

REGISTERED

SPEED POST



F. No. 380/36/B/2017-R.A.
375/27/B/2017-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 26/11/18

ORDER NO 54/18 Cus dated 23-7-2018 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/D-I/Airport/254/2017 dated 04/07/2017 passed by Commissioner of Customs (Appeals), NCH, Near IGI Airport, New Delhi.

APPLICANT : 1. Commissioner of Customs, New Delhi
2. Mobeen Khan

RESPONDENT : 1. Mobeen Khan
2. Commissioner of Customs, New Delhi

ORDER

A Revision Application No. 380/36/B/2017-R.A. dated 12/09/2017 has been filed by the Assistant Commissioner of Customs (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. CC -(A) -CUS/D-I/Airport/254/2017 dated 04/07/2017 whereby the order of the Additional Commissioner of Customs, New Delhi, confiscating absolutely the foreign currency equivalent to Rs. 35,32,500/- and imposing a penalty of Rs. 7.05 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. 8 lakhs and penalty of Rs. 4 lakhs. Besides above, the respondent Mr. Mobeen Khan has also filed a revision application no. 375/27/B/2017-R.A. dated 02/08/2017 against the same Order-in-Appeal.

2. The revenue has filed the revision application mainly on the ground that Mr. Mobeen Khan had attempted to export the foreign currencies by ingeniously concealing the same in the hollow rod of handles of his two trolley bags and not declaring the same to the customs as required under Section 77 of the Customs Act, 1962 and, therefore, the foreign currency cannot be allowed to be redeemed by the respondent on payment of fine. On the other hand, Mr. Mobeen Khan has challenged the order-in-appeal on the ground that the redemption fine and penalty imposed on him are on the higher side and may be reduced.

3. A personal hearing was held on 05.03.2018 in both the cases and was attended by Sh. S.S. Arora, Advocate, on behalf of respondent. He provided written submissions dated 26/02/2018 to emphasise that revenue's revision application is rejectable and requested for reduction in fine and penalty on the grounds already

pleaded in their application. However, no one appeared on behalf of revenue and no request has been received for a personal hearing on any other date also 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 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 and by reducing the personal penalty on the respondent from Rs. 7.05 Lakhs to Rs. 4 Lakhs. Even the Commissioner (Appeals) has clearly held in his order that foreign currency is prohibited goods and is liable for confiscation. 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 given by the Commissioner (Appeals) in his order. Further the Advocate has provided the copies of Orders-in-Original Nos. 176/Adj/AS/JC/2017 dated 18/09/2017, 145/Adj/DR/JC/2017 dated 11/08/2017, 2/Adj/2015 dated 15/05/2015, RLM/ACE/35/2015 dated 18/03/2015 and 21/JC/RR/2015 dated 05/03/2015 whereby such foreign currencies have been released on redemption fine and all these orders have been accepted by the Commissioner of Customs, New Delhi, who has filed the present application. 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, as regards Mr. Mobeen Khan's case that redemption fine and penalty have been imposed on higher side, his contention does not appear to be justified as the redemption fine and penalty imposed by the Commissioner (Appeals) are approximately 25% and 11% of the value of seized foreign currency which are quite reasonable in the facts and circumstances of the case and do not merit any further reduction.

5. In terms of the above discussion, the revision applications filed by the revenue as well as Mr. Mobeen Khan are rejected.

(R. P. Sharma)
23.3.18

(R. P. SHARMA)
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Commissioner of Customs,
Terminal-3, IGI Airport
New Delhi-37
2. Mr. Mobeen Khan,
House no. 176, Lahara Siddharth Nagar,
Uttar Pradesh-272 153

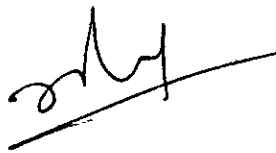
ORDER NO. 45-46/18-Cus dated 23-3-2018

Copy to:-

1. The Commissioner of Customs (Appeals), (P), New Custom House, New Delhi-37
2. P.S. to A.S.
3. Sh. S. S. Arora, Advocate, B1/71, Safdarjung Enclave, New Delhi-29
4. Guard File
5. Spare copy

ATTESTED

(NIRMALA DEVI)
Section Officer



Superintendent / अधीक्षक
Customs & Central Excise
केन्द्रीय उत्पाद एवं सी. ई. डी. विभाग
New Delhi, नई दिल्ली