

REGISTERED
SPEED POST



F.No. 375/114/B/18-RA
F.No. 375/118/B/18-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... 27/07/21

Order No. 140-141/21-Cus dated 27-7-2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Applications filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/D-1/Air/488-489/2018 dated 15.10.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : 1. Mr. Mohd. Asif, New Delhi
2. Mr. Mohd. Zahid, New Delhi

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

ORDER

Revision Application Nos. 375/114/B/18-RA dated 09.11.2018 and 375/118/B/2018-RA dated 14.11.2018, have been filed by Mr. Mohd. Asif, New Delhi (hereinafter referred to as the Applicant-1) and Mr. Mohd. Zahid, New Delhi (hereinafter referred to as the Applicant-2), respectively, against the Order-in-Appeal No.CC(A)Cus/D-1/Air/160-161/2018 dated 16.10.2018, passed by Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, bearing no. 80/2016 dated 14.07.2016, wherein foreign currency and Indian currencies cumulatively equivalent to Rs. 66,45,300/-, which were recovered from the Applicant-1, and foreign and Indian currencies cumulatively equivalent to Rs. 1,11,670/-, which were recovered from the Applicant-2, have been confiscated absolutely. The adjudicating authority has also imposed a penalty of Rs. 13,00,000/- under Sections 114 and & 114AA of the Customs Act, 1962 on the Applicant-1 and penalty of Rs. 25,000/- under Section 114 and 114AA of the Customs Act, 1962 on the Applicant-2, which have been maintained in appeal.

2. Brief facts of the case are that Mr. Mohd. Asif and Mr. Mohd. Zahid (Applicant - 1 & Applicant -2, respectively), who were scheduled to depart to Dubai by Flight 9W 0546 on 24.07.2013, were intercepted by the officers of Directorate of Revenue Intelligence (DRI) with the information that the Applicants were carrying assorted foreign currencies. On examination/personal search, foreign and Indian currencies equivalent to Rs. 66,45,300/- and Rs. 1,11,670/- was recovered from Applicant 1 & 2, respectively. Applicant -1 in his statement dated 24.07.2013 stated that he had borrowed various

sums of money from his friends and thereafter converted the same into foreign currency.

Applicant-1 filed a retraction letter dated 29.07.2013 with the DRI and DRI vide letter dated informed the Applicant -1 that the retraction dated 29.07.2013 was not supported with any evidence and the same was found to be baseless and afterthought. Applicant – 2 in his statement dated 25.07.2013 stated foreign and Indian currency recovered from him was sale proceeds of handicraft and Feng Shui Business; and that he had purchased 2400 Dirhams from an unauthorized person.

3. The revision applications have been filed by both the Applicants canvassing that import & export of Indian & foreign currency is not prohibited; that absolute confiscation is therefore illegal; and that, accordingly, seized currency may be released on payment of redemption fine. It is further prayed that the penalty imposed may be reduced.

4. Personal hearing in the matter was held, in virtual mode, on 26.07.2021. Ms. Harsimran Kaur, Advocate, appeared for the Applicants and reiterated the contents of the revision applications. She also requested that the compilation filed on 25.07.2021 may be taken on record. Ms. Kaur highlighted that Applicant-1 had produced bills for licit procurement of the foreign currency, except a very small amount of Saudi Riyals which were purchased in grey market. She specifically relied upon the case reported as 2017(357)ELT827 (Tri-Mum) to submit that the seized foreign currency should be allowed to be redeemed. In respect of Applicant-2, Ms. Kaur submitted that he is alleged to have brought very small amount of Indian currency. Facts of this case are almost identical to those in 2005(191)ELT291 (Tri-Ch.). Sh. Rajnish Kumar, Superintendent

appeared on behalf of the respondent and supported the orders of the lower authorities and highlighted that in case of Applicant 1, the bills were produced 05 days after he was apprehended. These bills are also of UAE dealers and not those of Authorized Dealers as per FEMA and regulations made thereunder.

