

**SPEED POST**



F. No. 375/73/B/2021-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue... 25/7/22

Order No. 243/22-Cus dated 25-7-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/D-1/Air/68/2021-22 dated 01.06.2021, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Sh. Virasat Hussain, Delhi.

Respondent : The Commissioner of Customs (Airport & General), New Delhi.

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**ORDER**

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A Revision Application No. 375/73/B/2021-RA dated 31.12.2021 has been filed by Sh. Virasat Hussain, Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-1/Air/68/2021-22 dated 01.06.2021, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the Appeal of the Applicant <sup>herein</sup> against the order of the Assistant Commissioner of Customs, IGI Airport, New Customs House, New Delhi, bearing No.49/Adj/2020 dated 27.04.2020.

2. Brief facts of the case are that the Applicant, who was scheduled to depart to Colombo, on 24.10.2019, was intercepted by the Customs Officers after he had crossed the immigration and was offloaded from the flight. During the search of his baggage, it was detected that the Applicant was carrying foreign currency of US\$ 7400/- (convertible value-Rs. 5,22,440/-). On enquiry, the Applicant could not produce any documentary evidence or proof for licit possession of foreign currency. Applicant, in his statement dated 24.10.2019, tendered under Section 108 of the Customs Act, 1962, stated that the foreign currency belonged to him and was acquired by him from a Money Exchanger shop at Karol Bagh, New Delhi but he did not possess any proof thereof. The original authority, vide the aforesaid Order-in-Original dated 27.04.2020, confiscated absolutely the seized foreign currency under Section 113 of the Customs Act, 1962. Penalty of Rs. 2,00,000/- was also imposed on the Applicant under Sections 114 and 114AA of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that the Applicant had obtained foreign currency from his relatives/friends who had purchased it from authorized money exchanger; that the Applicant is a lay man who does not have sufficient knowledge of law and regulations; that the penalty is not imposable under Section 114AA; and that the foreign currency may be released.

4. Personal hearing, in virtual mode, was held on 25.07.2022. Sh. Mayank Sharma, Advocate, appeared for Applicant and reiterated the contents of the revision application. He submitted that in view of the case laws cited the foreign currency may be allowed to be redeemed and penalty may be reduced. Sh. Mahender Singh, Superintendent appeared for the Respondent department and supported the orders of the lower authorities.

5. The Government has carefully examined the matter. It is clear, from the evidence on record, that the foreign currency was recovered from the Applicant. It is not disputed that he did not declare the currency to the Customs Officers at the airport under Section 77 of the Customs Act, 1962 and did not have any documents or evidence showing lawful possession of the currency. It is also on record that the Respondent failed to declare the possession of currency even when specifically asked to do so by the Customs officers. Further, the contention that the foreign currency was obtained from the friends/relatives is not supported by any documentary evidence.

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 Respondent has not produced 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 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 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.*"

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 original authority has denied the release of subject foreign currency 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 & 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 Commissioner (Appeals) could have interfered with the discretion exercised by the original authority only if it would have been tainted by any of vices highlighted by the Hon'ble Courts. Such a case is not made out. Hence, the discretion exercised by the original authority does not merit intervention and the commissioner (Appeals) has carefully refused to do so.

8. The imposition of penalty under Section 114AA has been assailed by the Applicant. Section 114AA reads as under:

*Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

The Government observes that the Applicant failed to declare the currency even when asked to do so. Consequently, he knowingly made a false declaration/statement. Thus, the imposition of penalty under Section 114 AA is merited. The quantum of penalty imposed is also just and fair, in the facts and circumstances of the case.

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



(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Virasat Hussain,  
F-1, Taj Enclave, Link Road,  
Geeta Colony,  
New Delhi 110031.

Order No. 243 /22-Cus dated 25-7-2022

Copy to:

1. The Commissioner of Customs, Airport & General, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
4. Sh. Mayank Sharma, B 28, Lajpat Nagar III, New Delhi - 110024.
5. PA to AS(RA).
6. ✓ Guard File.
7. Spare Copy

ATTESTED

  
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