

SPEED POST



F.No. 372/01/B/2019-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.. 28/5/21

Order No. 102/21-Cus dated 28-5-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional 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. KOL/CUS(Airport)/AA/2075/2018 dated 19.12.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Jagdeesh Singh, North 24 Parganas, West Bengal.

Respondent : Commissioner of Customs, Airport & Administration, Kolkata.

ORDER

A Revision Application No. 372/01/B/2019-RA dated 01.02.2019 has been filed by Sh. Jagdeesh Singh, North 24 Parganas, West Bengal (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Airport)/AA/2075/2018 dated 19.12.2018, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the Order-in-Original No. 76/2018 DC dated 25.07.2018 passed by the Deputy Commissioner of Customs, Airport, Kolkata and rejected the appeal filed by the Applicant herein.

2. Brief facts of the case are that the Applicant was apprehended while he was proceeding to board a flight for Bangkok on 24.10.2017. Upon his search, Foreign Currency of USD 4000, convertible equivalent to Rs. 2,56,600/-, was recovered. In his statement recorded, on 24.10.2017, under Section 108 of the Customs Act, 1962, the Applicant stated that after immigration when he was going to security check to CISF zone, they found USD 4000 in his pocket and he was handed over to the Customs Officers; that thereafter in the presence of a gazetted officer of Customs and two independent witnesses, the amount of USD 4000 was recovered; that he could not produce any licit document in support of legal acquisition, possession and/or legal exportation of foreign currencies; that he was taking the currency to buy clothes as he was working as a carrier of clothes. In his statement dated 15.03.2018, the Applicant reiterated the contents of the earlier statement dated 24.10.2017. The Deputy Commissioner of Customs vide Order-in-Original dated 25.07.2018 ordered absolute confiscation of the seized foreign currency of USD 4000 and imposed a penalty of Rs. 2,56,600/- on the Applicant under Section 114 of the Customs Act, 1962. The appeal filed by the Applicant before the Commissioner (Appeals) has been rejected. Hence, this revision application.

3. The revision application has been filed, mainly, on the grounds that the Applicant had received USD 4000 as gift; that as per regulations, an amount of USD 2000 only is allowed to be retained; that therefore the

amount of USD 2000 ought to have been released whereas the amount of USD 2000 over and above the permissible amount should be released at payment of fine and penalty. The veracity of the statement recorded by the Applicant under Section 108 of the Customs Act, 1962 has also been challenged on the grounds that it was an extracted statement. It has been further stated in the RA that the Applicant did not receive the Show Cause Notice but appeared for PH on 18.07.2018 before the original authority when he stated during past 2 years on his visits abroad he has accumulated the seized foreign currency and did not purchase the same from any authorized agent.

4. Personal hearing in the matter was fixed, in virtual mode, on 05.04.2021, 20.04.2021, 06.05.2021, 25.05.2021 & 28.05.2021. Sh. Nirmal Sarkar, Superintendent appeared for the department on 06.05.2021 and highlighted the following:

- (i) The Applicant acted as a carrier and did not produce any evidence that any amount had been accumulated during his previous visits, which he was carrying presently.
- (ii) The Applicant did not file reply to SCN nor did he mention this in the course of PH.

None appeared for the Applicant. However, a written submission has been received on 19.04.2021 from Sh. Barinder Singh, Consultant wherein besides reiterating the contents of the RA, it has been stated that the original authority had wrongly recorded that the Applicant had not made his submissions in reply to the Show Cause Notice whereas facts on records evidently established that the reply was delivered. As sufficient opportunities for PH have been granted to the Applicant, which he has failed to avail, the matter is taken up for decision based on records.

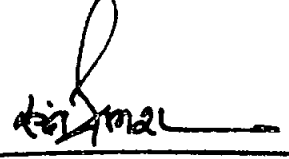
5.1 The Government has examined the matter. At the outset, it is observed that mutually contradictory statements have been made on behalf of the Applicant in as much as in para 7 of the Statement of Facts (Annexure P-1 to the RA) it is specifically stated that the applicant appeared before the original authority, on 18.07.2018, for PH when he

explained that "he did not receive any show cause notice and so he could not reply" whereas in the written submission received on 19.04.2021, it is stated that "it has been wrongly by the Ld. Adjudicating Authority that the Noticee did not make his submission to the relevant SCN, where as facts on records evidently establish that reply was delivered to airport." Further, the recovery of foreign currency in the presence of Panchas and the veracity of the statements recorded under Section 108 is being challenged without any evidence being brought on record that the Applicant sought to establish this by cross examining the Pancha witnesses in the proceedings before the lower authorities or that the statements recorded were retracted by him.

5.2 The Applicant has contended that since as per the FEMA (Export and Import of Currency) Regulations 2015, he was entitled to keep USD 2000 as retention money from his previous foreign visits, the same should be released to him and the balance USD 2000 should be released on payment of redemption fine. The Commissioner (Appeals) has held that the entire amount of USD 4000 was liable to confiscation keeping in view the provisions of the Regulations *ibid*. The redemption has also been denied citing the judgment of CESTAT in case of *Peringatil Hamza vs. Commissioner of Customs (Airport), Mumbai* {2014 (306) ELT 332 (Tri-LB)} and the order of the Hon'ble Bombay High Court Bombay in the case of *Union of India vs. Mohammad Aijaj Ahmed* {2009 (244) ELT 49 (Bom)} etc. The Government observes that the contention of the Applicant regarding source of acquisition of currency has been varying from time to time- in his statement the Applicant had stated that he was carrying the foreign currency to buy clothes for trading purposes in Bangkok and he had no licit documents evidencing legal acquisition; in the personal hearing before the original authority it was stated that it was the foreign currency saved by him from his previous visits abroad; whereas at this stage, it is being stated that the currency was imported by him "as gift" on 12.09.2017 & 13.10.2017. Thus, the Applicant has been improving his versions at every stage. Keeping in view the facts and circumstances of the case and specifically the ever-changing versions/ contradictory statements of the Applicant, the Government is not persuaded to accept

that the Applicant had legally acquired the foreign currency and, as such, is not inclined to interfere with the impugned Order-in-Appeal.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Jagdeesh Singh,
Parvati Apartment, 2, Airport Gate,
Motilal Colony, PS- Dumdum,
Kolkata- 700 081.

Order No. 102 /21-Cus dated 28-5-2021

Copy to:

1. The Commissioner of Customs (Airport & Admn.), NSCBI Airport, Kolkata- 700 052.
2. The Commissioner of Customs (Appeals), Kolkata.
3. Sh. Barinder Singh & S.C. Ratho, Customs Consultants, 14, Hare Street, Room No. 9, 1st Floor, Kolkata- 700 001.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi