

REGISTERED
SPEED POST



F.No. 372/10-12/B/13-RA
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... (17/4/14)

Order No. 88-90/14-cus dated 17-4-2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed,
under section 129 DD of the Customs Act
1962 against the Order-in-Appeal No.
passed by the Commissioner of Customs
(Appeals), Custom House, Kolkata
as mentioned in Column 3 of the table
in para 1 of this order.

Applicant : 1. Shri Nadeem Shaikh Mohammed
2. Shri Ekrrar Hossain
3. Shri Srinivasa Rao Patamesetty.
C/o Shri Punam Chand Jain, Consultant
64, Burtolla Street, Kolkata-700007.

Respondent : Commissioner of Customs, (Airport)
Custom House, Kolkata.

ORDER

These revision applications are filed by applicant against the Orders-in-Appeal No. passed by the Commissioner of Customs (Appeals), Kolkata as detailed below:-

S.No.	RA No. Name of the Applicant Shri	OIA No. & Date	Order-in-Original No. & Date	Description of Value and Goods (Rs.)	RF/PP/Order As per Order- in- Original (Rs.)	RF/PP/Order As per Order-in- Appeal (Rs.)
1	2	3	4	5	6	7
1	372/10/B/13-RA Shri Srinivasa Rao Patamessetty	11/13 dt. 30-03-2013	756/12 dt. 25-09-2012	IC= Rs. 50000	Absolute confiscation PP 5000	Appeal rejected
2	372/11/B/13-RA Shri Nadeem Shaikh Mohammed	10/13 dt. 30-03-2013	856/12 dt. 19-11-2012	FC USD 3500= NR 187425 IC= Rs. 45000	IC Absolutely confiscated of FC released on RF= Rs. 10000 PP 5000	-----do-----
3	372/12/B/13-RA Shri Ekra Hossain	9/13 dt. 30-03-2013	855/12 dt. 19-11-2012	FC USD 6000 Thai Baht 6500= INR 332935	RF 20000 PP 10000	-----do-----

2. Brief facts of the cases are that applicants leaving for Bangkok at NS CBI Airport Kolkata applicant passengers were intercepted at departure area of Airport by Customs AIU Officers and the Foreign Currency/Indian Currency (FC/IC) as mentioned above were recovered from them. Since the currencies were not declared before customs and were in excess of limits laid down Foreign Exchange Management (Export and Import of currency) Regulations 2000, the IC/FC was confiscated under section 113 (d) (g) (i) of Customs Act, 1962. However adjudicating authority in case at Sr. No. 3 above, allowed the FC to be redeemed on payment of redemption fine in lieu of confiscation under section 125 of Customs Act, 1962 as stated in above table. A personal penalty as stated above in table was imposed under section 114 of Customs Act.

3. Being aggrieved by the said orders-in-original, applicants filed appeals before Commissioner (Appeals), who rejected the appeal.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicants have filed these revision applications under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The applicants already given the statement before AIU officer that they were carrying the currencies acquired legally and had forgotten the cash memos at home. The genuineness of which had been verified from the purchased invoices for USD 1800 they have submitted.

4.2 The Indian currency was absolute confiscated is wrong. To carry Indian currencies upto Rs. 10000/- is not restricted or prohibited. So the same should be released and the balance amount under section 125 of Customs Act, 1962. Kindly release the IC Rs. 10000/- as per rule and the balance IC on payment of reasonable redemption fine.

4.3 They have made a bonafide declaration to this effect under section 77 of this Customs Act 1962 the imposition of penalty of Rs. 5000/- may kindly be waived or reduced to a reasonable amount. The charges levied against them by the lower authority are wrong and they were have not liable for any penal action as they have truthfully declared the currencies which were acquired legally and were unspent amount of last visit. Therefore imposition of penalty of Rs. 5000/- upon them is too high and should be reduced accordingly.

4.4 As per FEMA Act, 2000, an Indian Resident can retain the unspent amount of foreign exchange of provision visit. The excess amount was the unspent amount of last trip. So the redemption fine may be reduced to reasonable amount.

