

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

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F.No. 371/110-111/B/2022-RA/5091:

Date of Issue 04.08.2023

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ORDER No. 575-576 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.07.2023.  
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.

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Applicant No. 1 : Shri. Kirti Premji Pasad

Applicant No. 2 : Mrs. Uzma Khan

Respondent : Pr. Commissioner of Customs, C.S.I Airport, Mumbai

Subject : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-696/2021 dated 22.09.2021  
[F.No.S/49-944/2020] passed by the Commissioner of  
Customs (Appeals), Mumbai Zone-III.

**ORDER**

The common Revision Applications have been filed by the Shri. Kirti Premji Pasad and Mrs Uzma Khan, (herein referred to as 'Applicant No 1' and 'Applicant No. 2' respectively or 'Applicants") against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-696/2021 dated 22.09.2021 [F.No.S/49-944/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are on the basis of the information provided by CISF officials, the officers of AIU, Customs, Chhatrapati Shivaji International (CSI) Airport, followed Applicant No. 2, who was travelling to Singapore by Air India Flight No AI-342 and intercepted her after she had cleared Emigration and after she had crossed the Customs Counter at departure. On being asked whether she was carrying any foreign/Indian currency on her person on in her baggage she replied in the negative. Not being satisfied with the reply, personal search of the Applicant No. 2 was done and her baggage was examined. The examination of the baggage resulted in the recovery of on bundle of US dollars concealed in the inner pocket of the hand bag. Applicant No. 2 informed that the currency belonged to Applicant No. 1, who was her co-passenger. The details of the currency are as per Table 2 below.

2.1. Applicant No. 1 was identified and intercepted by the officers and he admitted that the foreign currency recovered from Applicant No. 2 belonged to him. Applicant No. 1 was also asked if he was carrying any foreign/Indian currency on his person or his baggage to which he replied in the negative. Pursuant to personal search and examination of the baggage of Applicant No. 2, four bundles of US Dollars and Singapore dollars cleverly concealed inside the inner pocket of the baggage were recovered.

The foreign currencies in denominations as given in Table No. 1 and 2 below were recovered from Applicant No. 1 and 2 respectively. The total equivalent value of the foreign currencies was Rs. 1,51,63,015/-. Both the Applicants'



had neither declared the foreign currency to the Customs nor did he possess any valid document/permit etc from RBI, as required under FEMA for export of the impugned currencies.

Table No. 1: Currency recovered from Applicant No.1)

Sr. No.	Currency	Denomination	Nos. of notes	Total value	Exch. Rate in INR.	Total Value in INR.
1	US Dollar	100	1641	164100	66.95	1,09,86,495/-
2	Singapore Dollar	100	32	3200	49.85	1,59,520/-
	Total					Rs. 1,11,46,015/-

TABLE No. 2 (Currency recovered from Applicant No. 2)

Sr. No.	Currency	Denomination	Nos. of notes	Total value	Exch. Rate in INR.	Total Value in INR.
1	US Dollar	100	600	60000	66.95	40,17,000/-

2.2. The officers took over and seized the recovered foreign currency equivalent to Rs. 1,51,63,015/- as detailed above, in the reasonable belief that the same were being smuggled out of India in violation of the provisions of FEMA, 1999 and relevant regulation issued thereunder read with the Customs Act, 1962.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Additional Commissioner of Customs, Chhatrapati Shivaji International (C.S.I) Airport, Mumbai vide Order-In-Original No. ADC/SKR/ADJN/54/2020-21 dated 28.07.2020 [Date of issue:12.08.2020] issued through F.No. S/14-6-5/2019-20 Adjn [SD/INT/AIU/226/2018 AP 'A'] absolutely confiscated the foreign currencies of denominations, as mentioned above, equivalent to Rs. 1,51,18,463/- after deducting GST of Rs. 3,732/- under Section 113 (d), (e) & (h) of the Customs Act, 1962. Penalty of Rs. 15,00,000/- was imposed on Applicant No.1 and penalty of Rs. 15,000/- was imposed on Applicant No. 2 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 of Customs (Appeals), Mumbai Zone-III, who vide

