

SPEED POST

F. No. 372/03/B/2020-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 27/1/22

ORDER NO. 27/22 - Cus dated 27-01-2022 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. KOL/CUS/(A/P)/AKR/726/2019 dated 13.11.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Sh. Mohd. Sanawaz Ansari, Kolkata.

RESPONDENT : Commissioner of Customs (Airport & Admn.), Kolkata.

ORDER

A Revision Application No. 372/03/B/2020-R.A. dated 06.02.2020 has been filed by Sh. Mohd. Sanawaz Ansari, Kolkata (hereinafter referred to as the Applicant) against Order-in-Appeal No. KOL/CUS/(A/P)/AKR/726/2019 dated 13.11.2019, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, AIU, NSCBI Airport, Kolkata bearing No. 26/2019 ADC dated 15.03.2019, wherein, foreign currency amounting to USD 97,600/-, equivalent to Rs. 61,92,720/-, has been confiscated absolutely and a penalty of Rs. 61,92,720/- has been imposed on the Applicant.

2. Brief facts of the case are that the Applicant, scheduled to depart to Hong Kong via Bangkok on 31.08.2017, was intercepted by the customs officers at the NSCBI Airport, Kolkata while he was proceeding towards immigration after completion of his check-in formalities. He was specifically asked if he was carrying any contraband items or Indian/foreign currency beyond permissible limit to which he replied in negative. On search of his checked-in baggage, a total of USD 97,600/- (976 pieces in the denomination of USD 100/- each), equivalent to Rs. 61,92,720/-, were recovered. The Applicant could not produce any evidence of lawful acquisition/possession/or legal exportation of the said currency. In his statement dated 31.08.2017, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that the recovered currency did not belong to him and the same was handed over to him by an unknown person; that he was told to stay at Chunking Mansion where a person would have come to receive the carton containing the currency from him and would

give some money for carrying the carton; that he accepted the offer for greed of money; and that he confessed his guilt and requested for a lenient view in the matter. The said foreign currency was confiscated absolutely by the original authority under Sections 113(d), 113(e) and 113(h) of the Customs Act, 1962 read with Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 and an equal penalty of Rs. 61,92,720/- was also imposed on the Applicant under Section 114 of the Customs Act. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal.

3. The revision application has been filed by the applicant canvassing that the statement of the Applicant, recorded under Section 108 of the Customs Act, 1962 was not voluntary; that he is the owner of the foreign currency; that import & export of Indian & foreign currency is not prohibited as held by different judicial fora in the past; that USD 2000, allowed to be exported as per law, should be released unconditionally; that the foreign currency was legally imported as gift/honorarium during his previous visits abroad; and thus should be released on payment of redemption fine under Section 125 of the Customs Act and penalty.

4. Personal hearing in the matter was fixed on 01.12.2021, 17.12.2021 and 27.01.2022, in virtual mode. No one appeared for the Applicant and no request for adjournment has also been received. Shri. Ram Narayan Meena, Superintendent, appeared for the respondent department and supported the orders of lower authorities. He highlighted that 426 out of 976 USD notes were in running serial numbers and the Applicant had admitted to being a carrier in his statement. Since sufficient opportunities have been

granted to the Applicant, the matter is taken up for decision based on records.

5. The Government has carefully examined the matter. It is evident that the foreign currency was recovered from the Applicant, which was concealed in between the two layers of brown coloured cardboard box, containing 90 pieces of Haldiram Bhujia packets, carried by the Applicant as his checked-in baggage. It has been admitted by the Applicant in his statement tendered under Section 108 of the Customs Act, 1962, 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. The Applicant has, however, subsequently claimed that he acquired/possessed the seized US dollars by way of gifts or honorarium and had imported the same during his previous trips. However, no evidence has been produced to substantiate this claim. Further, this claim was not made at the time of recording his voluntary statement dated 31.08.2017 which was never retracted. Thus, it appears to be nothing but an afterthought. Moreover, 426 out of 976 currency notes were in continuous serial numbers which is highly unlikely in case the currency was brought in different trips, over a long period of time, as claimed by the Applicant.

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. The Applicant has contended that the seized foreign currency is not 'prohibited goods'. 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;*

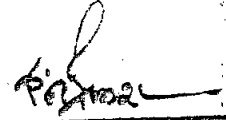
and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions." In view of the position explained in para 6 above, the conditions subject to which the currency could have been exported, have not been met in the present case. Hence, the seized foreign currency is "prohibited goods".

8. The Applicant has prayed that the foreign currency should be released on payment of redemption fine. The Government observes that the option to release 'prohibited goods', on redemption fine, 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 absolute confiscation has been ordered as the Applicant, acting as a carrier, was smuggling large amount of foreign currency by clever concealment. Thus, no case for interference with the discretion exercised by the lower authorities is made out. The case laws relied upon by the Applicant are not applicable in the facts and circumstances of the present case as the redemption has been denied for reasonable and relevant considerations and, as such, fulfils the test laid down by Raj Grow Impex.

9. It is observed that a penalty of Rs. 61,92,720/- has been imposed on the applicant which is equal to the convertible value of the foreign currency 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. 15 lakhs.

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. Md. Sanawaz Ansari,
5B, Shahama Land Road,
Kolkata-700023 (W.B.)

Order No. 27/21-Cus dated 27-01-2021

Copy to:

1. Commissioner of Customs (Airport), N.S.C.B.I. Airport, Kolkata-700001
2. Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata-700001
3. PA to AS(RA)
4. ~~Guard File.~~
5. Spare Copy

ATTESTED

(Ashish Tiwari)

Assistant Commissioner (Revision Application)