

**SPEED POST**



F. No. 373/298/B/SZ/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 25/05/23

Order No. 204/23-Cus dated 25-05-2023 of the Government of India passed by Sh. 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. 336/2018 dated 04.10.2018 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Mohammed Askar Murathane, Kasargod

Respondent : The Commissioner of Customs, Mangaluru

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**ORDER**

Revision Application No. 373/298/B/SZ/2018-RA dated 09.11.2018 has been filed by Sh. Mohammed Askar Murathane, Kasargod (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 336/2018 dated 04.10.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 16/2018 ADC dated 29.03.2018, passed by the Additional Commissioner of Customs, Mangaluru.

2. Briefly stated, based on a tip off, the Applicant herein was intercepted by the Customs officers at the Mangaluru International Airport, on 18.03.2017, while departing for Dubai. The Applicant, who after completing the immigration formalities was proceeding towards security check, was asked whether he had anything to be declared to Customs to which he replied in negative. On being specifically asked whether he was carrying any contraband goods, Indian or foreign currency, the Applicant replied that he was in possession of INR 270 only but had no foreign currency, either in his baggage or on his person. In his personal search, Indian currency notes valued at Rs. 270 were found. However, from his checked-in baggage, bundles of foreign currencies, secreted inside socks, which were kept in his jeans trousers, were recovered. Upon further examination, assorted foreign currency of 39,900 US Dollars, 26,090 Pound Sterlings, 14,670 Euros, 2,000 Saudi Riyals, 3,000 Danish Kroners, 200 French Francs, 7 Oman Riyals, 20 Canadian Dollars, 9,55,000 Russian Roubles and 1,000 Thailand Baht, of various denominations, equivalent to Rs. 69,74,704/- were found. Upon being asked, the Applicant herein stated that he had no valid documents to show purchase from any authorised exchange dealer and had no licit documents in this

regard. In his statement dated 18.03.2017, recorded under Section 108 of the Customs Act, 1962, the Applicant herein, inter-alia, stated that he was intercepted by the Customs officers when he was proceeding to security check after immigration; that he had denied to the Customs officers about carrying any foreign currency; that assorted foreign currency was found concealed inside the socks kept inside the jeans trousers kept in his checked in baggage; that the foreign currency was not his own but was given to him by M/s Fathima Travels, a Travel Agent, to carry over to Dubai for a remuneration of 1,500 UAE Dirhams and a free air ticket; that he agreed to carry the foreign currency for lure of money; and that he had no valid documents to show the purchase and carriage of currency. Upon completion of investigations, a show cause notice dated 11.09.2017 was issued, which was adjudicated by the original authority, vide the aforesaid Order-in-Original dated 29.03.2018. The original authority ordered absolute confiscation of the foreign currency, in terms of Section 113 (d), (e) & (h) of the Customs Act, 1962. A penalty of Rs. 20,92,411/- was also imposed on the Applicant herein, under Section 114 of the Act *ibid*. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 04.10.2018.

3. The revision application has been filed, mainly, on the grounds that the foreign currency is neither restricted nor prohibited and is required to be allowed to be redeemed under Section 125 of the Customs Act, 1962; that in terms of several judgments of the Hon'ble Apex Court, Hon'ble High Courts and the Tribunal, foreign currency is not prohibited and, therefore, it should not be confiscated absolutely; and that, therefore, the seized foreign currency may be released on nominal redemption fine under Section 125 *ibid* and personal penalty may be reduced substantially.

4. Personal hearing in the matter was fixed on 08.05.2023, when no one appeared for either side nor any request for adjournment was received. The personal hearing refixed on 15.05.2023 was adjourned to 24.05.2023 at the request of the Id. Advocate for the Applicant. However, even on 24.05.2023, no one appeared for either side nor any request for adjournment was received. The Id. Advocate, vide email dated 24.05.2023, requested that the matter may be decided based on written submissions. Accordingly, the case is being taken up for disposal based on records.

5.1 The Government has carefully examined the matter. It is observed that the foreign currency was, admittedly, recovered from the Applicant. It is also on record that the Applicant had not made any declaration in this regard. Further, the Applicant did not have any documents or evidence showing lawful possession of the foreign currency. The orders of the authorities below have been challenged only to the extent of absolute confiscation of the seized foreign currency based on the contention that foreign currency is neither 'restricted' nor 'prohibited' goods.

5.2 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.*" Further, 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, *ibid*. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled.

5.3 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 Section 111(d). In the case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT 423 (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 judgment 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.*" Thus, the ratio of aforesaid judgments of the Hon'ble Supreme Court is that the goods, import or export whereof is subject to certain conditions, are to be treated as 'prohibited goods', in case requisite conditions are not fulfilled. It would be relevant to observe here that the Applicant has cited the judgment of the Hon'ble Supreme Court in the case of Hargovind Das K. Joshi Vs. Collector of Customs, reported in 1992 (61) ELT 172 (SC), to contend that foreign currency is not prohibited goods. However, the Government finds that there is nothing to this effect

in the judgment of the Hon'ble Supreme Court in Hargovind Das K. Joshi (supra). Other decisions cited by the Applicant herein are not applicable in view of the dictum of Apex Court, as above. Therefore, there is no doubt that the subject foreign currency is to be treated as 'prohibited goods'.

5.4 The Government observes that the option to release seized goods on redemption fine, in terms of 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 Woolen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi {1998 (104) ELT 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, refused redemption, specifically keeping in view the fact that the Applicant herein was not the owner of the foreign currency and attempted to smuggle the same in a concealed manner, without making the requisite declaration. Therefore, the original authority has exercised discretion for relevant and

reasonable considerations. As such, the Commissioner (Appeals) has correctly refused to interfere in the matter.

5.5 In the facts and circumstances of the case, penalty imposed, under Section 114, is just and fair and no case for reduction in quantum thereof is made out.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)


Additional Secretary to the Government of India

Sh. Mohammed Askar Murathane,  
S/o Sh. Ummer,  
Morathana House,  
P.O. Kadambar,  
Via Manjeshwar,  
P.O. Kasargod, Kerala.

Order No. 204/23-Cus dated 25-05-2023

Copy to:

1. The Commissioner of Customs, New Custom House, Panambur, Mangaluru – 575 010.
2. The Commissioner of Customs (Appeals), BMTc Building, Above BMTc Bus Stand, Old Airport Road, Domlur, Bengaluru – 560 071.
3. Advani, Sachwani & Heera, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp. GPO Fort, Mumbai – 400 001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED  
  
अश्वनी कुमार लौ / Ashwahi Kumar Lau  
अधीक्षक / Superintendent (R.A. Unit)  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
Room No. 606, 6th Floor, B-Wing  
14, Hudco Vishala Building, New Delhi-110086

श्री कृष्ण जी | श्री कृष्ण  
अधीनस्थ | अधीनस्थ (R.A. Unit)  
विकास विभाग | Department of Revenue  
जिला मंत्रालय | Ministry of Finance  
Room No. 608, 6th Floor, B-Wing  
1A, Hubco Vardis Building, New Delhi-110066