Order-in-Appeal No. MUM-CUSTOM-PAX-APP-696/2021 dated 22.09.2021 [F.No.S/49-944/2020] upheld the order of the Original Adjudicating Authority regarding confiscation of the foreign currency and imposition of penalties on the Applicants.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant have preferred this common application for condonation of delay and revision application inter alia on the grounds that;

5.01. That the Applicant No. 1 was the owner of the seized foreign currencies and that Rs. 60 lakhs was from his earlier business and he took a loan of Rs. 13 lakhs from his wife's brother and was carrying the currency to Singapore for genuine business purpose of setting up a tourism business and renting a shop and that Applicant No. 2 carried the currency on his request and that they were not allowed to declare the currencies to Customs and it was not their intention not to declare the currencies to Customs;

5.02. That foreign currency is not prohibited goods and the order of absolute confiscation of the currency is not sustainable without realizing the fundamental distinction between what is prohibited and what is restricted;

5.03. That as per Regulation I of Foreign Exchange Management (Export and Import of Currency) Regulations 2015, foreign currency as such is not prohibited goods and its import or export is subject to the permission given by RBI and further as per Regulation 7(2) of the Said Regulations any person may take or send out of India foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or rules of Regulations or directions made or issued thereunder;



5.04. That as the intention behind the provision of Section 125 of the Customs Act, 1962 is that as import of goods such as arms, ammunition, drugs etc under any circumstances would cause danger to the health, welfare or morals of people as a whole, prohibition relates to these goods;

5.05. That 'prohibition' would not apply to a case where import/export of goods is permitted subject to certain conditions or to a certain category of persons and which are ordered to be confiscated for the reasons that the conditions has not been complied with;

5.06. That foreign currency attempted to be exported by them are not to be treated as 'prohibited goods' and therefore the goods are not liable for confiscation under the provisions of Section 113 of the Customs Act, 1962.

The Applicant has relied upon the decision in the case of Commr. of Customs (Prev), West Bengal vs. India Sales International [2009(241)ELT 182(Cal)]

5.07. That after extolling and analyzing the meanings, principles and differences between 'prohibition' and 'restriction', the Applicant has veered to the conclusion that foreign currency is not prohibited for import/export and therefore an option should be given to the importer/exporter for redemption of the goods, even if the importer/exporter fails to fulfil the conditions for export of currency;

5.08. That Section 125 of the Customs Act, 1962 vests the power to grant redemption of confiscated goods and the adjudicating authority has the discretion to give an option of redemption fine in case of prohibited goods but for other goods, it is mandatory to give the option of redemption of goods on payment of fine. The Applicant has placed reliance on the following cases in support of their contention:

- (i) In RE: Chellani Mukesh [2012(276) ELT 129(GOI)]

- (ii) Suresh Kumar Agarwal vs. Collector of Customs, Madras [1998 (103)ELT 18(AP)]
- (iii) Bhargav Patel [Appeal No C/381/10-Mum] [2015-TIOL-1951-CESTAT-Mum] and cases relied upon in the order
- (iv) Sujahi vs. Commr. of Customs, Chennai

5.09. That in principle, the adjudicating authority has the power to absolutely confiscate or allow redemption of the goods and the power is vested in the Customs Act, 1962 and as there are no specific guidelines demarcating the cases where the absolute confiscations should be ordered, judicial precedence alongwith overall circumstances of the case are taken into account for adjudging the matter and in the instant case there are not enough grounds for absolute confiscation.

5.10. That the OAA relied on the case of Om Prakash Bhatia vs. UOI [2003(155) ELT 423(SC)] for ordering the absolute confiscation of foreign currency. In the said case the Hon'ble Supreme Court has held that prohibition of importation or exportation can be subject to certain prescribed condition to be fulfilled before or after clearance of goods and if conditions are not fulfilled it may render the goods as prohibited goods;

5.11. That the judgement of Om Prakash Bhatia has been over ruled by the larger bench of the Supreme Court in the case of Commissioner of Customs vs. M/s Atul Automation Pvt Ltd;

5.12. That a lower court should honour findings of law made by the higher court that is within the appeals path of case the court hears and precedent is a legal principle or rule that is created by a court decision. This decision becomes an example, or authority for judges deciding similar issues later. 'Stare decisis' is a legal doctrine that obligates courts to follow historical cases



when making ruling on a similar current or future case. The Applicant has relied on the following case laws in support of their contention:

