

REGISTERED
SPEED POST



F.No. 375/34/B/18-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...01/11/21

Order No. 250/21-Cus dated 01-11-2021 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.CC(A)Cus/D-1/Air/763/2018 dated 11.03.2019, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Sh. Manish Kumar, Rohtak.

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

ORDER

A Revision Application No. 375/34/B/18-RA dated 10.05.2019, has been filed by Sh. Manish Kumar, Rohtak (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CC(A)Cus/D-1/Air/763/2018 dated 11.03.2019, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, bearing no. 305/AS/JC/2018 dated 31.07.2018, wherein foreign currency equivalent to Rs. 75,69,700/-, which was recovered from the Applicant, has been confiscated absolutely. The adjudicating authority has also imposed a penalty of Rs. 15,00,000/- under Section 114 of the Customs Act, 1962 read with Section 13 of Foreign Exchange Management (Export & Import of Currency) Regulation, 1999 on the Applicant, which has been maintained in appeal.

2. Brief facts of the case are that the Applicant, who was scheduled to depart to Dubai by Flight EK-517, on 25.10.2017, was intercepted by the Customs Officers with the information that the Applicant was carrying foreign currency. On examination/personal search, foreign currency, equivalent to Rs. 75,69,700/-, was recovered from the Applicant. Applicant in his statement dated 25.10.2017 stated that the recovered foreign currency recovered belonged to him. He further stated that on arrival in Dubai he would have handed over the foreign currency to one Mr. Surender; and that Mr. Surender would have helped him in purchasing gold from Dubai for onward selling in India to earn profit.

3. The revision application has been filed by the Applicant canvassing that the foreign currency was acquired by converting part of the sale proceeds of a property of the Applicant; that import & export of foreign currency is not prohibited; that absolute confiscation is therefore illegal; and that, accordingly, seized currency may be released on payment of redemption fine. It is further prayed that the penalty imposed may be reduced.

4. Personal hearing was held on 01.11.2021, in virtual mode. Sh. A. K. Attri, Advocate appeared for the Applicant and reiterated the contents of RA. He submitted that Applicant had sold his property and he had got part of sale proceeds converted into FC, which he was taking abroad for expanding his business. Sh. Attri, therefore, requested for the currency to be released on the payment of fine and penalty. Sh. A. K. Meena, Superintendent submitted that though currency seized is claimed to have been a part of the sales proceeds of property, there is nothing on record that it was acquired through legitimate means. Further, it was ingeniously concealed. Hence, malafides are apparent.

5. The Government has carefully examined the matter. It is apparent, from the evidence on record, that a huge amount of foreign currency ingeniously concealed in the shoes and between the layers of vest 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 at the time of apprehension. It is also on

record that the Applicant failed to declare the possession of currency even when specifically asked to do so by the Customs officers. Though, it is claimed that the foreign currency was acquired by converting a part of the sale proceeds of a property of the Applicant, there is nothing on record to evidence that any such transaction(s) took place through legal channels. Hence, the claim of ownership is not borne out of records.

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 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, 2001. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled.

7.1 The question of law raised by the Applicant is that the import or export of foreign currency is not 'prohibited'. 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)}, 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 (CA Nos. 2217-2218 of 2021), 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."*

7.2 The original authority has correctly brought out that in this case the conditions subject to which 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'.

8. The original authority has denied the release of offending goods, i.e., foreign currency on redemption fine, under Section 125 of Customs Act, 1962, which has been assailed in the instant Revision Application. 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*". In the present case, the original authority has refused to grant redemption in the background of attempted smuggling by ingenious concealment and non-declaration. Being a reasoned order passed on valid considerations, no case for interference with the discretion so exercised by the original authority is made out.

9. Further, the quantum of penalty imposed upon the Applicant appears to be just and fair in the facts and circumstances of the case.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Manish Kumar,
202, 3rd Floor,
Model Town,
Rohtak, Haryana-124001

Order No. 250/21-Cus dated 01-11-2021

Copy to:

1. The Commissioner of Customs (Airport & General), IGI Airport Terminal-3, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi

4. Sh. Amit Kumar Attri, Advocate, Chamber No. 952, Patiala House Court, New Delhi 110001
5. PA to AS(RA)
6. Guard File.
7. 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