

SPEED POST



F. No. 375/15/B/2022-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 03/08/22

Order No. 253 /22-Cus dated 03-08-2022 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. 273(SM)CUS/JPR/2021 dated 15.12.2021 passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

Applicant : Sh. Aatif Ali Khan, Nagaur, Rajasthan

Respondent : Commissioner of Customs (Preventive), Jodhpur.

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ORDER

A Revision Application No. 375/15/B/2022-RA dated 23.03.2022 has been filed by Sh. Aatif Ali Khan, Nagaur, Rajasthan (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 273(SM)CUS/JPR/2021 dated 15.12.2021, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs (Preventive), Jodhpur, bearing no. 37/2020-ADC Customs dated 29.05.2020. The original authority had ordered absolute confiscation of foreign currency, totally valued at INR 1,55,84,383/- concealed inside the baggage(s) of Sh. Naresh and his one accomplice, namely, Sh. Mohd. Javed, under Section 113(d) and 113(e) of the Customs Act, 1962. Besides penalties of Rs. 1,50,000/- under Section 114(i) and Rs. 1,50,000/- under Section 114AA of the Act, *ibid*, each were imposed on Sh. Naresh, Sh. Mohd. Javed and the Applicant, herein.

2. Brief facts of the case are that Sh. Naresh was intercepted while he was scheduled to depart for Sharjah from Jaipur, on 08.02.2018. On being asked by the authorities, Sh. Naresh denied the fact of carrying any contraband or Indian/ Foreign currency beyond the permissible limit. He, however, informed about his co-passenger Sh. Mohd. Javed who was also travelling to Sharjah by the same flight. The baggage of Sh. Naresh was examined on 08.02.2018, and foreign currency, amounting to Rs. 1,12,80,863/-, was recovered. During investigations, on the basis of the further information the baggage of Sh. Mohd. Javed was examined on 10.02.2018 which resulted in recovery of foreign currency, amounting to Rs. 43,03,520/-. Thus, total value of recovered foreign currency was estimated at INR 1,55,84,383/-. Sh. Naresh, in his statement dated 08.02.2018, recorded under Section 108 of the Customs Act, 1962, informed that the bag containing currency in concealed manner

was handed over to him along with his ticket & visa at Jaipur Airport with instructions to hand over the same to one of his co-passengers, namely, Sh. Mohd. Javed, who was also travelling to Sharjah. He further admitted that he agreed to carry foreign currency in greed of money. Further, Sh. Javed, in his statement dated 08.02.2018, admitted that the bag containing foreign currency, which was given to Sh. Naresh, was to be taken by him from Sh. Naresh after reaching Sharjah airport. Subsequent to recovery of foreign currency, amounting to Rs. 43,03,520/-, on 10.02.2018, from the baggage of Sh. Javed, his statement, was recorded in judicial custody, on 12.02.2018, wherein he, inter-alia, stated that he came to Jaipur airport in the car of the Applicant; that the Applicant had handed over the red colour trolley bag to him and told him that foreign currency of value Rs. 40-45 lakhs was concealed in the bag; that he had to hand over his red colour bag along with black colour bag carried by Sh. Naresh, to a person deputed by the Applicant at Sharjah. He also handed over a visiting card received from the Applicant to the authorities evidencing dealing of the Applicant with air tickets and dealing in foreign exchange. In follow up proceedings, the statement of the owner of the shop (as mentioned on the visiting card), Sh. Rafik Khan was also recorded on 28.02.2018, under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that the Applicant Sh. Aatif Khan was his nephew and looking after his business of tours & travels, tickets and currency exchange; that he tried to contact the Applicant since the day of incident but his mobile phones were found switched off. During the course of investigations, summons were issued to the Applicant, at least on seven occasions, but he did not join the investigations. The seized foreign currency was confiscated absolutely by the original authority and penalty was imposed upon Sh. Naresh, Sh. Mohd. Javed and the Applicant, herein. The Applicant filed an appeal before the Commissioner (Appeals) on the grounds that the entire case of the

