

SPEED POST



F. No. 372/42/B/2019-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. 21/01/22

Order No. 23/22-Cus dated 20-01-2022 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. KOL/CUS(Airport)/117/2019 dated 02.08.2019 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Shri Dinesh, Howrah, Kolkata.

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

ORDER

A Revision Application No. 372/42/B/2019-RA dated 05.11.2019 has been filed by Shri Dinesh C/o Shri Puran Chand Jain, 64, Burtolla Street, Kolkata-700007 (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Airport)/117/2019 dated 02.08.2019 passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs, (AIU), NSCBI Airport, Kolkata, bearing no. 17/2018-JC dated 30.01.2018, wherein Indian Currency amounting to Rs. 15,36,800/-, which was recovered from the Applicant, has been confiscated absolutely under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962 read with Section 3(1)(a) & 7b(ii) of Foreign Exchange Management (Export & Import of Currency) Regulation, 2000. Besides, a penalty of Rs. 15,36,800/- was also imposed on the Applicant by the original authority, under Section 114 of the Customs Act, 1962, which has been maintained in appeal.

2. The brief facts of the case are that the Applicant, who was scheduled to depart for Bangkok, by Thai Airways Flight No. TG-314 dated 05.08.2015, was intercepted by the Customs AIU officers. The Checked-in baggage of the Applicant was searched, which resulted in recovery of Indian foreign currency amounting to Rs. 15,36,800/- (Denomination of Rs. 1000, Rs. 500 and Rs. 100) and the Applicant could not produce any licit documents for its legal acquisition, possession or exportation. The same was confiscated absolutely by the original authority under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962 read with Section 3(1)(a) & 7b(ii) of Foreign Exchange Management (Export & Import of Currency) Regulation, 2000, vide Order-in-Original dated 06.02.2018. A penalty of Rs. 15,36,800/- was also imposed under Section 114 of the Act, *ibid.* Aggrieved, the Applicant herein filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal.

3. The revision application has been filed, mainly, on the grounds that the Applicant was not aware of the rules and regulations for taking Indian Currency (IC) out of India; that IC is restricted not prohibited; that declaration was made under Section 77 of the Act, *ibid.*; that confiscated goods were not concealed; that the currency belonged to the Applicant and can be redeemed on payment of fine under Section 125 of the Customs Act, 1962.

4. Personal hearing, in virtual mode, was held on 17.01.2022. Sh. Punam Chand Jain, Consultant, appeared for the Applicant and reiterated the contents of RA. He requested that IC be allowed to be redeemed on payment of fine and penalty may be reduced. Sh. Jitendra Kumar, Superintendent, appeared for the Respondent department and supported the orders of lower authorities.

5. The Government has carefully examined the matter. The Applicant was specifically asked by the Customs Officer whether he was carrying any Indian/ Foreign Currency but in reply he disclosed the possession of Rs. 3000/-, only. However, he was found in possession of Indian currency amounting to Rs.15,36,800/- which was recovered from his Checked-in baggage. Thus, it is also on record that he did not declare the confiscated currency to the Customs authorities at the time of his departure, as required under Section 77 of Customs Act, 1962. Further, the Applicant has admitted the recovery of Indian currency from his Checked-in baggage and the fact of non-declaration in his statements dated 05.08.2015 & 20.11.2015, tendered under Section 108 of Customs Act, 1962. The Applicant also admitted that he was aware that he could not carry IC in excess of Rs.25,000/- but claimed the ownership. However, he failed to produce any licit documents for valid possession of the confiscated Indian currency.

5.1 The Government observes that as per Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 issued under Notification No. FEMA 6/RB-2000 dated 03.05.2000, "any person resident in India may take outside India (other than Nepal and Bhutan) Currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs. 5000/- per person". Thus, it is clear that the Applicant was carrying Indian currency, which is over and above the permissible limit, as specified, with an intent to export the same to a place, outside India.

5.2 The Applicant has contended that the confiscated goods are not 'prohibited' but 'restricted' and as such may be allowed to be redeemed under Section 125 of the Act, *ibid*. However, the Government finds that the Hon'ble Supreme Court has, in the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}*, 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 is a case relating to export of goods, 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 dated 17.06.2021, 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."

5.3 In this case, as noted above, the conditions subject to which subject Indian currency could have been legally exported have not been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'.

6. The original adjudicating authority has denied the release of offending goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that the option to release 'prohibited goods' on redemption fine, 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 Raj Grow Impex (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 relevant considerations*". In the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344) ELT1154 (Mad.)}, the Hon'ble Madras High Court, after extensive application of several judgments of the Hon'ble Apex Court, has held that "*non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference*". Further, "*when discretion is exercised under Section 125 of the Customs Act, 1962, the twin test to be satisfied is 'relevance and reason'*". It is observed that the original authority has, in the instant case, after appropriate consideration of facts of the case, statement tendered by the Applicant and rules/regulations governing export and import of Indian currency, passed a reasoned order not allowing redemption. Thus, the discretion exercised by the original authority could not have been interfered with.

7. However, it is observed that the penalty of Rs. 15,36,800/-, imposed on the Applicant, is on a higher side especially when the Indian currency has been confiscated absolutely. The penalty is, thus, reduced to Rs. 3 Lakhs.

8. In view of the above, impugned Order-in-Appeal is upheld, except to the extent of penalty imposed, as modified above, and the revision application is disposed of accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

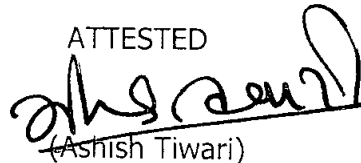
Shri Dinesh,
S/o Anirudh Tripathi,
R/o – 6/7, Bhairabber Lane,
PO – Howrah, PS – Howrah,
West Bengal – 711101.

Order No. _ 23/22-Cus dated 20-01-2022

Copy to:

1. The Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of Customs(Airport & Admn), NSCBI Airport, Kolkata-700001.
3. Sh. Punam Chand Jain, 64, Burtolla Street, Kolkata-700007.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (RA)