

SPEED POST



F. No. 372/18/B/2019-R.A.
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..02./08./21

ORDER NO. 165/21-Cus dated 01-08-2021 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. KOL/CUS/(A/P)/12/2018 dated 22.02.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Subhash Majumder, North 24 Parganas.

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

ORDER

A Revision Application No. 372/18/B/2019-R.A. dated 03.04.2019 has been filed by Sh. Subhash Majumder, North 24 Parganas (hereinafter referred to as the Applicant) against Order-in-Appeal No. KOL/CUS(A/P)/12/2019 dated 22.02.2019, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) has upheld the order of the Deputy Commissioner of Customs, AIU, NSCBIA Airport, Kolkata bearing No. 58/2018 DC dated 17.05.2018 wherein foreign currency amounting to USD 4000 equivalent to Rs.2,51,400/-, has been confiscated absolutely and a penalty of Rs.2,51,400/- has been imposed under Section 114 of the Customs Act, 1962, on the Applicant.

2. Brief facts of the case are that the Applicant, scheduled to depart to Bangkok on 10.08.2017, was intercepted by the DRI officers at the NSCBIA Airport, Kolkata. On examination of the hand baggage of the Applicant, US Dollars 4000, found concealed in two 100 gms MDH Kitchen King (Mixed Spices Powder) packets, were recovered. The Applicant could not produce any evidence of lawful acquisition/possession/or legal exportation of the said currency. In his voluntary statement dated 10.08.2017, recorded under Section 108 of the Customs Act, 1962, the Applicant stated that the foreign currency was given to him by someone outside Kolkata Airport, to be handed over to another person at the Bangkok Airport; that he had done this mistake for greed of some money; that he confessed his guilt as he knew that carrying foreign currency without licit documents is an offence.

3. The revision application has been filed by the Applicant on the grounds that import & export of foreign currency is not prohibited; that absolute confiscation is therefore illegal; and that, USD 2000 which were imported from abroad, may be released without fine & penalty and the remaining USD 2000 seized currency may be released on payment of redemption fine and penalty.

4. Personal hearings in the matter were fixed on 05.08.2021, 16.08.2021 and 27.08.2021. 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 27.08.2021 and supported the orders of the lower authorities. Since sufficient opportunities have been granted, the matter is taken up for final disposal based on records.

5. The Government has carefully examined the matter. It is not disputed that the foreign currency was recovered from the Applicant, which was ingeniously concealed by him in two MDH Kitchen King (Mixed Spices Powder) packets. Further, no documents or evidence showing lawful possession of the currency were produced by the Applicant. The Applicant has simply claimed that the seized US dollars were legally imported and were his 'saved amount' but no evidence has been produced to substantiate this claim. Further, this claim was not made at the time of recording of his voluntary statement dated 10.08.2017. Thus, this defence is clearly an afterthought.

6. The Government observes that the 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 currency found in his possession. He has 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.

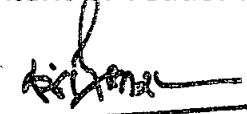
7. It is the Applicant's contention that the seized foreign currency is not 'prohibited goods'. However, the Government do not find this contention

acceptable. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Others {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 the case of UOI & Others vs. M/s Raj Grow Impex LLP & Others (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." In view of the position explained in para 6 above, the conditions subject to which the currency could have been exported, have not been complied in this case. Hence, the seized foreign currency is 'prohibited goods'.

8. The redemption of the seized foreign currency has been denied by the original authority under Section 125 of Customs Act, 1962, which has been challenged 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 M/s Raj Grow Impex LLP (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 of the seized currency who intentionally attempted to smuggle currency. Thus, the exercise of discretion being based on relevant and reasonable considerations, no case is made out for interference.

9. It is observed that a penalty of Rs. 2,51,400/- has been imposed on the Applicant which is equal to the convertible value of the foreign currency 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. 85,000/-.

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

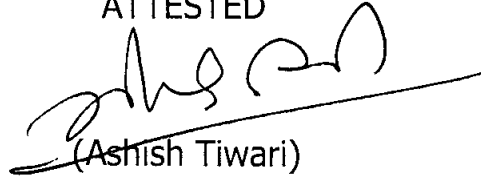
Sh. Subhash Majumder,
S/o Sh. Jatin Majumder,
Nabapally, PO- Italgacha,
North 24 Parganas-700079 (W.B.)

Order No. 165/21-Cus dated 01-08-2021

Copy to:

1. Commissioner of Customs (Airport & Admn), N.S.C.B.I. Airport, Kolkata-700001.
2. Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001.
3. PA to AS(RA).
4. ~~Guard File.~~
5. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (RA)