

REGISTERED  
SPEED POST



F.No. 372/25/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. 26/10/21..

Order No. 241 /21-Cus dated 26/10/ 2021 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 Application filed, under section 129 DD of  
the Customs Act 1962 against the Order-in-Appeal  
No. Kol/Cus(Airport)/AA/218/2019 dated  
01.04.2019, passed by the Commissioner of  
Customs (Appeals), Custom House, Kolkata.

Applicant: Sh. Vidya Sagar, Kolkata.

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

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**ORDER**

A Revision Application No.375/25/B/2019-RA dated 10.06.2019 has been filed by Sh. Vidya Sagar, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Kol/Cus(Airport)/AA/218/2019 dated 01.04.2019, passed by the Commissioner of Customs (Appeals), Kolkata whereby Commissioner (Appeals) has upheld the Order-in-Original No. 81/2018 AC dated 26.11.2018 passed by the Assistant Commissioner of Customs, Air Intelligence Unit, NSCBI Airport, Kolkata.

2. Brief facts of the case are that the Applicant was intercepted at the NSCBI Airport, Kolkata, while he was about to board a flight to Bangkok in the intervening night of 09.12.2017 and 10.12.2017. The Customs Officers asked him specifically whether he was carrying any contraband items or Indian/Foreign currency more than the permissible limit to which he replied in the negative. His personal search resulted in the recovery of USD 5000/- (with a convertible value of Rs. 3,18,500/-) from his trouser pockets. In his statement dated 10.12.2017, tendered under Section 108 of Customs Act, 1962, the Applicant stated that the foreign currency so recovered actually belonged to someone else who had handed over the same to the Applicant outside the airport and he was offered Rs. 2000/- to carry it out of the country. The original authority ordered absolute confiscation of the seized foreign currency under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962. A penalty of Rs. 3,18,500/- was also imposed on the Applicant under Section 114 ibid. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals).

3. The revision application has been filed by the Applicant, mainly, on the grounds that foreign currency belonged to the Applicant; that cash memos covering USD 2250/-, were submitted before the lower authorities; that USD 2000/- were allowed to be taken out of the country as per FEMA Notn. No. 11(R)/2015-RB dated 29.12.2015; and that the remaining USD 750/- be released on reasonable redemption fine and penalty.

4. Personal hearing in the matter was fixed on 27.08.2021, 16.09.2021 and 25.10.2021. In the personal hearing held on 25.10.2021, in virtual mode, Sh. Jitender Kumar, Superintendent, appeared for the Respondent and supported the orders of the lower authorities. No one appeared for the Applicant on any of the dates nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for final disposal based on records.

5. The Government has examined the matter. It is not disputed that the foreign currencies were recovered from the Applicant which were not declared by him as required under Section 77 of the Customs Act, 1962, to the Customs authorities at the time of departure and he could not produce any licit documents in support of acquisition, possession or legal exportation of the same. In his voluntary statement recorded under Section 108 of the Customs Act, 1962, the Applicant admitted that he was acting as a carrier who would get pecuniary benefit for this job.

6. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, 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, 2000, 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 not produced any permission from the Reserve Bank of India for export of foreign currencies found in his possession. He has also not shown compliance with the provisions of Regulation 3 (iii) *ibid.* Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled.


7. It has been contended that USD 2250/- were licitly obtained from legal sources. But the cash memos evidencing the same were not produced at the time of seizure of the foreign currency and no mention thereof is found in the statement recorded under Section 108 also. Hence, it can be concluded that this contention is nothing but an afterthought.

8. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962. 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 & Others [2021-TIOL-187-SC-CUS-LB], 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". In the present case, the original authority has refused to grant redemption in the background that the Applicant acted merely as a carrier who concealed the currency to avoid detection. No case for interference with the discretion so exercised by the original authority is made out.

9. It is observed that penalty of Rs. 3,18,500/- has been imposed on the Applicant which is equal to the convertible value of the foreign currencies seized. The Government finds that the penalty imposed is on a higher side, specially keeping in view the fact that the foreign currency has been confiscated absolutely. Accordingly, the penalty imposed under Section 114 of the Customs Act, 1962 is reduced to Rs. 1 Lakh.

10. The revision application is allowed partly to the extent of reduction in penalty, as above.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Vidya Sagar, 49/5/H84, Karl marx Sarani,  
P.O. Babu Najar, P.S. South Port-1,  
Kolkata-700 023.

Order No. \_ 241 /21-Cus dated 26/10/ 2021  
Copy to:

1. The Commissioner of Customs (Airport & Admin.), NSCBI Airport, Kolkata – 700052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700001.
3. PA to AS(RA).
- ✓ 4. Guard File.
5. Spare Copy.

ATTESTED

  
(Ashish Tiwari)

Assistant Commissioner (RA)