- (i) CCE, Calcutta vs. Alnoori Tobacco Products [2004(170) ELT 135 (SC)]
- (ii) Escorts Ltd vs. CCE, Delhi [2004 (173) ELT 113 (SC)]
- (iii) CC (Port), Chennai vs. Toyota Kirloskar [2007 (213) ELT 4 (SC)]
- (iv) Sri Kumar Agency vs. CCE, Bangalore [2008 (232) E.L.T. 577 (S.C.)]
- (i) Escorts Ltd vs. CCE, Delhi-II [2004 (173) E.L.T. 113 (S.C.)]
- (ii) CC, Customs vs. M/s Atul Automations Pvt Ltd

5.13. That if the goods are not expressly 'prohibited' for importation, the owner as well as the importer would be entitled to an option to redeem the goods even upon adjudication and in the case of prohibited goods there is a discretion in the officer to release the confiscated goods in terms as set in and in the case of other goods, the officer is bound to release the goods on redemption. The Applicant has relied upon the following case laws in support of their contention:

- (i) Horizon Ferro Alloys Pvt Ltd vs. UOI -judgement by the Division Bench of Punjab and Haryana High Court.
- (ii) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (iii) Dhanak M. Ramji vs. Union of India [2009 (237) E.L.T. 280 (Tri-Bom.)]
- (iv) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].
- (v) Mohd Zia Ul Haque vs. Addl. Commissioner of Customs, Hyderabad [2014(214) E.L.T 849 (GOI)]
- (vi) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (vii) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (viii) Shaik Jamal Basha vs. Government of India [1992 (91) ELT 227(AP)]
- (ix) Mohamed Ahmed Manu vs. CC, Chennai [2006(205) E.L.T 383(Tri-Chennai)].
- (x) Rajaram Bohr vs. UOI [2015(322) E.L.T 337 (Cal)]

5.14. That foreign currency is not prohibited and its import or export is subject to laws and rules and regulations issued by a competent authority and foreign currency is not notified as 'prohibited' under the Customs Act, 1962 and FEMA and in view of this, the foreign currencies carried by the Applicant cannot be considered as prohibited goods;

5.15. Further, the Applicant has placed reliance on the following cases:

- (i) Prem Kumar vs. Customs [2016(334) ELT 498(Del)]
- (ii) T. Soundarajan vs. CC, Chennai [2008(221) E.L.T. 258(Tri.-Chennai)]
- (iii) UOI vs. Harish Muljimal Gandhi
- (iv) Mohammed Liakat Ali vs Commr. of Customs (Prev) Kolkata [2008(22) ELT (Tri-Kolkata)]
- (v) Kishin Shewaram Loungani vs. Commissioner of Customs, ACC, Mumbai
- (vi) Mohd. Ayaz vs UOI
- (vii) Rajinder Nirula and Tilak Raj vs. Commr of Customs -CESTAT order dated 25.04.2006
- (viii) Commr. of Customs vs. Harshvadan Bhagvanji Varia- CESTAT order dated 05.10.2001

5.16. That the allegations that the Applicant attempted to export foreign currencies for purchase of gold for the purpose of smuggling into India is based only on presumption and the case is not proved beyond doubt. That simply for the reason that some invoices for the purchase of gold were seized, no allegation can be made that the currencies were carried for buying the gold and from the same, for want of any corroboration from any other evidence or source, no presumption under the law could be drawn from the bare confessional statement of the Applicant. That 'Presumption of innocence' serves to emphasize that a prosecution has the obligation to prove each element of the offence beyond a reasonable doubt and that the accused bears no burden of proof. The Applicant has placed reliance on the following case

- (i) Sodhi Transport vs State of UP
- (ii) Oudh Sugar Mills vs. UOI [1978ELT (J-172)]



- (iii) Madhu Food Producte vs CCE [ 1995(76) ELT 197]
- (iv) UP State Sugar Corpn. Vs CCE [2000(127) ELT 83]
- (v) Dulichand Silk Mills (P) Ltd vs CCE, Hyderabad [2001(133) ELT 468 Tri]

5.17. That the Applicants' relies on Boards Circular No 95/2003-Cus dated 06.11.2003 which states that the burden is on the Department to show that the goods are smuggled goods and the department failed to prove it;

5.18. That penalty imposed on the Applicant No. 1 was disproportionate and imposition of heavy penalty on the Applicant No.1 is not sustainable; Applicant has made submissions about import of gold which has no relevance to the instant case and hence not mentioned.

5.19. That the course of action taken by the OAA must depend on the gravity and nature of the infraction by the individual Applicant and thus punishment must be proportional to the violation. The Applicants' has relied upon the following cases:

- (i) UOI vs. Mustafa & Najibhai Trading [1998(6 SCC 79]
- (ii) Management of Coimbatore DCC Bank vs. Secretary Coimbatore District Co-op Bank Employees Association [(2007) 4 SCC 669]
- (iii) Commissioner of Customs, Tuticorin vs. Sai Copiesr [2008(226) ELT 486(Mad)]
- (iv) Commissioner of Customs(Import) vs. Shankar Trading Co [2008(224) ELT 206(Bom)]
- (v) CC, Tuticorin vs. Shri Kamakshi Enterprises [2009(238) ELT 242(Mad)]
- (vi) Maa Tara Enterprises vs. CC Cochin [2009(243) ELT 730 Tri-Bang]
- (vii) Commr. of Customs, Cochin vs. Dilip Ghelani [2009(248) ELT (Tri-LB)]
- (viii) New Copier Syndicate vs. Commr. of Customs [2015(232) ELT 620(Tri-Bang)]
- (ix) Omex International vs. Commr. of Customs , new Delhi [2015(228) ELT (Tri-Del)]
- (x) Office Devices vs. Commr. of Customs, Cochin [2016-TIOL-2557-CESTAT-BANG]

(xi) Sai International and ors vs. CC, Cochin.

5.20. That the Applicant No. 1 submits that he is the owner of the assorted foreign currencies and they were not allowed to declare the currencies to customs and were forced to sign the incorrect statements and panchanama. Further, Applicant No. 1 states that permission from RBI could not be taken due to the fact that he was unaware of the provision of the law and that the allegation has been made without considering the series of judicial pronouncements which says that where the default in following the legal provisions is due to ignorance of law without malafide intention, no penalty is imposable.

5.21. Further reliance has been placed on the following cases:

- (i) Felix Dores Fernandes vs. CC [2000(118) ELT 639]
- (ii) UOI vs. Harsh Muljimal Gandhi [2016(340) ELT 93( Bom)]
- (iii) Rajinder Narula and Tilakraj vs. Commr. of Customs [ Order dated 25.04.2006]

Under the above circumstances of the case, the Applicant prayed to the Revision Authority to set aside the Order-in-Appeal and release the foreign currency on payment of reasonable fine and reduce the personal penalty on Applicant No.1.

On behalf of Applicant No. 1, the Advocate representing him, vide letter dated 13.02.2023, requested that early hearing in the case be granted to him as it was causing him undue hardship due to his life savings involved and as he had an excellent case on merits.

6.1. Personal hearing in the case was scheduled for 18.05.2023. Shri Prakash Shingrani, Advocate for the Applicants' appeared for the hearing and submitted that the Applicant No.1 is a tourist operator and wanted to set up a business in Singapore. He further submitted that foreign currency was



arranged to the above purpose and further submitted that foreign currency was not prohibited. He requested to allow option to redeem the goods on reasonable fine and penalty.

6.2. No one appeared for the Respondent Commissionerate nor any request was received in this regard,

7. On behalf of Applicant No. 1, his advocate, vide letter dated 07.07.2023 made additional submissions, which were in the nature of explaining the source of the foreign currency. In the additional submissions, it was stated that the Applicant had taken gold loan from a bank for the purpose of business and gave time line details of the gold loan and personal loans taken by him and his wife. The Applicant No. 1 stated the amount was invested in the tours and travel business run by him. It was further stated that the Applicant was earning commission from the main travel agencies through whom he organized the tours for his customers and that the commissions were used to repay the gold loans. Further, the Applicant claimed to have taken a loan of Rs. 13 lakhs from his wifes brother. In the said letter, the Applicant also admitted to be a frequent traveller in connection with his tours and travels business and used to accompany his clients/customers as a tour guide in the tours by him to various countries. It was stated that 27 trips to various countries were undertaken by the Applicant and that at the end of the tour the customers/passengers used to pay him tips in USD and SGD's to the extent of 50 to 100 dollars. Further, at the end of the tour the passengers used to sell left over currencies to the Applicant, all of which was saved and which accumulated to USD 115070 and SGD 3200 at his residence. The letter also stated that it was not the intention of the Applicant not to declare the currencies to Customs.

8. Government has gone through the facts of the case and the submissions. Government finds that there is no dispute that the seized foreign



currencies were not declared by the Applicants to the Customs at the point of departure. Both, Applicant No. 1 and 2, when asked whether they were carrying foreign/Indian currency on their person or in their baggage had replied in the negative. It is subsequent to the examination of their baggage that the foreign currencies which were concealed in the inner pocket of their bags by both the Applicants, were recovered therefrom. Further, in his statement the Applicant No. 1 had admitted that the foreign currency recovered from Applicant No. 2 belonged to him and admitted the possession, carriage, concealment, non-declaration and recovery of the foreign currency. The Applicant No. 1 claimed that he was the owner of the currency and had carried the currencies for genuine business purpose of setting up a tourism business and renting a shop. Further, Applicant No.1 stated that he had also submitted that Rs. 60 lakhs was from his earlier business and Rs. 13 lakhs was taken as a loan from his wife's brother and the rest of the amount was proceeds of the profits on sale of smuggled gold. The Applicant No.1 was unable to give the source of how he came in possession of the foreign currency. The Applicant has been giving different explanations with regard to the source of funds at various periods of time. The fact remains that the Applicant No.1 had not disclosed the impugned foreign currency and the source of the foreign currency had remained unaccounted. The Applicant No.1 could not provide sufficient evidence that the seized foreign currency was obtained from legitimate / authorized sources. Also, the fact that the foreign currency was procured from persons other than authorized persons as specified under FEMA, makes the goods liable for confiscation in view of the prohibition imposed in Regulation 5 of 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 as the Applicants were carrying foreign currency in excess of the permitted limit and no declaration as required under section 77 of the Customs Act,



1962 was filed. Therefore, the Government finds that the confiscation of the seized foreign currency was justified on the ground of concealment and also as both the Applicants could not account for the legal procurement of the currency and that and no declaration as required under section 77 of the Customs Act, 1962 had been filed by the Applicants.

9. The Government finds that the Applicants had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. 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, 2015 have been violated by the Applicants is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Original Adjudicating Authority has applied the ratio of the judgement of the Madras High Court in the case of Apex Court in the case of Commissioner of Customs, Chennai v/s. Xavier Poonolly [2014(310) E.L.T. 231 (Mad)].

10. Government also notes that the Applicants in their Revision Application submitted that it was not their intention not to declare the currencies to Customs and they were not allowed to declare the currencies to Customs. Besides the Applicant No.1 has also submitted that permission from RBI could not be taken as he was unaware of the provision of law. Government notes that as per records of the case, the Applicants were intercepted when they were proceeding towards the boarding gates and after crossing the Customs counter at departure. Government also notes that the Applicant No. 1 by his own admission used to travel to Singapore, Malaysia, Dubai to make arrangements for tours of small groups of people. Despite the same, to say that he was not aware of the provisions of law is far from the realms of probability. The fact

however remains that the Applicants had failed to declare the foreign currency to the Customs at the time of departure.

11. Government finds that the case of Commissioner of Customs, Chennai v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad)] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

10. *On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.*

11. *Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals with Export of foreign exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :*

5. *“Prohibition on export and import of foreign currency. -*

*Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.*

7. *Export of foreign exchange and currency notes. -*

(1) *An authorized person may send out of India foreign currency acquired in normal course of business.*

(2) *any person may take or send out of India, -*

(i) *cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;*

(ii) *foreign exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder*

.....”



