

SPEED POST



F. No. 375/21/B/2019-R.A.
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..02.11.21..

ORDER NO. 251/21-Cus dated 02-11-2021 of the Government of India, passed by Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)/CUS/Air/644/2018 dated 31.12.2018, passed by the Commissioner of Customs (Appeals), IGI Airport, New Delhi-110037.

APPLICANT : Sh. Sudhir Nishal, Faridabad.

RESPONDENT : Commissioner of Customs, IGI Airport, New Delhi.

ORDER

A Revision Application No.375/21/B/2019-R.A dated 15.04.2019 has been filed by Sh. Sudhir Nishal, Faridabad (hereinafter referred to as the Applicant) against Order-in-Appeal No. CC(A)/Cus/D-I/Air/644/2018 dated 31.12.2018, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) has upheld the Order-in-Original of the Additional Commissioner of Customs, IGI Airport, New Delhi, bearing No. 144/ADJ/2016 dated 03.10.2016 wherein foreign currency cumulatively equivalent to Rs. 19,26,346/-, which was recovered from the Applicant, has been confiscated and allowed to be redeemed on payment of redemption fine of Rs. 2,00,000/- under Section 125 of the Customs Act, 1962. Besides, a penalty of Rs. 4,00,000/- was also imposed on the Applicant under Section 114 of the Customs Act, 1962 read with Section 13 of Foreign Exchange Management (Export & Import of Currency) Regulation, 1999.

2. Brief facts of the case are that the Applicant, who was scheduled to depart to Bangkok from IGI Airport, New Delhi by Flight AI-332, on 20.10.2015, was handed over to Customs by Airlines Staff. On examination/personal search, assorted foreign currency equivalent to Rs. 19,26,346/- was recovered, wrapped in a red colour sari, from the Applicant. The Applicant, in his statement dated 20.10.2015, recorded under Section 108 of Customs Act, 1962, stated that the foreign currency was purchased by him from open market to earn maximum profit as it cost less to purchase from open market without any bill than to purchase from authorised money exchanger; and that he was carrying the foreign currency to purchase the readymade garments. Further, he admitted his mistake.

3. The revision application has been filed, mainly, on the grounds that the foreign currency has been wrongly confiscated and hence redemption fine has been wrongly imposed; and that penalty is not imposable as the offending currencies, not a prohibited item, were not concealed.

4. Personal hearings were granted on 05.10.2021, 20.10.2021 and 29.10.2021 which were not attended by the Applicant nor any request for adjournment has been received. Sh. Charan Singh, Superintendent appeared on behalf of the respondent department on 29.10.2021 and supported the orders of the lower authorities. Since sufficient opportunities have been granted to the Applicant, the matter is taken up for decision on the basis of records available.

5. The Government has examined the matter. It is apparent, from the evidence on record, that a huge amount of foreign currency was recovered from the Applicant. It is not disputed that the Applicant 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.

6.1 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 Applicants have not produced any permission from the Reserve Bank of India for export of foreign currency found in their possession. They have 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.

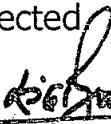
6.2 In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term *"Any*

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)}, 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.*"

6.3 The original authority has correctly brought out that in this case the conditions subject to which subject foreign 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'. As such, the confiscation of the seized foreign currency is in order.

7. Noting that the Applicant herein is the owner of the foreign currency, the original authority has, in his discretion, given an option to the Applicant to redeem the same on payment of Rs. 2 Lakhs as redemption fine under Section 125 of Customs Act, 1962. The department has not been aggrieved whereas The Applicant has challenged the imposition of redemption fine. As held hereinabove, the offending foreign currency has been correctly confiscated. Hence, its redemption is permissible only on imposition of fine, in terms of Section 125 ibid. As such, the fine has been correctly imposed. Further, the Government finds that the amount of fine imposed is reasonable. Similarly, the penalty imposed upon the Applicant is also just and fair, in the facts and circumstances of the case.

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


(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Sudhir Nishal,
S/o Sh Vinod Nishal,
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Faridabad-121010

Order No. 251/21-Cus dated 02-11-2021

Copy to:

1. The Commissioner (Appeals), New Customs House, Near IGI Airport, Delhi-110037
2. Commissioner of Customs (Airport & General), T-3, IGI Airport, New Delhi-110037.
3. Sh. Rajesh Kumar & Associates, 601, SG Alpha Tower-II, Sector 9, Vasundhgara, Ghaziabad-201 012.
4. PA to AS(RA)
5. ~~Guard File.~~
6. Spare Copy

ATTESTED

(Ashish Tiwari)
Assistant Commissioner (RA)