

F. No. 375/26/B/2019-R.A.

F. No. 375/27/B/2019-R.A.

F. No. 375/28/B/2019-R.A.

SPEED POST



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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...07/12/21

Order No. 278-280/21-Cus dated 07-12-2021 of the Government of India passed by Sh. 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/Airport/657-659/2018 dated 31.01.2019 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : 1. Sh. Mohd. Rizwan, Delhi
2. Sh. Sameer Choudhary, Delhi
3. Sh. Harshvardhan Singh Jugnu, Delhi

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

ORDER

Three Revision Applications, bearing nos. 375/26/B/2019-RA, 375/27/B/2019-RA and 375/28/B/2019-RA all dated 01.05.2019, have been filed by Sh. Mohd. Rizwan, Delhi (hereinafter referred to as the Applicant-1), Sh. Sameer Choudhary, Delhi (hereinafter referred to as the Applicant-2) and Sh. Harshvardhan Singh Jugnu, Delhi (hereinafter referred to as the Applicant-3), against the common Order-in-Appeal No. CC(A)CUS/D-1/Airport/657-659/2018 dated 31.01.2019 passed by the Commissioner of Customs (Appeals), Delhi. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, New Delhi, bearing no. 156/ADC/2018 dated 31.03.2018, wherein Foreign Currency equivalent to INR 1,30,81,722/-, recovered from the Applicant-1, was confiscated absolutely under Section 113(d), 113(e) 113(h) and 113(i) of the Customs Act, 1962. Besides, penalty of Rs. 26,16,345/-, *each* was imposed on Applicant-1 & Applicant-2 and a penalty of Rs. 10,00,000/- was imposed on Applicant-3, by the original authority, under Sections 114 of the Customs Act, 1962, which has been maintained in appeal.

2. The brief facts of the case are that acting on specific information, officers of Directorate of Revenue Intelligence (Hqrs), New Delhi, intercepted Applicant-1, 2 & 3 in the Security Hold Area (SHA) of departure hall of the IGI Airport, New Delhi, on 04.12.2013, when the Applicant-1 was scheduled to depart for Sharjah (UAE) by Air Arabia Airlines Flight No. G9-466 and the Applicant-2 & 3 were scheduled to depart for Amritsar by Air India Flight No. AI-016. Apart from the Applicants(s), two more passengers, who were brothers of the Applicant-1, were also scheduled to depart for Sharjah (UAE) by the same Air Arabia Airlines flight. Personal search and the search of Hand baggage, belonging to Applicant-1, resulted in recovery of foreign currency equivalent to INR 1,30,81,722/-. All the Applicant(s) failed to produce any licit documents for legal acquisition,

possession or exportation of the recovered foreign currency. The Applicant-1 on enquiry admitted the recovered foreign currency and it's handing over to him, by Applicant-2 Sh. Sameer Chaudhary, in concealed manner, in the toilet located at the Security Hold Area (SHA) of departure hall before his departure, for further delivery at Sharjah. The seized foreign currency was confiscated absolutely by the original authority under Section 113(d), 113(e) 113(h) and 113(i) of the Customs Act, 1962, along with the concealing materials under Section 118 of the Act, *ibid*, vide Order-in-Original dated 31.03.2018. A penalty amounting to Rs. 26,16,345/-, *each* was imposed on Applicant-1 & Applicant-2 and penalty amounting to Rs. 10,00,000/- was imposed on Applicant-3, under Section 114 of the Act, *ibid*. Aggrieved, the Applicant-1, 2 & 3 herein filed appeal(s) before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal dated 31.01.2019, rejected the same.

3.1 The revision application has been filed by the Applicant-1, mainly, on the grounds that the Applicant was not given the opportunity to declare foreign currency; that currency in question was brought by him, in India from Dubai, during his previous visits, being a Non-Resident Indian; that the foreign currency is not a prohibited item; and that heavy penalty was imposed upon the Applicant and confiscated foreign currency was not released on payment of redemption of fine & penalty.

3.2 The Applicant-2 & 3 filed the revision application, mainly, on the grounds that nothing incriminating was recovered from them; that they were domestic passengers, going to Amritsar and had no concern or connection with foreign currency in question; that they were going to Amritsar in connection with their business of readymade garments.

4. Personal Hearing, in virtual mode, in respect of Applicant-1 was held 03.12.2021. Ms. Sangita Bhayana, Advocate appeared for the Applicant and reiterated the contents of the revision application. She requested for the seized foreign currency to be released on imposition of nominal fine and penalty. Sh. Charan Singh, Superintendent appeared for the respondent department and supported the orders of the lower authorities. Personal hearing, in respect of Applicant-2 & 3, was also held on 03.12.2021. Ms. Sangeeta Bhayana, Advocate appeared for the Applicants and reiterated the contents of the respective revision application. She requested for a lenient view to be taken. None appeared for the department and no request for adjournment has been received.

5.1 The Government has carefully examined the matter. It is observed that the Applicant-1 was intercepted by Officers of Directorate of Revenue Intelligence (Hqrs), New Delhi in Security Hold Area (SHA) of Departure Hall of the IGI Airport, New Delhi along with two other International Passengers and two Domestic Passengers i.e. Applicant 2 & 3, that led to recovery of assorted foreign currency, of various denominations, which was found concealed in namkeen packets, plastic bottles containing milk shake powder etc. kept in the black colored trolley bag of 'ALFA' Brand, belonging to the Applicant-1. The Applicant-1 admitted to having received the foreign currency in concealed manner from the Applicant-2. The fact of non-declaration has also been admitted by the Applicant-1, in his statement dated 05.12.2013, tendered under Section 108 of Customs Act, 1962. The Applicant-1 also admitted the purpose and motive for carrying the seized foreign currency and the fact that he was acting as a carrier of the same along with his co-passengers and done the same act on two earlier occasions, too. The investigations also revealed that the Applicant-1 was a frequent traveler, who had travelled to & from India (through 04 different airports) 104 times, during the period from 01.04.2012 to

04.12.2013. The Government observes that the Applicant was apprehended with the foreign currency in the Security Hold Area, which is after the area where Immigration & Customs formalities are completed. As such, the contention that the Applicant-1 intended to declare the foreign currency is incorrect and unacceptable.

5.2 It is further observed that the Applicant-2 has admitted, in his statement dated 04.12.2013, that he handed over the foreign currency in concealed manner, in a bag, in the toilet of departure hall of IGI Airport to Applicant-1, before proceedings to board flight for Amritsar. The Applicant-2 confirmed that on the directions of one Sh. Pradeep Kumar, who was known to Applicant-1 also, he and Applicant-3 made a plan to travel to Amritsar and to hand over the foreign currency to the Applicant -1 in transit. The Applicant-3 also revealed the similar facts and admitted that he is a part of the gang and got paid time to time, depending upon various factors.

6.1 The Government observes that as per Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 (as amended) issued under Notification No. FEMA 6/RB-2000 dated 03.05.2000, "Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency". Further, as per Regulation 7(2)(ii) *ibid*, "Any person may take or send out of India, foreign exchange obtained by him by drawl from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder". Whereas, Regulation 7(3)(i) of the said regulations stipulates that "any person may take out of India - foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations 2000". Applicant-1 has failed to show

compliance with the aforesaid provisions. The Applicant-2 & Applicant-3 have dealt with the seized foreign currency and have abetted the Applicant-1 in smuggling the same.

6.2 A plea has been taken that the offending goods are not 'prohibited goods'. However, the Government is not persuaded by this contention in as much as 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". Further, 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 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'.

7. The original authority has denied the release of offending goods on redemption fine under Section 125 of Customs Act, 1962, which has been

large amount of foreign currency in a pre-meditated manner. Thus, in the facts and circumstances of the case, the penalty imposed on Applicant-1, 2 & 3 is just and fair.

9. In view of the above, the Revision Applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Sh. Mohd. Rizwan,
S/o Sh. Mohd. Younis,
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2. Sh. Sameer Choudhary
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3. Sh. Harshvardhan Singh Jugnu,
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Delhi - 110088

Order No. 273-280/21-Cus dated 07-12-2021

Copy to:

1. The Commissioner of Customs, (Airport & General), New Customs House, New Delhi-110037.
2. Commissioner of Customs (Appeals), New Customs House, New Delhi-110037.
3. Ms. Sangita Bhayana, Advocate, Chamber No. 707, LCB-III, Delhi High Court, new Delhi 110001.
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
नई दिल्ली / New Delhi