

**SPEED POST**



F. No. 375/64/B/2021-R.A.  
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..11/07/22

ORDER NO. 220/Cus-22 dated 11-07-2022 of the Government of India, passed by 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. 169(SM)/CUS/JPR/2021 dated 14.09.2021, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

**APPLICANT** : Sh. Sanjay Sharma, Mumbai, Maharashtra.

**RESPONDENT** : The Commissioner of Customs (P), Jodhpur.

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**ORDER**

A Revision Application No. 375/64/B/2021-R.A. dated 22.11.2021 has been filed by Sh. Sanjay Sharma, Mumbai, Maharashtra (hereinafter referred to as the Applicant) against Order-in-Appeal No. 169(SM)/CUS/JPR/2021 dated 14.09.2021, passed by the Commissioner (Appeals), Custom, Central Excise & CGST, Jaipur. The Commissioner (Appeals) has partly upheld the order of the Additional Commissioner of Customs (Preventive), Jodhpur, bearing No. 35/2020-ADC Customs dated 29.05.2020, wherein, assorted foreign currency equivalent to Rs. 12,88,320/-, has been confiscated absolutely under Section 113(d) and 113(e) of the Customs Act, 1962 and a penalty of Rs. 2,00,000/- imposed on the Applicant under Section 114(i). However, penalty of Rs. 1,50,000/- imposed under Section 114AA of the Act, ibid has been set aside by the Appellate Authority.

2. Brief facts of the case are that the Applicant was intercepted on 01.02.2019 by the officers of CISF at Jaipur International Airport with foreign currency of 18300 USD, while departing for Dubai. Thereafter, the Applicant was handed over to the Customs officers. On being enquired, no legal document or approval, permission to carry the currency in terms of provisions of Section 3 of Foreign Exchange Management Act, 1999 read with regulation 5 & 7 of the Foreign Exchange Management (Export & Import of Currency) Regulation, 2015, was produced by the Applicant. Therefore, the subject foreign currency, valued at Rs. 12,88,320/-, recovered from the Applicant, was seized under Section 110(1) of the Customs Act, 1962. In his statement dated 01.02.2019, recorded under Section 108 of the Customs Act, 1962, the Applicant stated that the recovered currency belonged to him which was

exchanged from different places in Mumbai; that he arranged certain amount of money from his savings and rest amount was borrowed from relatives and friends on interest; that he was carrying the foreign currency, to earn good return, after purchasing gold from Dubai and selling it in India; and that he often went to Dubai in connection with his Rubber Spare Parts business. The said foreign currency was confiscated absolutely by the original authority under Sections 113(d) and 113(e) of the Customs Act, 1962 and a penalty of Rs. 2,00,000/- was imposed on the Applicant under Section 114(i) and penalty of Rs. 1,50,000/- was imposed under Section 114AA of the Act, *ibid*. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been partly upheld as mentioned in Para 1, above.

3. The revision application has been filed by the Applicant, mainly, on the grounds that the foreign currency was not concealed; that it was purchased for his own use, for business purpose; that the said foreign currency has been procured from legitimate funds, personal savings and money borrowed from friends and relatives; that foreign currency is not prohibited and be released on payment of nominal redemption fine and penalty.

4. Personal hearing in the matter was fixed on 08.06.2022, 24.06.2022 and 08.07.2022. Personal hearing, in virtual mode, was held on 08.07.2022. Ms. Prabhjot Kaur, Advocate appeared for the Applicant and reiterated the contents of RA. She also relied upon the judgments cited in the email dated 07.07.2022. Sh. H. N. Kohli, Superintendent appeared for the Respondent department and reiterated the contents of the comments emailed on 07.07.2022.

5. The Government has carefully examined the matter. It is evident that the foreign currency was recovered from the Applicant. It is brought out in the Panchnama as well as admitted by the Applicant in his statement tendered under Section 108 of the Customs Act, 1962 that he was intercepted by the CISF officials with subject foreign currency and further handed over to the Customs officer at the Jaipur Airport. Thus, it is evident that the Applicant did not declare the currency, as required under Section 77 of the Customs Act, 1962, and also did not have any documents or evidence showing lawful possession of the currency. The Applicant has failed to disclose the agency from which foreign currency was acquired. Further the contents of the statement dated 01.02.2019 and 11.02.2019 do not appear to have been retracted by the Applicant, at any stage. In view of this, the contention that the Applicant had procured confiscated foreign currency legally, is not acceptable.

6.1 Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 (as amended), 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, 2015 (as amended), 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 though claimed that he had legally arranged Indian currency to acquire foreign currency but failed to produce 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, 2015. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Respondent) are not fulfilled.

6.2 The contention of the Applicant is that the foreign currency is not a prohibited item. 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."*

6.3 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case.

7. The Applicant has prayed that the foreign currency should be released on payment of redemption fine. 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 & 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, *"when discretion is exercised under Section 125 of the Customs Act, 1962, ----- 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."* Thus, 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. Rather, the original authority has, after due application of mind, ordered absolute confiscation for

the relevant and reasonable considerations. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter. The case laws relied upon by the Applicant are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

8. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

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Order No. 220/22-Cus dated 11-07-2022

Copy to:

1. The Commissioner of Customs (P), Jodhpur, Hqrs at NCRB, Statue Circle, Jaipur-302005.
2. The Commissioner of Customs (Appeals), Central Excise & CGST, NCRB, Statue Circle, Jaipur-302005.
3. Sh. D.S. Chadha, Advocate, G.16, 2<sup>nd</sup> floor, Lajpat Nagar-I, New Delhi – 110 024.
4. PA to AS(RA)
5. Guard File
6. Spare Copy

Attested



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi