



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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F.No. 371/36/B/2022-RA  
F.No. 371/35/B/2022-RA

6404

Date of Issue : 29.08.2023

ORDER No. 611 /2023-CUS (WZ)/ASRA/MUMBAI DATED. 29.08.2023.  
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.

Applicant No. 1 : Mr. Abdul Mateen

Applicant No.2 : Mr. Abdul Raqeeb Asfaque Ahmed Soudagar

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-CUSTOM-PAX-APP-828 & 829/2021-22 dated  
28.10.2021 [Date of issue: 28.10.2021] passed by the  
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

These separate revision applications have been filed by Mr Abdul Mateen and Mr. Abdul Raqeeb Asfaque Ahmed Soudagar (herein referred to as 'Applicant No. 1 and Applicant No.2 respectively and as 'Applicants' when referred collectively)' against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-828 & 829/2021-22 dated 28.10.2021 [Date of issue: 28.10.2021] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 08.02.2019, on the basis of intelligence, the officers of the AIU, Customs, CSI Airport intercepted Applicant No. 1 and Applicant No. 2, both Indian passport holders, who was bound for Muscat by Oman Airways Flight No. 0202, after they had cleared themselves from security and immigration. On being asked whether they were carrying any contraband, foreign or Indian currency either on their person or in their baggage, they replied that they were carrying foreign currency within permissible limit. Not being convinced by their reply, search of their baggage and person were conducted. Examination of the baggage of Applicant No. 1 led to the recovery of US\$ 30,000 and 14,000 Qatar Riyals concealed in a white coloured cardboard box in the bottom of his trolley bag. Examination of the baggage of Applicant No. 2 resulted in the recovery of US\$ 24,500 which were concealed in a strawberry printed corrugated box in the bottom of the trolley bag. A total of US\$ 54,500 and 14000 Qatar Riyals were recovered from the Applicants. The said assorted foreign currency was seized under the reasonable belief that the same were being attempted to be smuggled out of India and hence were liable to confiscation under the contravention of the provisions of the Customs Act, 1962 read with FEMA, 1999 and Foreign Exchange Management (Export and Import of Currency) Regulations 2015. Both the Applicants were arrested and released on personal bail and surety bond for Rs. 1,00,000/-.



3.1 Applicant No 1 in his statement admitted knowledge, possession, concealment, no-declaration, recovery and seizure of the foreign currency of US\$ 30,000 and 14000 Qatari Riyals from his possession and that he did not have any legal/valid purchase documents for the seized currency; that the seized currency was handed over to him on the instruction of his brother who was in Muscat and that he was a carrier who tried to smuggle currency for monetary considerations.

3.2. Applicant No. 2 in his statement stated that the foreign currency was handed over to him by an unidentified person and that he was to smuggle the currency to Muscat and hand it over to Mr. Kasim; that he knew that Applicant NO. 1 was also carrying foreign currency; that he admitted knowledge, possession, concealment, no-declaration, recovery and seizure of the foreign currency and that he had travelled 21 times in 2018 and 3 times in 2019 to carry cosmetics and sell in the local market.

3.3. The investigations and call records showed that the Applicants were frequent travellers and that they were constantly in touch with Mr Kasim which established the involvement of the Applicants admittedly in organised smuggling activity

4. 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/13/2019-20 dated 27.05.2020 [Date of issue: 30.06.2020) issued through F.No. [S/14-6-21/2019-20 Adjn SD/INT/AIU/67/2019 AP 'C'] and corrigendum dated 06.08.2020 ordered absolute confiscation of the foreign currency i.e USD 54,500 and 14,000 Omani Riyals equivalent to Rs. 41,34,175/- under Section 113 (d) (e) & (h) of the Customs Act, 1962 read with relevant provisions of FEMA, 1999. Penalty of Rs. 7,00,000/- each was imposed on Applicant No.1 and Applicant No. 2 under Section 114(i) of the Customs Act, 1962. The

bags which were used for concealing the foreign currencies were confiscated under Section 119 of the Customs Act, 1962.

5. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide his order Order-in-Appeal No. MUM-CUSTM-PAX-APP-828 & 829/2021-22 dated 28.10.2021 [Date of issue: 28.10.2021] upheld in toto, the order of the Original Adjudicating Authority.