5. Personal hearing scheduled in these cases 28-03-2014 at Kolkata Customs House was attended by Shri Punam Chand Jain, Consultant on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. On perusal of records, Government observes that the said foreign currency and Indian currency was not declared by the applicant passengers before customs

are required under section 77 of Customs Act, 1962. Applicant could not produce valid document for legal possession of the foreign currency. So, applicants attempted to export said currency in violation of provisions of FEMA 1999, Foreign Exchange Management (Export and Import of currency) Regulations 2000, r/w section 11 and 77 of Customs Act. As such order for its confiscation under section 113 (d) (h) and imposition of penalty under section 114 ibid cannot be assailed. However the Foreign currencies were allowed to be redeemed on payment of redemption fine as stated in above table.

8. Government notes that Indian currency was allowed to be redeemed on payment of redemption fine in similar circumstances vide GOI Revision Orders No. 308/2001 dt. 11-06-2001, 290/97 dt. 04-06-1997, 771/99 dt. 06-09-99 and in a recent order No. 361/14-Cus dt. 21-02-2014 in the case of Shri Shantilal Shenkarlal Vs. Commissioner of Customs Airport Chennai.

8.1 Government notes that in the case of Mohammed Akram Mohamad Shayam, Additional Commissioner of Customs, Chennai vide Order-in-Original No. 23/2009/AIR dated 26-03-2010 had allowed redemption of Indian currency of Rs. 1250000/- and the said order was upheld by Commissioner (Appeals) Customs, Chennai vide Order-in-Appeal No. 603/10-AIR dt. 30-09-2010. Finally Government vide Government of India Order No. 247/11-Cus dated 10-08-2011 upheld the said Order-in-Appeal.

8.2 CESTAT in the case of Rajeev Johar Vs. CC Calcutta reported on 2001 (135) ELT 102 (T.Kol) has held as-

" Redemption fine- Attempt to export Indian currency of Rs. 2 lakhs-Ignorance of law is no excuse-Redemption of said amount of Indian currency allowed on payment of redemption fine of Rs. 25000/- taking a lenient view-section 125 of Customs Act, 1962. "

8.3 Similarly Government of India in its Order No. 57/2002 dt. 28-02-2003 in the case Shri Kapil Mansoor (RA filed against Order-in-Appeal No. 467/2002-AP'B' dated 25-07-2002 passed by Commissioner of Customs (Appeals) Mumbai) had allowed

redemption of Indian currency of Rs. 256500/- which was attempted to be illegally exported.

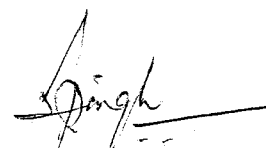
9. Government notes that ratio of above said case laws are applicable to the instant cases. As such the request of applicants to release the Indian currency on payment of redemption fine in lieu of confiscation under section 125 of Customs Act, 1962 merits acceptance. Hence Government allows the said Indian currency in cases at Sr. No. 1 and 2 of above table to be released on payment of redemption fine as stated below:-

S.No.	RA No. Name of the Applicant Shri	OIA No. & Date	Description of Value and Goods (Rs.)	Redemption Fine (Rs.)
1	2	3	4	5
1	372/10/B/13-RA Shri Srinivasa Rao Patamesetty	11/13 dt. 30-03-2013	IC= Rs. 50000	Rs. 10000
2	372/11/B/13-RA Shri Nadeem Shaikh Mohammed	10/13 dt. 30-03-2013	IC= Rs. 45000	Rs. 9000

The personal penalty and redemption fine imposed in these cases by lower authorities is quite reasonable and cannot be called harsh. As such Government upholds the same. The impugned Orders-in-Appeal are modified to above extent.

11. These revision applications are disposed off in terms of above.

12. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

1. Shri Nadeem Shaikh Mohammed
 2. Shri Ekrar Hossain
 3. Shri Srinivasa Rao Patamesetty.
- C/o Shri Punam Chand Jain, Consultant
64, Burtolla Street, Kolkata-700007.

ATTESTED



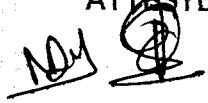
(निर्मला देवी/NIRMALA DEVI)
अनुभाग अधिकारी/Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 77-90/14-Cus Dated 17-11-2014

Copy to:

1. The Commissioner of Customs (Airport), 15/1 Strand Road, Custom House, Kolkata-700001.
2. The Commissioner of Customs (Appeals), 15/1 Strand Road, Custom House, Kolkata 700001.
3. The Assistant Commissioner of Customs (Airport), NSCBI Airport, Custom House, Kolkata.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

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(Nirmala Devi)

Section Officer (REVISION APPLICATION)

(निर्मला देवी / NIRMALA DEVI)
अनुमान अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
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भारत सरकार / Govt. of India
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