

**SPEED POST**



F. No. 372/03/B/2022-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: 19/07/22

Order No. 233/22-Cus dated 18-07-2022 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Applications under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS/Airport/AKR/831/2021 dated 26.11.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Sanjay Kumar Singh, Kolkata

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

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**ORDER**

A Revision Application No. 372/03/B/2022-RA dated 14.01.2022 has been filed by Sh. Sanjay Kumar Singh, Kolkata (hereinafter referred to as the Applicant), against the Order in Appeal No. KOL/CUS/Airport/AKR/ 831/2021 dated 26.11.2021, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs (Airport & Admn.), Kolkata, bearing no. 36/2021/ADC dated 20.07.2021, ordering absolute confiscation of foreign currency, amounting to USD 54000 equivalent to Rs. 38,04,300/- under Sections 113(d), 113(e) and 113(h) of the Customs Act, 1962 along with one blue coloured trolley bag bearing brand name "VIP" with black coloured cover carried by the Applicant and used for concealing the foreign currency notes, under Section 118 of the Customs Act, 1962. Besides penalty of Rs. 9,50,000/- was also imposed on the Applicant, under Section 114 of the Act, *ibid*.

2. Brief facts of the case are that the Applicant was scheduled to depart for Bangkok from Kolkata, on 06.01.2020. The Applicant was intercepted by the officers of Customs at Airport when he approached the Security Hold Area after the completion of the immigration formalities. The Applicant was asked specifically whether he was carrying any contraband or Indian/ Foreign currency beyond the permissible limit, to which he replied in negative. The baggage of the Applicant was searched, it was noticed that foreign currency notes were deftly concealed at the base and side walls of the trolley bag with the help of screws and adhesive glues. 540 notes of USD 100 denominations totaling to USD

54000 equivalent to INR 38,04,300/- were recovered. The Applicant in his statements dated 06.01.2020 & 26.02.2020, recorded under Section 108 of the Customs Act, 1962, stated that he was working as Business Development Manager in HDFC Life in Kolkata; that he was given the Trolley Bag by an unknown person through a person named Sh. Murugan Pandi, who sold Dosa in front of his office; that he was told by Sh. Murugan Pandi that one person named Sh. J. Bhai would come at Bangkok Airport to receive the Trolley Bag; that he did not know the owner of the currency and made the mistake for greed of Air fare, Hotel stay and to visit to Bangkok.

3. The revision application has been filed, mainly, on the ground that under Section 125 of the Customs Act, 1962 mandates release of confiscated goods, not being prohibited goods; that question of declaration of the same in terms of Section 77 of the Customs Act, 1962 does not and cannot arise; that penalty imposed under Section 114 of the act, ibid is otherwise bad in law and beyond the settled principle of law; that the Order-in-Appeal may be set aside with consequential relief to the Applicant.

4. A personal hearing, in virtual mode, was held on 18.07.2022. Sh. Arijit Chakraborty, Advocate appeared on behalf of the Applicant. He submitted that foreign currency is not "prohibited goods" for export. Hence the currency should have been released on payment of RF and nominal penalty. Sh. D.K. Ramuka, Supdt. supported the orders of lower authorities and highlighted that the Applicant was admittedly acting as a carrier.

5. The Government has carefully examined the matter. It is evident that the foreign currency was recovered from the Applicant, which was concealed at the base and side walls of the trolley bag with the help of screws and adhesive glues. It is brought out that the Customs officers asked the Applicant as to whether he was carrying any foreign currency to which he replied in negative. 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 contents of the statement dated 06.01.2020 & 26.02.2020 do not appear to have been retracted by the Applicant.

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 failed to produce any legal documents for licit possession of the confiscated currency or any permission from the Reserve Bank of India for export of foreign currency found in his baggage in concealed manner. He has also not shown compliance with the

provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2000, as amended. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled.

6.2 Another 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. The Applicant's contentions to the contrary are incorrect.

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

Sh. Sanjay Kumar Singh,  
S/o Sh. Raj Kishore Singh,  
R/o 16/1, Shibtala Lane,  
Entally, Kolkata-700015.

Order No. 233 /22-Cus dated 18-07-2022

Copy to:

1. The Commissioner of Customs (Appeals), 3<sup>rd</sup> floor, Custom House, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of Customs (Airport & Admn.), NSCBI Airport, Kolkata-700052.
3. Sh. Prabir Bera, Advocate, Hastings Chambers, Room No. B/G, (Basement), 7C, Kiran Sanker Roy Road, Kolkata-700001.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED

*Gehata*  
19/7/22

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