

SPEED POST



**F. No. 372/28/18—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.....17.12.2020

Order No. 17/2020- CUS dated 17-12-2020 of the Government of India, passed by Shri Sandeep Prakash, Principal Commissioner & 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 (AIRPORT)/AA/296/2018 dated 02/02/2018 passed by Commissioner(Appeals), Kolkata.

Applicant: Sh. Ajit Singh, North 24 Parganas.

Respondent: Commissioner of Customs, Kolkata.

ORDER

A Revision Application No. 372/28/B/18—R.A. dated 23/04/2018 is filed by Sh. Ajit Singh, North 24 Parganas (hereinafter referred to as applicant) against Order-in –Appeal no. KOL/CUS(AIRPORT)/AA/296/2018 dated 02/02/2018 passed by Commissioner of Customs (Appeals), Kolkata wherein the Order-in-Original passed by Joint Commissioner of Customs, Kolkata absolutely confiscating the foreign currency of Euro 25,000/-, USD 10100/-, Pounds 5,000/- and Canadian Dollars 10,000/- equivalent to Rs. 35,38,340/- under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962 and imposing a penalty of Rs.35,38,340/- under Section 114 of Customs Act, 1962 on the applicant has been upheld.

2. The revision application has been filed on the grounds that the Commissioner (Appeals) has erred by not allowing the redemption of the absolutely confiscated foreign currency which is not prohibited goods; that the foreign currencies in question were imported by him from abroad in his various trips to Bangkok and not required to be declared on arrival being less than US\$ 5000/- in each visit; that US\$2000/- should be released without fine/penalty being allowed to be retained by him in terms of Notification Nos. 6/2000 and 11/2000-RB dated 03/05/2000; that the rest of the foreign currency be allowed to be redeemed on reasonable fine and penalty.

3. Personal hearing was granted on 15.12.2020 in virtual mode Sh. Barinder Singh, representing the applicant, responded vide letter dated 13/12/2020 requesting

that the virtual hearing may be dispensed with and the matter may be decided on the basis of written submissions and grounds taken in the revision application. No one appeared for the respondent department.

4. The Government has examined the matter. It is observed that the applicant was carrying the foreign currency in his hand bag without declaring the same to the customs authorities at the airport and no documentary evidence was produced at that time for its licit possession and legal export. In his statement recorded under Section 108 of Customs Act, 1962, the applicant admitted to the fact that he was knowingly carrying and taking out of India the said foreign currency as a carrier, for monetary consideration. Thus, the applicant undeniably attempted to illegally export the foreign currency which is prohibited goods in terms of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 read with Section 47 of the Foreign Exchange Management Act, 1999. Regulation 5 *ibid* reads as follows:-

“5. Prohibition on export and import of foreign currency-

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve bank, export or send out of India, or import or bring into India, any foreign currency.”

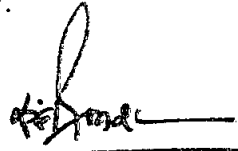
The original authority has discussed this aspect in detail in the order-in-original dated 17/10/2017 in light of Hon’ble Supreme Court’s judgement in the case of Om Prakash Bhatia [2003(6)SCC(161)].

5. As regards the redemption of the foreign currency in terms of Section 125 of the Customs Act, 1962, it is the discretion of the adjudicating authority whether to

allow the redemption of the confiscated 'prohibited goods' or not. Ref. M/s Garg Woollen Mills (P) Ltd. vs. Additional Collector of Customs [1998(104) ELT 306 (SC)]. The original authority has decided to absolutely confiscate the foreign currency on the findings that the applicant is the carrier and has committed the offence knowingly for financial gains. In the facts and circumstances of the case, this decision is well founded.

6. It is observed that a penalty of Rs. 35,38,340/-, an amount equal to that of the value of offending foreign currency, has been imposed on the applicant. In the facts and circumstances of the case and considering that the foreign currency has been absolutely confiscated, the government reduces the penalty on the applicant to Rs. 18,00,000/-.

7. The impugned order of the Commissioner (Appeals) is upheld, with the above modification, and the revision application is disposed of, accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Ajit Singh,
S/o Sh. Ramdeo Singh,
Avisekh Plaza,
704, R N Giha Road, Dum Dum,
North 24 Parganas, Pin-700028

G.O.I. Order No. 17/20-Cus dated 17-12-2020

Copy to:-

1. Commissioner of Customs (Airport and Administration), Kolkata.
2. Commissioner of Customs (Appeals), Kolkata.
3. Shri Barinder Singh, Consultant, 14, Hare Street, 1st Floor, Room No. 9, Kolkata-700001.
4. PA to AS(Revision Application)
5. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)