department was based on the statement of the co-accused and requested for an opportunity to cross-examine them. Similar submissions were made during personal hearings held on 25.08.2021 and 06.09.2021. During the hearing held on 30.09.2021, the co-accused, i.e., Sh. Naresh and Sh. Mohd. Javed were cross-examined by the counsel of the Applicant. Thereafter, the Applicant was required to appear, on 12.10.2021; before the Appellate Authority for cross-examination but neither the Applicant nor his Counsel appeared on the fixed date. The Commissioner (Appeals), thereafter, rejected the appeal filed by the Applicant, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the ground that no corroborative evidence has been placed on record against the Applicant; that the referred call details were made to ascertain the details required for visa processing, scheduling of tickets, cost and timings etc., and not for illegal export of foreign currency; that the penalty is not imposable under Section 114 and 114AA of the Customs Act, 1962; that the Order-in-Appeal may be set aside and personal hearing in the matter may be granted.

4. The personal hearing was fixed for 20.07.2022 & 02.08.2022. In hearing held, in virtual mode, on 02.08.2022, Sh. Ankit Totuka, Advocate appeared on behalf of the Applicant and reiterated the contents of the revision application. He highlighted that his client was not the travelling passenger and had no obligation to make a declaration regarding foreign currency in terms of Section 77. Therefore, penalty under Section 114AA could not have been imposed on him. No one appeared for the department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. The issue that arises for consideration in this revision application is the complicity or otherwise of the Applicant in the smuggling of foreign currency recovered from Sh. Naresh and Sh. Mohd. Javed. It is the case of the department that the recovered foreign currency was handed over to them by the Applicant. On the other hand, it is the contention of the Applicant that the case against him is solely based upon the statements of Sh. Naresh and Sh. Javed. However, the Government finds that the department's contention is also proven from the cross examination conducted on behalf of the Applicant, before the Commissioner (Appeals). In his cross examination, Sh. Naresh stated that the bag containing the currency was given to him by Sh. Mohd. Javed and another person (Q.1, Cross examination dated 30.09.2021). Sh. Mohd. Javed has in his cross examination confirmed that Applicant had given him the two bags containing foreign currency and had dropped him at the airport (Q.8, Cross examination dated 30.09.2021). Besides, in their respective Cross examination, both stood by their statements made before the department. As correctly pointed out by the Commissioner (Appeal), the case against the Applicant is further supported by the technical evidence. The Government further observes that the Applicant failed to join the investigations despite repeated summons. He also made himself scarce when called for cross examination by the Commissioner (Appeal); though he had earlier availed of the opportunity to cross-examine Sh. Naresh and Sh. Mohd. Javed. It is, thus, apparent that the Applicant did not conduct himself in a bonafide manner and, hence, adverse inference needs to be drawn against him for this reason as well. As such, the Government holds that the Applicant was directly complicit in the matter and is liable to penalty under Section 114 of the Customs Act, 1962.

(1-6114) (2022)
 (L. K. Raghavan)
 Joint Secretary
 Ministry of Finance
 Government of India

6. It is also contended that the penalty under Section 114AA was not imposable on the Applicant as he was not the passenger and, as such, there was no obligation on him of making any declaration under Section 77 of the Act, ibid. This contention merits consideration, specially as nothing has been brought on record by the respondent department that the Applicant had directed or instructed the passengers not to declare the confiscated currency. Thus, penalty imposed upon the Applicant under Section 114AA is set aside.

7. In view of the above, the revision application is partly allowed to the extent of setting aside the penalty imposed on the Applicant under Section 114AA of the Customs Act, 1962.



(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Aatif Ali Khan,
S/o Sh. Abid Ali Khan,
R/o Khan Mohalla, Kuchaman City,
Distt. Nagaur (Raj.)-341001.

Order No. 253/22-Cus dated 03-08-2022

Copy to:

1. The Commissioner of Customs (P), Jodhpur, Hqrs at NCRB, Statue Circle, C-Scheme, Jaipur-302005.
2. The Commissioner of Customs (Appeals), Central Excise & CGST, NCRB, Statue Circle, Jaipur-302005.
3. Sh. Ankit Totuka, Advocate, G-3, Shivgyan Avenue, 2 Yudhister Marg, C-Scheme, Jaipur-302005 (Raj.)
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED


(Lakshmi Raghavan)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
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