliance with the provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2001. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the respondents) are not fulfilled.

6.2 In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the purpose of

Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words all types of prohibition. Restriction is one type of prohibition". The provisions of Section 113(d) are in pari-materia with the provisions of Sections 111 (d). In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods". The original authority has correctly brought out that in this case the conditions subject to which foreign currency could have been legally exported have not been fulfilled. Thus, following the law laid down by the Apex Court, there is no doubt that the subject goods are 'prohibited goods'.

7. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962 but appellate authority has ordered to release the goods on redemption fine. The Government observes that the option to release seized goods on redemption fine, in respect of "prohibited goods", is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the present case, the original authority has refused to grant redemption to the respondents as the respondents attempted to smuggle the goods and as they were not the owners thereof. In the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court, after extensive application of several judgments of the Apex Court, has held that "non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous

and it causes for judicial interference.' Further, "when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason"." It is observed that the original authority has in the instant case after appropriate consideration passed a reasoned order refusing to allow redemption. Thus, applying the ratio of P. Sinnasamy (Supra), the interference by the appellate authority in the discretion lawfully exercised by the original authority is not correct.

8.1 The order of Commissioner (Appeals) allowing redemption to the respondents is incorrect for another reason as well.

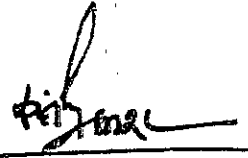
8.2 It is to be observed that respondents, in their statements tendered under section 108 of the Customs Act, 1962, have admitted that they were carrying the foreign currency, on behalf of one Sh. Preet Pal, for a consideration. Therefore it is apparent that respondents were not the owners of the goods and were mere carriers.

8.3 In the case of Union of India Vs. Mohammed Aijaj Ahmad – 2009(244)ELT 49 (Bom), the Hon'ble Bombay High Court has held that "if only the owner is not known, then a person from whose possession or custody such goods have been seized could have given an option to pay in lieu of confiscation." In the present case, the respondents have admitted that Preet Pal was the owner of the foreign currency. Thus, following the ratio of Mohammed Aijaj Ahmed (supra), it was not open to the Commissioner (Appeals) to allow redemption to the respondents .

9. The original authority has imposed a penalty of Rs. 5 lakh each on both the respondents. The Commissioner (Appeals), while maintaining the penalty imposed

on Respondent 1, has reduced the penalty imposed on Respondent 2 to Rs. 1,50,000/-. The Government finds that keeping in view the amount of foreign currency recovered from the possession of Respondent 1 and Respondent 2, respectively, the reduction of penalty imposed on Respondent 2 cannot be faulted.

10. In view of the above, the impugned Order-in-Appeal is set aside and the order dated 31.10.2016 of the original authority is restored, except that the reduction of penalty imposed on Respondent 2 by the Commissioner (Appeals) is maintained. The revision application is disposed of accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

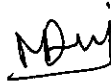
1. The Commissioner of Customs, IGI Airport, T-3, Delhi-110037

ORDER NO. 45/2021-Cus dated 19-02-2021

Copy to:-

1. Sh. Gagan Deep Singh, 10/35, Adarsh Nagar, VPO Banga, District Nawashahar (Punjab).
2. Smt. Harpreet kaur, 10/35, Adarsh Nagar, VPO Banga, District Nawashahar (Punjab).
3. The Commissioner (Appeals), New Customs House, Near IGI Airport, Delhi-110037.
4. P.S. to A.S.
5. Guard File.
6. Spare Copy.

ATTESTED



(NIRMALA DEVI)
SECTION OFFICER (RA)