12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

12. 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."*



13. In the Revision Application, request for release of the foreign currencies has been made, relying on a number of cases wherein the redemption of currency being taken abroad is justified. In this regard, the Government finds that the Original Adjudicating Authority has passed a cogent and judicious Order wherein contentions raised by the Applicants in the Revision Application have been dealt with in great detail at the first stage itself. The case of the Applicants has been thoroughly examined against the relevant provisions of the Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, Liberalised Remittance Scheme of RBI, etc. It has been rightly held by the Original Adjudicating Authority that a passenger can carry Indian / foreign currency provided he fulfils the conditions specified in the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and that any currency carried in violation of the restrictions imposed and non-declaration or mis-declaration thereof would render such currency liable to confiscation and the passenger would render himself liable to penalty for his / her act or omission and commission. Further, the Original Adjudicating Authority has held that the Applicants had not complied with the conditions as laid down under Regulation 5 and 7(2)(b) of the Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 and thus, had violated the restrictions imposed under the said Regulations, and by concealing the foreign currency in the baggage between their personal effects, no declaring the same, had not obtained permission from RBI and not drawn the foreign currency from an authorized dealer and thus the seized foreign currency was rendered as 'prohibited goods' and liable for confiscation under Section 113(d), (e) and (h) of the Customs Act, 1962 and for this act of omission and commission, the Applicants had rendered himself liable to penalty under Section 114(i) of the Customs Act, 1962.



14. Government finds that every allegation made in the Revision Application and case laws cited referred have not been considered, etc have been dealt with cogently by the Original Adjudicating Authority and have been deliberated upon and negated, point-wise. The Original Adjudicating Authority and the Appellate Authority has discussed various contentions of the Applicants in the Order-in-Original.

15. Government notes that the quantity of the foreign currency is substantial and the same was concealed in the baggage of the Applicants among their personal effects. The explanation regarding the source of the currencies has been varying at different periods of time. Both the Applicants were unable to produce the evidence that the foreign currency had been sourced by them from licit channels and had not complied with the statutory provisions. It is seen from the records that the Applicant has made unsubstantiated, inconsistent and incorrect submissions of the source of the funds for purchase of the foreign currency and also the source of purchase of foreign currency, which in any case is not from an authorised person. A case has been made out that the Applicant No. 1 being a regular traveller, was aware of the provisions of law but feigned ignorance of the law, which is no excuse for the violations committed by him and his accomplice and had attempted to smuggle out the foreign currency without declaring the same. Had the Applicants not been intercepted, they would have gotten away with the foreign currency. Government finds that considering that a large amount of foreign currency was being concealed in the baggage and recovered therefrom, currency remained unaccountable, Applicant No. 1 being a frequent traveller, admittedly the foreign currency was belonging to him, thus discretion used by OAA to absolutely confiscate the currencies is appropriate and judicious. Government finds that in this case, the discretion not to release the foreign currency under the provisions of Section 125 of the Customs Act, 1962 has been applied appropriately by the original adjudicating authority which has

been upheld by the Appellate Authority. Government finds that the Appellate order rejecting the appeal and upholding the confiscation of the foreign currency by the original adjudicating authority is legal and judicious and the Government is not inclined to interfere in the same.

16. The Government finds that the personal penalty of Rs. 15,00,000/- imposed on the Applicant No.1 and Rs. 15,000/- on Applicant No. 2 under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

17. In view of the above, the Government upholds the MUM-CUSTOM-PAX-APP-696/2021 dated 22.09.2021 [F. No. S/49-944/2020] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and does not find it necessary to interfere in the same.

18. The Revision Applications are dismissed as being devoid of merit.

  
( SHRAWAN KUMAR )

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

ORDER No. 575-576 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.07.2023

To,

1. Mr, Kirti Premji Pasad, 14,15,16, 1<sup>st</sup> Floor, Mithabai Mansion, Malviya Road, Ramnagar, Dombivali (East), Thane 421 201.
2. Ms Uzma Khan, 702, 7<sup>th</sup> Floor, Nizam Heights, Opp Kausa Petrol Pump, Near Dongre Hospital, Kausa, Mumbra, Thane 400 612.
3. Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.



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1. The Commissioner of Customs (Appeals), Mumbai -III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
2. Shri Prakash Shingrani, (Advocate), 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400 051
3. Sr. P.S to AS (RA), Mumbai
4. File Copy.
5. Noticeboard.

