

SPEED POST



F. No. 372/56/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: 12/4/21.....

ORDER NO: 80/21-Cus dated 8-4-2021 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. KOL/CUS(AIRPORT)/AA/1407/2018, dated 01.08.2018, Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Mr. Ravi Shankar Yadav, Kolkata

RESPONDENT : Commissioner of Customs (Airport & Admin), Kolkata

ORDER

A Revision Application No. F. No. 372/56/B/2018-R.A dated 07.09.2018 has been filed by Mr. Ravi Shankar Yadav, Kolkata (hereinafter referred to as the applicant) against the Order-in-Appeal No. KOL/CUST(AIRPORT)/AA/1407/2018 dated 01.08.2018 passed by the Commissioner of Customs (Appeals), Kolkata, wherein Order-in-Original No. 70/2017/JC dated 19.09.2017, passed by Joint Commissioner of Customs, Air Intelligence Unit, Kolkata absolutely confiscating foreign currency of US Dollars 3000 and Indian Currency, Rs.7,50,000/-, collectively valued at Rs. 9,39,300/-, under Section 113 of the Customs Act, 1962, and imposing a penalty of Rs. 75,000/-, has been upheld.

2. Brief facts of the case are that the officers of AIU, NSCB Airport, Kolkata intercepted the applicant, who was scheduled to depart for Bangkok on 05.08.2015. An examination of his baggage and personal search resulted in the recovery of foreign currency i.e. US Dollars 3000 and Indian Currency of Rs. 7,50,000/- from the applicant (total value Rs. 9,39,300/-). The applicant could not produce any evidence of lawful acquisition/possession/or legal exportation of the said currencies. The applicant in his statement dated 05.08.2015, recorded under Section 108 of the Customs Act, 1962, admitted to the recovery of the said currencies. The Joint Commissioner of Customs, vide his order dated 19.09.2017, confiscated absolutely the said currencies, collectively valued at Rs.9,39,300/-, under Section 113(d), 113(e) and

113(h) of the Customs act, 1962 read with Section 3(1)(a) and 7b(ii) of Foreign Exchange Management Act, 1999 and Foreign Exchange Management (Export and Import of Currency) Regulations, 2000. A penalty of Rs. 75,000/- was also imposed on the applicant under Section 114 of Customs Act, 1962. Aggrieved, the applicant filed an appeal with the Commissioner of Customs (Appeals), Kolkata which was rejected.

3. The Revision Application has been filed on the ground that the foreign currency carried by the applicant was within permissible limit and may be released as per rules. He was carrying the Indian currency out of ignorance. Since the Indian currency is not a prohibited item, it may be released on payment of redemption fine under Section 125 of Customs Act, 1962. Penalty is on a higher side and may be reduced.

4. Personal hearing was held on 05.04.2021, in virtual mode. Sh. Rana Datta, Superintendent, attended the hearing on behalf of the respondent and supported the orders of the lower authorities. No one from applicant's side appeared for the hearing. However, a written submission was submitted on 01.04.2021 stating that the applicant does not want any personal hearing and the case may be decided on the basis of available records.

5. The Government has examined the matter. Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, reads as follows:-

"3. Export and import of Indian currency and currency notes.- (1) Save as otherwise provided in these regulations, any person resident in India, --

(a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time."

Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000, reads as follows:-

"3. Limits for possession and retention of foreign currency or foreign coins.- For the purpose of clause (a) and clause (e) of Section 9 of the Act, the Reserve Bank specifies the following limits for possession or retention of foreign currency or foreign coins, namely:--

- (i) possession with limit of foreign currency and coins by an authorised person within the scope of his authority;*
- (ii) possession without limit of foreign coins by any person;*
- (iii) retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US \$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques—*

(a) *was acquired by him while on a visit to any place outside India by way of payment of services not arising from any business in or anything done in India;*”

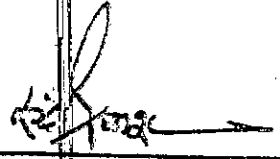
Thus, the foreign currency of US\$ 3000/- and the Indian currency of Rs, 1,75,000/- found with the applicant, at the time of his departure, was not permissible as per Regulations above.

6. It has been contended that the export of Indian Currency is not 'prohibited'. The law on this issue is settled by the judgment of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors [1971 AIR 293] wherein it was 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”. 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”. The original authority has correctly brought out that in this case the conditions subject to which Indian Currency could have been exported have not been fulfilled. Thus, following the law laid down by the Apex Court, there is no doubt that the subject Indian Currency, in excess of permissible limit, is '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 M/s 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 as the applicant attempted to smuggle the currency by concealment and was merely a carrier for financial gains. In the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy [2016(344)ELT1154 (Mad.)], the Hon'ble Madras High Court, after extensive application of several judgments of the Apex Court, has held that "non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference.' Further, "when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason". Thus, applying the ratio of P. Sinnasamy (supra), the discretion exercised by the original authority does not merit interference.

8. In view of the above, the Government upholds the impugned Order-in-Appeal with the modification that the Indian Currency amounting to Rs. 25,000/- may be released to the applicant, being

within the permissible limit. The revision application is disposed of, accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Ravi Shankar Yadav
C/o Shri Punam Chand Jain,
64, Burtolla Street, Kolkata-700007

ORDER NO. 80/21 -Cus

dated 08-04-2021

Copy to:-

1. The Commissioner of Customs (Appeals), Custom House, Kolkata-700001.
2. The Commissioner of Customs, (Airport & Admin), NSCBI Airport, Kolkata-700052.
3. The Joint Commissioner of Customs, AIU, NSCBI Airport, Kolkata-700052.
4. PA to AS(RA).
5. Guard File/^{6.}Spare copy

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (RA)