

REGISTERED
SPEED POST



F.No. 372/07/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..25/8/21..

Order No. 159/21-Cus dated 25-8-2021 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 Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. Kol/Cus(Airport)/AA/26/2019 dated 07.01.2019, passed by the Commissioner of Customs (Appeals), Custom House, Kolkata.

Applicant: Sh. Kishan Nigam, Dumdum, North 24 Parganas.

Respondent: The Commissioner of Customs (Airport & Admin), Kolkata.

ORDER

A Revision Application No.375/07/B/2019-RA dated 22.02.2019 has been filed by Sh. Kishan Nigam, Dumdum, North 24 Parganas (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Kol/Cus(Airport)/AA/26/2019 dated 07.01.2019, passed by the Commissioner of Customs (Appeals), Kolkata whereby Commissioner (Appeals) has upheld the Order-in-Original No. 184/2018 ADC dated 10.09.2018 passed by the Additional Commissioner of Customs, Air Intelligence Unit, NSCBI Airport, Kolkata.

2. Brief facts of the case that the Applicant was intercepted at NSCBI Airport, Kolkata, while he was about to board Flight No. SG 83 on 27.02.2017 to Bangkok. The Customs Officer asked him specifically whether he was carrying any contraband items or Indian/Foreign currency more than the permissible limit to which he replied in the negative. A thorough search of his hand baggage resulted in the recovery of a mix of foreign currencies [EURO (200X25=5000 & 50X100=5000), USD (100X10=1000), Qatari Riyal (500X6=3000) and Saudi Arabian Riyal (500X47=23500)], discreetly concealed inside the inner padding of the backpack. The total value of recovered foreign currencies was Rs. 12,25,900/-. The original authority ordered absolute confiscation of the seized foreign currency under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962. A penalty of Rs. 12,25,900/- was also imposed on the Applicant under Section 114 ibid. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals).

3. The revision application has been filed by the Applicant on the grounds that foreign currency is not prohibited goods and should have been released on payment of redemption fine, as per Section 125 of Customs Act, 1962 and penalty. It is also pleaded that USD 2000/- should be allowed to be released without any fine, being within the permissible limit as per FEMA Notn. No. 11(R)/2015-RB dated 29.12.2015.
4. Personal hearing in the matter was fixed on 22.07.2021, 13.08.2021 and 23.08.2021. None appeared for the Applicant and no request for adjournment has also been received. Sh. Jitender Kumar, Superintendent, appeared for the Respondent in the hearing held on 23.08.2021 and supported the orders of the lower authorities. Since sufficient opportunities have been granted, the matter is taken up for final disposal on records.
5. The Government has examined the matter. It is not disputed that the foreign currencies were recovered from the Applicant which were not declared by him as required under section 77 of the Customs Act, 1962, to the Customs authorities at the time of departure and he could not produce any licit documents in support of acquisition, possession or legal exportation of the same. The foreign currencies were ingeniously concealed inside the inner padding of his backpack to avoid detection by the authorities. In his voluntary statement recorded under Section 108 of the Customs Act, 1962, the Applicant admitted that he was acting as a carrier who would get pecuniary benefit for this job.
6. 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 Applicant has not produced any permission from the Reserve Bank of India for export of foreign currencies found in his possession. He has also not shown compliance with the provisions of Regulation 3 (iii) *ibid*. Thus, it is clear that the conditions in respect of possession and export of foreign currencies (seized from the Applicant) are not fulfilled.

7.1 Applicant has contended that the seized foreign currency is not 'prohibited goods'. 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) ELT 423 (SC)}, which relates to exports, 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 subject currency 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 & Others (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 that the Applicant acted merely as a carrier who ingeniously concealed the

currency to avoid detection. No case for interference with the discretion so exercised by the original authority is made out.

9. It is observed that penalty of Rs. 12,25,900/- has been imposed on the Applicant which is equal to the convertible value of the foreign currencies seized. The penalty imposed is on a higher side, specially keeping in view the fact that the foreign currency has been confiscated absolutely. Accordingly, the penalty imposed under Section 114 of the Customs Act, 1962 is reduced to Rs. 4.5 lakhs.

10. The revision application is allowed partly to the extent of reduction in penalty, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Kishan Nigam,
S/o Late Sh. Bhagirathi Nigam,
552/2/1, P.K. Guha Road, Dum Dum,
North 24 Pgns-700028.

Order No. _ 159/21-Cus dated 25-8-2021

Copy to:

1. The Commissioner of Customs (Airport & Admin.), NSCBI
Airport, Kolkata – 700052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom
House, 15/1, Strand Road, Kolkata – 700001.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED

Gulshan Bhatia
25/8/2021

GULSHAN BHATIA
Superintendent.