6. Aggrieved with the aforesaid Order passed by the AA, the Applicants have preferred separate revision applications inter alia on the common grounds that;

6.1. That the Order in Appeal suffers from the vice of excessive use of powers and jurisdiction vested with the Appellate Authority, which did not take into consideration all the aspects of the case and thus the impugned order is arbitrary and unilateral and is liable to be set aside;

6.2. That the reasons are the life and blood of any quasi-judicial Order including an OIA and in both the orders passed by the lower authority there are no proper reasoning given by both the lower authorities on vital submissions made by the Applicant before them;

6.3. That the findings does not exhibit as to how and in what manner the imposition of such heavy and harsh penalty on him has been justified;

6.4. That there were various documents which were generated and prepared such as statements, call records, video footage of CCTV cameras and all such other documents which were requested by the Applicant since the same are relevant and part of the investigation proceedings/file, and hence requested and was never furnished which has resulted in gross miscarriage of justice. The Applicant has relied on the decision in Shalu Chadha, [2018 (359) E.L.T. 28 (Bom.)]



6.5. That the Applicant has in relation to any goods not done or omitted to do any act which act or omission would have rendered the goods liable to confiscation or have abetted the doing or omission of such an act and hence no penalty could have been imposed upon them under section 114 (1) of the Act;

6.6. That the burden lies on the customs department to show that the person have acted dishonestly or contumaciously or with deliberate of distinct object of breaching the law. The Applicant relies on the decision of Akbar Badruddin Jivani, [1990 (47) ELT 161 (SC)] which clearly states that imposing of penalty in such circumstances is unwarranted;

6.7. Further the Applicant has relied on the following case laws in support of his contention:

- (i) Jaisukh Gobarbhai Savalia reported in 2019 (367) E.L.T. 290 (Tri. Ahmd.)
- (ii) Elektronik Lab Vs. CC(P), Mumbai [2005 (187) ELT 362 (Tri. Mum.)]
- (iii) Joseph Itteyara Vs. CC, Mumbai [2004(176) ELT 165 (Tri. Mum)]
- (iv) Calcutta Ahmedabad Carriers Vs. CC, New Delhi [2004(164) ELT 367 (Tri. Del.)]

6.8. That even otherwise some logical reasoning was required to be made while imposing penalty. The penalty has been imposed equally on all the noticee. Penalty should commensurate with the role played by each person;

6.9. That the Respondent erred in proceeding to adjudicate the case hurriedly without considering the prayer for redemption;

6.10. That even otherwise goods not being notified as prohibited, and are importable 'freely' are not absolutely confiscable and Applicant is entitled for conditional release thereof. The Applicant has relied on the case of Nihar

Samir Mehta where the Commissioner of Customs, Airport, Mumbai has given the option for redemption;

6.11. That so far as Section 125 of the Customs Act is concerned, unless the importation or exportation of goods is expressly "prohibited", the Adjudicating Authority is bound to give to the Owner of the goods an option to pay fine in lieu of confiscation and since the export of currency is not expressly prohibited under section 11 of the Customs Act, 1962 or by any other statutory the option to redeem the goods, on payment of fine in lieu of confiscation should have been granted. The Applicant has placed reliance on the following case laws:

- (i) Decision of the Supreme Court in the case of Mukesh K. Tripathi vs. Senior Divisional Manager, LIC
- (ii) Ramesh Mehta vs. Sanwal Chand Singhvi
- (iii) State of Maharashtra vs. Indian Medical Association

6.12. That for the purpose of invoking Section 111(d), the word 'prohibition' has been liberally interpreted in the light of the words 'improperly imported' for confiscation of all goods, however, when it comes to section 112(i) or section 125, if the definition is applied, the same would result in absurdity and would render the provisions redundant and otiose. A clear distinction is made for dutiable goods, other than "prohibited goods" In section 112(i);

6.13. That in view of the two options conferred on the Adjudicating Authority under Section 125, if the word "prohibited" is construed as to apply in respect of every violation of any regulation or restriction or statutory procedural requirement, the said section would be rendered redundant and meaningless, and no such interpretation can thus be given in the context of section 125, in light of the judgment of Hon'ble Supreme Court in Asian Food Industries read with the above referred binding precedents on interpretation of words "unless the context otherwise requires". Therefore, the judgments relied in the



impugned Order are not applicable in the context that the aforesaid arguments and binding precedent of Hon'ble Apex Court have not been considered therein;

6.14. That the Applicant is ready to pay on the confiscated goods nominal Redemption fine/ Personal Penalty as deemed fit.

Under the circumstances, both the Applicants prayed for setting aside the impugned Order-in-Appeal and allow them to redeem the currency on nominal redemption fine and penalty or issue any order as deemed fit.

7. Personal hearing in the case was scheduled for 12.07.2023. Shri Yogesh Rohira, Advocate for the Applicant appeared for the hearing and submitted that the foreign currency recovered from the Applicants was well below the limit of USD 2,50,000/- fixed by RBI for capital or current account. He submitted that the Applicants is not a habitual offender and foreign currency not being prohibited under the Customs Act, the same should be released on reasonable fine and penalty. No one appeared for the personal hearing on behalf of the Respondent.

8. Government has gone through the records and facts of the case and the submissions of both the Applicants. Government finds that there is no dispute that the seized foreign currency was not declared by the Applicants to the Customs at the point of departure. The seized foreign currency were concealed in the white coloured and strawberry printed cardboard box in the bottom of the trolley bag carried by Applicant No. 1 and Applicant No. 2 respectively with the express intention of hoodwinking the Customs. Both the Applicants in their statements had admitted the knowledge, possession, carriage, concealment, non-declaration and recovery of the foreign currency. Both the Applicants, in their statements, admitted that were not the owners of the foreign currency and they were instructed by one Mr Kasim to collect the



foreign currency from a person in Mumbai and smuggle it to Muscat for a monetary consideration and admitted that they were aware that carrying such currency and not declaring the same was an offence under the Indian law. Therefore, the confiscation of the foreign currency was justified as the Applicants could not account for the legal procurement of the currency and that no declaration as required under section 77 of the Customs Act, 1962 was filed by them.

9. The Government finds that both 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, 2000 and Customs Act, 1962 have been violated by the Applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified.

10. Further the Madras High Court in the case of Commissioner of Customs, Chennai v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad)] at Para 13 has held as under;

*“..... We find, in the present case, the passenger has concealed the currency of 55,500 US dollars and other currencies, attempted to be taken out of India without a special or general permission of the Reserve Bank of India and this is in violation of the Rules. The fact that it was procured from persons other than authorized person as specified under the FEMA, makes the goods liable for confiscation in view of the above-said prohibition. Therefore, the Original Authority was justified in ordering absolute confiscation of the currency. The key word in Regulation 5 is prohibition of import and export of foreign currency. The exception is that special or general permission should be obtained from the Reserve Bank of India, which the passenger has not obtained and therefore, the order of absolute confiscation is justified in respect of goods prohibited for export, namely, foreign currency.....”*

11. 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."*

12. In the Revision Application, request for release of the foreign currencies has been made, relying on cases and extolling the argument that as far as Section 125 of the Customs Act, 1962 is concerned, unless the importation or exportation of goods are expressly prohibited, redemption has to be granted and that foreign currency is not a prohibited goods. 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, FEM (Possession and Retention of Foreign Currency) Regulations, 2015 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 cardboard boxes in the bottom of their bags and not declaring the same, not obtaining permission from RBI and not drawing the foreign currency from an authorized dealer, 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 themselves liable to penalty under Section 114(i) of the Customs Act, 1962.

13. Government finds that every aspect of the averments made by the Applicants have already 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 have discussed various contentions of the Applicants in the Orders-in-Original and the Orders-in-Appeal.

14. The Appellate Authority at Para No. 11, 12 and 13 of the OIA has stated as follows

*"11. Accordingly taking out foreign currency is regulated on two fronts i.e. source of acquisition and the maximum amount which can be taken out by any person. In the present case at hand the Appellant has not declared the impugned foreign currency truthfully in contravention of Section 77 of the Customs Act, 1962 and had intentionally attempted to export the same illegally. As regards the source from which foreign currency being taken out should be acquired, Regulation 7(2) (b) of the Foreign Exchange Management (Export & Import of Currency) Regulation, 2015 lays down, inter-alia, that any*



*person may take or send out of India 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 there under. As per Section 2 (c) of the FEMA 1999, "authorized person" means an authorized dealer, money exchanger, off-shore banking unit or any other person for the time being authorized under sub-section (1) of Section 10 of the Act to deal in foreign exchange or foreign securities. In the case in hand, the Appellant has failed prove the licit possession of the impugned foreign currency by non production of any documentary evidence.*

12. *I find that in terms of Section 125 of the Customs Act, 1962, it is not mandatory for redemption to be given for goods, if such goods are foreign currency which is confiscated under Section 113(d), (e) and (h) of the Customs Act, 1962 read with the FEMA, 1999 and regulations made thereunder and such currency are prohibited goods. I find that it has been decided by the Apex Court in the case Om Prakash Bhatia vs. CC Delhi (2003) 6 SCC 161 - that if importation or exportation is subject to any prescribed conditions to be fulfilled, then, such goods shall be 'prohibited goods' as per Section 2(33) read with Section 113(d) thereof. Further, in case of Suresh Gangaram Hole Vs CC (Airport), Mumbai 2015 (327) ELT 555 (Tri Mum), tribunal observed that "illicit nature of transactions is manifested and amounts to "smuggling" in and out foreign currency. Thus the tainted nature of seized foreign currency and the transaction is established beyond doubt" accordingly the court held absolute confiscation of the seized foreign currency under section 113 (d) and (h) of the Customs Act, 1962 which is beyond any legal challenge". I also find that in case of Baburaya Narayan Nayak Vs Commissioner of Customs, Bangalore wherein the CESTAT Bangalore 2018 (364) ELT 811 (Tri Bang) upheld the order of the adjudicating authority wherein the adjudicating authority had absolutely confiscated the silver bars since the Appellant had not produced any evidence regarding the licit possession of the goods.*

*13. Under these circumstances, I find that the adjudicating authority has rightly confiscated the impugned foreign currency absolutely and redemption in such circumstances cannot be claimed as a right.”*

15. Government notes that the quantity of the foreign currency is substantial and the same was concealed in cardboard boxes in the bottom of the baggage of the Applicants. Government also notes that both the Applicants are persons of limited means and were in no position to procure the impugned foreign currency on their own accord. The Applicants admittedly were frequent travellers and were attempting to carry the currency at the behest of their handler abroad and were not the owner of the currency but carriers for an organised smuggling syndicate. Both the Applicants were unable to produce the evidence that the impugned foreign currency had been sourced by them from licit channels and had not complied with the statutory provisions of the law. 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. Both the Applicants, being a frequent travellers, admittedly the foreign currency was not belonging to them and 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 and has been rightly upheld by the Appellate Authority.

16. 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.



17. The Government finds that the personal penalty of Rs. 7,00,000/- each imposed on the Applicants under Section 114(i) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

18. In view of the above, the Government upholds the Orders-in-Appeal Nos. MUM-CUSTM-PAX-APP-828 & 829/2021-22 dated 28.10.2021 [Date of issue: 28.10.2021] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and does not find it necessary to interfere with the same.

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

*Shrawan*  
28/8/23  
( SHRAWAN KUMAR )

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

ORDER No. 611 /2023-CUS (WZ)/ASRA/MUMBAI DATED 28.08.2023.

To,

1. Mr. Abdul Mateen, S/o, Abdul Rawoof Nilgiri, H.No. 11, Khambara House, Siddique Street, Bhatkal, Karwar, Karnataka 581 320
2. Mr Abdul Raqeeb Asfaque Ahmed Soudagar, S/o Ashfaque Ahmad Soudagar Abdul Hadi Saudagar, 3<sup>rd</sup> Cross, Usman Nagar, Bhatkal, Karnataka 581 210
3. Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.

Copy to:

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 Yogesh Rohira, Advocate, C/o SMJ Legal, 1 Aban House, Ropewalt Street, Kala Ghoda, Fort, Mumbai 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Noticeboard.

