

SPEED POST



F. No. 375/102/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.....07/07/21

ORDER NO. 121/21-Cus dated 07-07-2021 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/D-I/Air/233/2018 dated 17.08.2018, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Asaraf Ali Aliyar, Chennai.

Respondent : Commissioner of Customs (Airport & General), New Delhi

**ORDER**

A Revision Application No. F. No. 375/102/B/2018-R.A dated 28.09.2018 has been filed by Mr. Asraf Ali Aliyar, Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/233/2018 dated 17.08.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037, wherein Order No. 3391 dated 28.12.2016 passed by Assistant Commissioner of Customs, IGI Airport, New Delhi, absolutely confiscating the Indian currency i.e. Rs. 74,000/-, under Section 111 (d) of the Customs Act, 1962, has been upheld. However, the penalty imposed on the Applicant by the original authority under Section 112 of the Customs Act, 1962, has been reduced to Rs. 5,000/- from Rs. 10,000/-.

2. Brief facts of the case are that the Applicant, who arrived at IGI Airport, from Dubai, on 28.12.2016, was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and his baggage Indian currency notes of Rs. 98,000/- were recovered from his possession. 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. 74,000/- and released the balance currency of Rs. 24,000/- to the Applicant. Besides, penalty of Rs. 10,000/- was also imposed on the Applicant under Section 112 of the Customs Act, 1962. Aggrieved, the Applicant filed an Appeal before the Commissioner (Appeals), who vide the above mentioned OIA dated 17.08.2018, rejected the appeal as regards to the absolute confiscation of the currency, but reduced the penalty to Rs. 5,000/- from Rs. 10,000/-.

3. The Revision Application has been filed, mainly, on the ground that the Applicant himself had declared the currency before the Customs authorities on his arrival at IGI Airport; and that the currency was not concealed. Hence, the Indian currency may be released and penalty may be set aside/reduced.

4. Personal hearing was granted on 19.05.2021, 14.06.2021 and 07.07.2021. Sh. Anil Kumar Meena, Superintendent appeared on behalf of the respondent department on 14.06.2021 and 07.07.2021. Sh. Meena supported the order of the Commissioner (Appeals). Applicant has submitted written submission dated 12.06.2021 wherein it is stated that the said submissions may be treated as oral and written arguments of the case. Hence, the case is taken up for disposal.

5. Government has examined the matter carefully. 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 taking out of/ bringing into India, the Indian currency in excess of the specified limit. Thus, it is clear that the conditions in respect of possession and import of Indian currency (seized from the applicant) are not fulfilled.

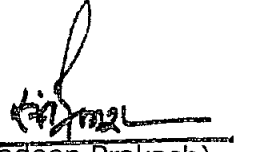
6. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words all types of prohibition. Restriction is one 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 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 not declared by the Applicant, the decision not to allow redemption cannot be faulted.

8. As regards the penalty, the Commissioner (Appeals) has already reduced the penalty to Rs. 5000/-. In the facts and circumstances of the case, no further relief is merited.

9. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

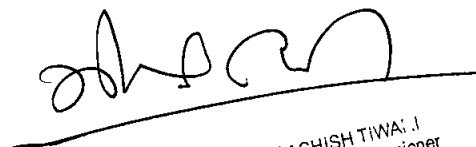
Mr. Asraf Ali Aliyar,  
C/o Mr. K. Mohamed Ismail Advocate & Notary  
Public New No. 102, Linghi Chetty Street,  
Chennai 600001.

ORDER NO. 121 / 21 -Cus dated 07-07-2021

Copy to:

1. The Commissioner of Customs (Airport & General), New Custom House, Delhi-110037
2. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037
4. Sh. K. Mohammad Ismail, Advocate & Notary Public, New No. 102, Linghi Chetty Street Chennai- 600 001.
5. PA to AS(RA)
6. Guard File.
7. 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