

SPEED POST



F. No. 375/64/B/2018-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... 5/4/21.

ORDER NO. 74/21-Cus dated 01-04-2021 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. JNK-EXCUS-APP-91/2018-19 dated 08.06.2018, Commissioner of CGST, Central Excise and Customs (Appeals), Jammu

APPLICANT : Mr. Ajit Singh, Amritsar

RESPONDENT : Commissioner of Customs (Preventive), Amritsar

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**ORDER**

A Revision Application No. F. No. 375/64/B/2018-R.A dated 31.07.2018 has been filed by Mr. Ajit singh (hereinafter referred to as the applicant) against the Order-in-Appeal No. JNK-EXCUS-APP-91/2018-19 dated 08.06.2018, passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Jammu, wherein Order-in-Original passed by Assistant Commissioner of Customs, LCS Attari Rail, Amritsar, bearing No. 32/E/AC/2017 dated 02.11.2017, absolutely confiscating the foreign currency i.e. Pak Currency Rs. 70,000/- and US Dollar 1300-, under Section 113 of the Customs Act, 1962, has been upheld. Besides, penalty of Rs. 10,000/- was also imposed on the applicant.

2. Brief facts of the case are that the applicant, who was scheduled to depart to Pakistan via LCS, Attari Rail on 02.11.2017 had presented himself before the Customs Officer for Custom clearance/baggage examination. On examination/personal search, assorted foreign currencies i.e. Pak Currency Rs. 70,000/- and US Dollar 1300 and 30 Shawls were recovered from the applicant. The applicant could not produce any evidence of lawful acquisition/possession of the said currency and the Shawls were found to be in commercial quantity. The Assistant Commissioner ordered absolute confiscation of the foreign currency as well as shawls. In appeal, the shawls have been allowed to be redeemed on a fine of Rs. 10,000/-.

3. The Revision Application has been filed on the ground that the currency was carried by the applicant to purchase gifts for his near and dear. Applicant was under the bonafide belief that he can carry USD 100000/-. The lapse on the part of the applicant

was unintentional. The release of foreign currency on payment of redemption fine has been requested.

4. Personal hearing was granted on 01.04.2021. Sh. R.K. Wadhawan, Advocate, attended the hearing on behalf of the applicant. Sh. Wadhawan, Advocate reiterated the grounds of revision already stated in the revision application and prayed that the foreign currency, which has been absolutely confiscated, may be allowed to be redeemed on payment of appropriate fine. None appeared on behalf of the respondent nor any request for adjournment has been made. Therefore, the case is taken up for disposal as per records.

5. The Government has examined the matter. It is evident, from the evidence on record, that the foreign currency was recovered from the applicant. It is not disputed that he did not declare the currency to the Customs officers at the LCS Attari Rail. As observed by the Commissioner (Appeals), invoice dated 11.04.2017 produced to claim that Pak currency of Rs. 23,100/- was purchased from authorized money exchanger cannot be correlated with the present case as it shows that the currency was purchased 07 months before the date of travel.

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

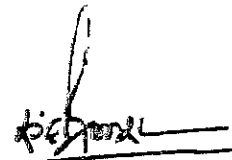
person resident in India could retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate subject to the condition that such currency was acquired by him by way of payment for services outside India or as honorarium, gift, etc. In the present case, the applicant has not produced any permission from the Reserve Bank of India for export of foreign currency found in his possession. He has also not shown 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 applicant) 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". In the present 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, which has been

assailed in the instant Revision Application. 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 in the background of attempted smuggling by not declaring the foreign currency. No case for interference with the discretion so exercised by the original authority is made out.

8. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

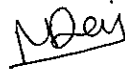
Mr. Ajit singh  
H. No. 62, Gali No. 2, Tehsilpura P.O.  
Husenpura, Amritsar -143001  
Punjab

ORDER NO. 74/21-Cus dated 01-04-2021

Copy to:-

1. The Commissioner of Customs, Preventive, Customs House, Central Revenue Building, The Mall, Amritsar – 143001, Punjab
2. The Commissioner of CGST, Central Excise and Customs (Appeals), 32-OB, Rail Head complex, Jammu
3. Sh. R.K. Wadhawan, Advocate, H.No. 70, 2<sup>nd</sup> Floor Street No. 1, Sector-7, Ram Prastha, Green Vaishali, Ghaziabad, U.P.
4. PA to AS(RA)
5. Guard File.
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ATTESTED



(NIRMALA DEVI)  
SECTION OFFICER (RA)