

SPEED POST



F. No. 375/65/B/2018-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.. 7/4/21

ORDER NO. 75/21-Cus dated 05-04-2021 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-89/2018-19 dated 05.06.2018, Commissioner of CGST, Central Excise and Customs (Appeals), Jammu

APPLICANT : Mr. Peerzada Khalid Ashraf, Baramulla

RESPONDENT : Commissioner of Customs (Preventive), Amritsar

ORDER

A Revision Application No. F. No. 375/65/B/2018-R.A dated 31.07.2018 has been filed by Mr. Peerzada Khalid Ashraf (hereinafter referred to as the applicant) against the Order-in-Appeal No. JNK-EXCUS-APP-89/2018-19 dated 05.06.2018, 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. 35/DC/IMP/2016-17 dated 27.11.2016, absolutely confiscating the Indian currency i.e. Rs. 1,70,000/-, under Section 111 of the Customs Act, 1962, has been upheld. Besides, penalty of Rs. 5,000/- was also imposed on the applicant, which has been maintained in appeal.

2. Brief facts of the case are that the applicant, who arrived from Pakistan via LCS, Attari Rail on 26.11.2016 had declared before the Customs Officer that he was carrying Indian Currency of Rs. 2,00,000/-. The applicant could not produce any evidence of lawful acquisition/possession of the said currency. The Assistant Commissioner ordered absolute confiscation of the Indian currency of Rs. 1,70,000/- after allowing free allowance of Rs. 25,000/- and rest of the Rs. 5,000/- was deducted as being imposed as penalty under Section 112 of the Customs Act, 1962 on applicant.

3. The Revision Application has been filed on the ground that he has himself declared the currency before the Customs authorities on his arrival at LCS, Attari Rail; that he is an illiterate person and is not aware about the provisions of the Customs Act,

1962. 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 Indian 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. Government has examined the matter. Regulation 8 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, specifies that "Notwithstanding anything contained in these regulations, the Reserve Bank may, on an application made to it and on being satisfied that it is necessary to do so, allow any person to take or send out of India to any country or bring into India from any country currency notes of Government of India and / or of Reserve Bank of India subject to such terms and conditions as the Reserve Bank may stipulate." Further, in terms of Regulation 3(1)(C) of the Foreign Exchange Management (Export and Import of currency) Regulations, 2015, any person resident in India who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25,000/- per person or such amount and

subject to such conditions as notified by Reserve Bank of India from time to time. 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 8 of the FEMA, 2015. Thus, it is clear that the conditions in respect of possession and import of Indian currency (seized from the applicant) are not fulfilled.

6. 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 Indian currency could have been legally imported 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. The Government finds that in the facts and circumstances of the case, specifically as the possession of Indian currency was declared by the applicant, the redemption can be allowed in terms of Section 125 of the Customs Act, 1962. The Government, accordingly, directs that the seized Indian currency amounting to Rs. 1,70,000/- may be allowed to be redeemed on payment of fine of Rs. 25,000/-. Penalty of Rs. 5000/- is maintained.

8. The revision application is disposed of in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Peerzada Khalid Ashraf,
Darul KRM Ashpeer,
Mohalla sopore-Baramullah
Jammu and Kashmir


ORDER NO. 75/21 -Cus dated 05/04/2021

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, 2nd 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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(NIRMALA DEVI)
SECTION OFFICER (RA)