

SPEED POST



F. No. 380/28/B/SZ/2020-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 28/4/23

Order No. 159/23-Cus dated 28-04-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129DD of the Customs Act, 1962, against the Order-in-Appeal No. TCP-CUS-000-APP-034-020 dated 20.04.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

Applicant : The Commissioner of Customs (Preventive), Tiruchirappalli

Respondent : Sh. A. Seyed Mohammed, Chennai

ORDER

Revision Application No. 380/28/B/SZ/2020-RA dated 07.08.2020 has been filed by the Commissioner of Customs (Preventive), Tiruchirappalli, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. TCP-CUS-000-034-020 dated 20.04.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. TCP-CUS-PRV-JTC-20/2019 dated 05.09.2019, passed by the Joint Commissioner of Customs, Tiruchirappalli and allowed redemption of the foreign currency equivalent to Rs. 7,17,058/-, which was seized from Sh. A. Seyed Mohammed, Chennai (hereinafter referred to as the Respondent), on a redemption fine of Rs. 1,43,500/- and also reduced the penalty imposed, under Section 114 of the Customs Act, 1962, to Rs. 72,000/-.

2. Brief facts of the case are that the Respondent herein had been apprehended smuggling Foreign Currencies, in his baggage, before departure to Colombo from Madurai Airport, on 14.09.2018. He had attempted to remove Foreign Currencies from the Customs Area without making any declaration in the 'Customs Declaration Form' and upon oral inquiry also denied carrying any contraband. The original authority ordered absolute confiscation of the offending goods and also imposed penalty of Rs. 1,43,500/-, under Section 114(i) of the Act, *ibid*, on the Respondent. Aggrieved, the Respondent herein filed appeal, which has been partly allowed by the Commissioner (Appeals), as above.

3. The Revision Application has been filed by the Applicant department, mainly, on the grounds that the Respondent herein had attempted to smuggle foreign currency in a concealed manner; that the Respondent was carrying foreign currency in excess of the legally permissible limit; that the offending foreign currency is therefore, 'prohibited goods'; that, hence, Commissioner (Appeals) ought not to have interfered in the matter.

4. Personal hearings were fixed on 18.04.2023, 24.04.2023 & 28.04.2023. No one appeared for either side nor any request for adjournment has been received. Since

sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is observed that the foreign currency was, admittedly, recovered from the Respondent. It is also on record that the Respondent had not made any declaration in this regard. Further, the Respondent did not have any documents or evidence showing lawful possession of the currency.

6. As per Regulation 5 of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015, *"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."* Furthermore, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, 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 failed to show compliance with the Regulations, as above. Thus, it is clear that the conditions in respect of possession and export of and foreign currency (seized from the Respondents) are not fulfilled.

7.1 The Government observes that 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, in the case of UOI & Ors vs. M/s Raj Grow Impex

LLP & Ors (2021-TIOL-187-SC-CUS-LB), 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 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present cases.

8. The Government observes that the option to release seized goods on redemption fine, in terms of the provisions of Section 125 of the Customs Act, 1962, in respect of 'prohibited goods', is discretionary. The Hon'ble Supreme Court has affirmed this position 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"*. Further, the Hon'ble Madras High Court has, in the case of Commissioner of Customs (Air), Chennai-I vs. P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, held that *"when discretion is exercised under Section 125 ----- the twin test to be satisfied is "relevance and reason"*. Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive."* In the present case, the original authority has, after detailed consideration (as evident from paras 31 to 37 of the OIO), refused redemption. Therefore, the discretion exercised by the original authority could have been interfered with, only if it suffered from any of the vices indicated by the Hon'ble Courts, as above. The Commissioner (Appeals) has not made out such a case rather the reasoning adopted by him, in para 7 of the OIA, makes it evident that he has supplanted his discretion for that of the original authority, which cannot be

accepted in law. Hence, the Commissioner (Appeals) has erred by interfering in the matter by allowing redemption.

9. The Commissioner (Appeals) has also reduced the penalty imposed, under Section 114 ibid, from Rs. 1,43,500/- to Rs. 72,000/-. The Government observes that the amount of penalty imposed by the original authority works out to about 20% of the value of the offending goods, which is neither harsh nor excessive. Hence, the Commissioner (Appeals) has again erred by interfering with the penalty imposed.

10. The revision application is, accordingly, allowed and the Order-in-Appeal impugned herein is set aside.



(Sandeep Prakash),
Additional Secretary to the Government of India

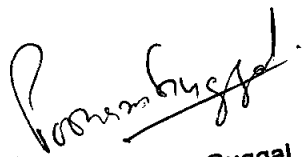
The Commissioner of Customs (Preventive)
No. 1, Williams Road, Cantonment,
Tiruchirappalli-620001

Order No. 159/23-Cus dated 28-04-2023

Copy to:

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2. The Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. PPS to AS(RA)
4. Guard file.
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6. Notice board.

ATTESTED



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