

SPEED POST



F. No. 372/14/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. 23.8.22

Order No. 281/22-Cus dated 23-08-2022 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. KOL/CUS/Airport/AKR/74/2022 dated 01.03.2022 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Manawar Hossain, Kolkata.

Respondent : Commissioner of Customs, NSCBI Airport, Kolkata.

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ORDER

A Revision Application No. 372/14/B/2022-RA dated 20.06.2022 has been filed by Sh. Manawar Hossain, Kolkata (hereinafter referred to as the Applicant), against the Order-in-Appeal No. KOL/CUS/Airport/AKR/74/2022 dated 01.03.2022, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the order of the Additional Commissioner of Customs (Airport), Kolkata, bearing no. 80/2020/ADC dated 11.11.2020, ordering absolute confiscation of foreign currency notes (USD 100 x 600 Nos.), amounting to USD 60,000 (equivalent to Rs. 40,65,500/-) under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962. Besides penalty of Rs. 10,00,000/- was also imposed on the Applicant, under Section 114 of the Act, *ibid*.

2. Brief facts of the case are that the Applicant was scheduled to depart for Bangkok from Kolkata, on 10.04.2019. The Applicant was intercepted by the CISF staff and was handed over to the Customs officers. The Applicant was asked specifically whether he was carrying any contraband or Indian/ Foreign currency beyond the permissible limit, to which he replied in negative. The baggage of the Applicant was searched and the foreign currency amounting to USD 60,000 (USD 100 x 600 Nos.) equivalent to Rs. 40,65,500/-, concealed inside "Biryani" packets, which were kept inside his handbag, was recovered. On being asked, the Applicant could not produce any licit document in support of legal acquisition, possession and /or exportation of the foreign currency notes and hence, the same were seized under Section 110 of the Customs Act, 1962. The Applicant in his statement dated 10.04.2019 & 11.04.2019, recorded under Section 108 of the Customs Act, 1962, stated that he was scheduled to depart for Bangkok by Thai Airways; that after completion of his immigration formalities he was proceeding towards the security check and, he was intercepted by the CISF personnel; that during the scanning of his hand bag, he was handed over to Customs department alongwith his hand bag in which he had

concealed the foreign currency; that he had also given USD 30,000 to his son, namely, Sh. Asif Manawar for smuggling; that the recovered foreign currency was given to him by a person in Kolkata whose name and address was unknown to him; that he was promised to pay INR 30,000/- for this job; that he accepted his guilt of smuggling foreign currency from India to abroad.

3. The revision application has been filed, mainly, on the grounds that Section 125 of the Customs Act, 1962 mandates release of confiscated goods, not being prohibited goods on payment of redemption fine and penalty. Penalty imposed, may be waived or reduced to a reasonable amount; that the Order-in-Appeal may be set aside with consequential relief to the Applicant.

4. A personal hearing, in virtual mode, was held on 22.08.2022. Sh. Punam Chand Jain, Consultant appeared on behalf of the Applicant and reiterated the contents of revision application. He stated that the foreign currency is not prohibited item and hence it should be redeemed on redemption fine and also requested for the reduction of penalty. Sh. D.K. Ramuka, Superintendent appeared for the Respondent department and highlighted that the foreign currency was concealed inside food items kept in the lunch box. He supported the orders of lower authorities.

5. The Government has carefully examined the matter. It is evident that the foreign currency was recovered from the Applicant, which was concealed inside "Biryani" packets, kept inside his handbag. It is brought out that the Customs officers asked the Applicant as to whether he was carrying any foreign currency to which he replied in negative. Thus, it is evident that the Applicant did not declare the currency, as required under Section 77 of the Customs Act, 1962, and also 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, 2015 (as amended), 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, 2015 (as amended), 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 failed to produce any legal documents for licit possession of the confiscated currency or any permission from the Reserve Bank of India for export of foreign currency found in the biryani packets in concealed manner. He has also not shown compliance with the provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2000, as amended. 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 Another contention of the Applicant is that the foreign currency is not a prohibited item. 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)}, 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, 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

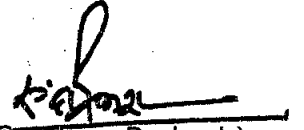
"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."

6.3 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case. The Applicant's contentions to the contrary are incorrect.

7. The Applicant has prayed that the foreign currency should be released on payment of redemption fine. 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"*. Further, *"when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason"."* Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive."* Thus, the discretion exercised by the original authority could have been interfered with, only if it suffered from any of the vices indicated by the Hon'ble Courts as above. Such a case is not made out. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter.

8. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

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


(Sandeep Prakash)

Additional Secretary to the Government of India

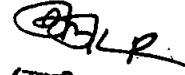
Sh. Manawar Hossain,
S/o Abdul Majid,
R/o 37/2/1D, Kabitirtha Sarani
(Watgunge Street), PO-Khidderpore,
Kolkata-700023.

Order No. 28/22-Cus dated 23-08-2022

Copy to:

1. The Commissioner of Customs (Appeals), 3rd floor, Custom House, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of Customs (Airport), NSCBI Airport, Kolkata-700052.
3. Sh. Punam Chand Jain, Advocate, 64, Burtolla Street, Kolkata-700007.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)
(Lakshmi Raghavan)

अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय / Ministry of Finance

Ministry

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