5. The Government has carefully examined the matter. It is evident, from the evidence on record, that a huge amount of foreign & Indian currency was recovered from the Applicants. It is not disputed that they did not declare the currency to the Customs officers at the airport under Section 77 of the Customs Act, 1962 and did not have any documents or evidence showing lawful possession of the currency at the time of apprehension. It is also on record that the Applicants failed to declare the possession of currency even when specifically asked by the DRI officers. Further, Applicant-1 has produced bills dated 25.03.2013 and 28.06.2013 showing purchase of UAE Dirhams and Saudi Riyals from the currency vendors at Dubai, UAE. However, these bills do not appear to be reliable evidence for purchase of foreign currency by the Applicant-1 that was found in his possession, for the following amongst other reasons:

- (i) The Bill dated 25.03.2013 shows purchase of UAE Dhs 126000/- for Nepali Rupees 40,00,000/-. There is nothing on record about Nepali Rupees 40,00,000/- being available to the Applicant-1 with the permission of competent authority through legitimate channels. The contention that this amount was given to him by his cousin sister is not supported by any independent evidence.
- (ii) The Bill dated 25.03.2013 shows the name of customer as "M. ASIF" and not "Mohd. Asif", i.e., the name of Applicant-1.

- (iii) The Bill dated 28.06.2013 shows purchase of Saudi Riyals 217750/- by paying an amount of UAE Dhs 213024.83. Though it is claimed that the UAE Dhs were given to him by his cousin sister, there is no independent evidence on record to corroborate this contention.

6.1 Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, specifies that "*Except as otherwise provided in these regulations, no person shall, without the general or special permission of Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.*" Further, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000, any person resident in India could retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate subject to the condition that such currency was acquired by him by way of payment for services outside India or as honorarium, gift, etc. In the present case, the Applicants have not produced any permission from the Reserve Bank of India for export of foreign currency found in their possession. They have also not shown compliance with the provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2001. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled.

6.2 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 Applicants have not produced any permission from the Reserve Bank of India for export of foreign currency found in their possession. They have also not shown compliance with the provisions of Regulation 8 of the FEMA Regulations, 2015. Thus, it is clear that the conditions in respect of possession and export of Indian currency (seized from the Applicants) are not fulfilled.

7.1 The question of law raised by the Applicants is that the import or export of Indian and foreign currencies is not 'prohibited'. 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 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 its judgment dated 17.06.2021, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (CA Nos. 2217-2218 of 2021), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that "*any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions.*"

7.2 The original authority has correctly brought out that in this case the conditions subject to which currencies could have been legally exported have not been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'.

8. 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 case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (supra), the Hon'ble Supreme Court has held "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant*

considerations". In the present case, the original authority has refused to grant redemption in the background of attempted smuggling by not declaring the foreign and Indian currency as well as the ownership is not proved. No case for interference with the discretion so exercised by the original authority is made out.

9. As regards penalty, the quantum of penalty imposed upon the Applicant-1 appears to be fair in the facts and circumstances of the case. However, in the case of Applicant-2, the penalty is reduced to Rs. 15,000/-.

10. In view of the above, the revisions application filed by Applicant-1 (Sh. Mohd. Asif) is rejected whereas the revision application filed by the Applicant-2 (Sh. Mohd. Zahid) is partly allowed to the extent of reduction in penalty amount.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Mr. Mohd. Asif,
R/o 12, Shahi Masjid Rashid market, Krishna Nagar,
Delhi 110051.
2. Mr. Mohd. Zahid,
R/o 2293, Gali Meer Madari, Rodgran, Lal Kuan,
Delhi 110006

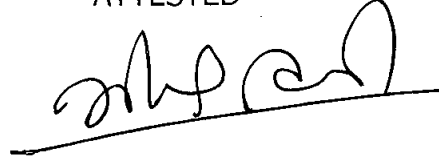
Order No. 140-14/21-Cus dated 27-7-2021

Copy to:

1. The Commissioner of Customs (Airport & General), IGI Airport Terminal-3, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi
4. Ms. Harsimran Kaur, Advocate, B-1/71, Safdarjung Enclave , New Delhi 110029

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