

REGISTERED

SPEED POST



F. No. 380/50/B/15-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue..6/6/18.

ORDER NO 69/18-Cus dated 5-6-2018 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/Air/1152/2015 dated 06/08/2015 passed by Commissioner of Customs (Appeals), NCH, Near IGI Airport, New Delhi.

APPLICANT : Commissioner of Customs, New Delhi

RESPONDENT: Sh. Sudhir Kumar, Delhi

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**ORDER**

A Revision Application No. 380/50/B/15-R.A. dated 16/11/2015 has been filed by the Commissioner of Customs (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No. CC (A) CUS/D-I/Air/1152/2015 dated 06/08/2015 whereby the order of the Additional Commissioner of Customs, New Delhi, confiscating absolutely the foreign currency equivalent to Rs. 69,47,315/- and imposing a penalty of Rs. 10 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. 12.35 lakhs and the penalty on the respondent has been reduced to Rs. 5 lakhs.

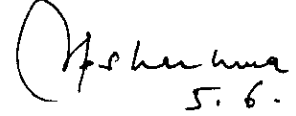
2. A personal hearing was held on 18.05.2018 which was attended by Sh. Vinit Kumar, Deputy Commissioner of Customs, on behalf of the applicant who reiterated the grounds of revision already given in the revision application. On behalf of the respondent, Sh. S. S. Arora, Advocate, appeared and gave written submissions to oppose the revision application.

3. The government has examined the matter and found that the revision application has been filed 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 a redemption fine of Rs. 12.35 lakhs and by reducing the personal penalty on the respondent from Rs. 10 Lakhs to Rs. 5 Lakhs. The respondent, in his written submissions dated 15/05/2018 submitted during his personal hearing on 15/05/2018, has not denied that he had attempted to illegally export the foreign currencies after having procured the same in India and abroad from his friends in Dubai and India. 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. The respondent has also relied upon various case laws which support his case such as Mr. Kamara Kaid Mohammad Vs Commissioner of Customs (P) [2003(162)ELT 237(TRI-MUMBAI)], Mr. Philip Fernandes Vs Commissioner of Customs, Airport (Mumbai) [2002(146)ELT 180 (TRI-MUMBAI)], Mr. Felix Dores Fernandes Vs Commissioner of Customs, ACC, Mumbai [200 (118)ELT 639 (Tribunal)], Government of India's Orders no. 282/07 dated 26/06/2007 and 111/2011-Cus dated 21/06/2011 upholding Commissioner (Appeal)'s orders no. CC(A)113/A/07 dated 22/06/2007 in the case of Mr. Jyoti Kumar Dubey and CC(A)air/154/2010 dated 31/08/2010 in the case of Mr. Jaspreet Singh Gulati, the Commissioner (Appeals)'s orders nos. CC(A)AIR/DI/226/08 dated 12/06/2008 in the case of Mr. Parminder Singh, CC(A)27-29/AIR/DI/2006 dated 04/10/2006 in the case of Mr. Gursimran Singh and CC(A)AIR/DI/340/07 dated 14/12/2007 in the case of Mr. Sandeep Garg wherein it is held consistently that absolutely confiscated foreign currency can be released on payment of redemption fine. The respondent has also submitted that foreign currency has been released on payment of redemption fine by the same adjudicating authority i.e. Additional/Joint Commissioner of Customs in the cases of Mr. Sombir (Order No. 44/2014 dated 30/06/2014), Mr. Samid Ali (Order No. 21/JC/RR/2015 dated 09/03/2015), Mr. Dilshad Ahmad (Order No. 74/2013 dated 22/11/2013) and Ms. Jaya Arya (Order No. RLM/ACE/35/2015 dated 18/08/2015) and the same were accepted by the Commissioner also. In the respondent's own revision application dated 24/08/2015 requesting for reduction of redemption fine and penalty imposed by the Commissioner (Appeals), the Government has upheld the order-in-appeal under challenge in this case and rejected the respondent's revision application vide Revision Order No.40/17-Cus dated 02/11/2017 holding the order-in-appeal as well reasoned and judicious. Above all, from the above mentioned several Orders-in-Original it is manifest that the applicant has consistently released confiscated foreign currencies on payment of redemption fine by exercising discretion under Section 125 of the Customs Act, 1962 and, therefore, the Government does not find any deviation in the Order-in-Appeal in this case in allowing redemption of foreign currencies on payment of fine. Quantum

of redemption fine imposed in the Order-in-Appeal is not challenged at all and, therefore, it is not considered while passing this Order.

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

  
5.6.2018

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

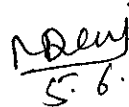
The Commissioner of Customs,  
Terminal-3, IGI Airport,  
New Delhi 110 037

ORDER NO. 69/2018 - Cus dated 5-6-2018

Copy to:-

1. Sh. Sudhir Kumar, L-26, Shastri Nagar, delhi-110052.
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-37
3. P.S. to A.S.
4. Guard File
5. Spare copy

ATTESTED

  
5.6.18

(NIRMALA DEVI)

Section Officer