

SPEED POST



F. No. 380/03/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. 08/09/22

Order No. 290/22-Cus dated 08-09-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

- Subject : Revision Applications filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.117-CUS/APPL/LKO/2021 dated 21.02.2022 passed by the Commissioner of Customs (Appeals), 3/194, Vishal Khand, Gomti Nagar, Lucknow.
- Applicant : Commissioner of Customs (Preventive), Lucknow.
- Respondents :
1. Sh. Rajendra Chaurasia, Gorakhpur, UP.
 2. Sh. Santosh Kumar, Deoria, UP.
 3. Sh. Himanshu Gupta, Gorakhpur, UP.
 4. Sh. Pintu Patel, Siwan, Bihar.
 5. Sh. Lal Ji, Gorakhpur, UP.
 6. Sh. Shib Shankar Nandan, Kolkata.
 7. Sh. Nand Kishore Gupta, Gorakhpur, UP.
 8. Sh. Prabhu Nath Gupta, Gorakhpur, UP.
 9. Sh. Ganesh Shankar Gupta, Gorakhpur, UP.
 10. Sh. Ram Gupta, Gorakhpur, UP.

ORDER

A Revision Application, bearing No. 380/03/B/2022-RA dated 18.05.2022, has been filed by the Commissioner of Customs (Preventive), Lucknow (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 117-CUS/APPL/LKO/2022 dated 21.02.2022, passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the appeal filed by the Applicant department and has upheld the Order-in-Original bearing no. 84/JC/2020-21 dated 17.02.2021, passed by the Joint Commissioner of Customs (Preventive), Lucknow, wherein assorted foreign currency equivalent to INR 1,18,65,714/- was confiscated under Section 113 of the Customs Act, 1962. However, redemption of confiscated assorted foreign currency was allowed on payment of redemption fine of Rs. 8,00,000/-, Rs. 4,00,000/-, Rs. 4,00,000/-, Rs. 3,50,000/- and Rs. 4,00,000/-, respectively, to the Respondents, namely, Sh. Rajendra Chaurasia, Sh. Himanshu Gupta, Sh. Santosh Kumar, Sh. Lal Ji and Sh. Pintu Patel, respectively. Besides, penalty of Rs. 2,00,000 was imposed on Sh. Rajendra Chaurasia under Section 114 of the Customs Act, 1962, whereas, penalty of Rs. 1,00,000/- each was imposed upon the Respondents, namely, Sh. Himanshu Gupta, Sh. Santosh Kumar, Sh. Lal Ji, Sh. Pintu Patel, Sh. Shib Shanker Nandan, Sh. Nand Kishore Gupta, Sh. Prabhu Nath Gupta, Sh. Ganesh Shanker Gupta @ Babloo Gupta and Sh. Ram Gupta, under Section 114 of the Customs Act, 1962.

2.1 Brief facts of the case are that based on specific information, the officers of Directorate of Revenue Intelligence intercepted five passengers namely, Sh. Rajendra Chaurasia, Sh. Santosh Kumar, Sh. Himanshu Gupta,

Sh. Pintu Patel and Sh. Lal Ji who intended to depart from India to Bangkok through LBS International Airport, Babatpur, Varanasi, on 30.04.2019. During the course of baggage and personal search, foreign currency equivalent to INR 39,45,500/, 20,66,500/-, 20,72,960/-, 20,63,254/- and 17,17,500/- was recovered from the Respondents named hereinabove. They could not produce any valid documents with respect to the said recovered assorted foreign currency. The intercepted persons in their respective statements dated 01.05.2019, 17.05.2019, 20.05.2019, 01.07.2019, 08.08.2019 admitted the recovery of the said foreign currency and stated that they were carrying the said concealed foreign currency, illegally to Bangkok on behalf of some other persons and for its onward delivery to known persons of suppliers' of recovered foreign currency. The suppliers of the foreign currency, namely, Sh. Shib Shanker Nandan, Sh. Nand Kishore Gupta, Sh. Prabhu Nath Gupta, Sh. Ganesh Shanker Gupta @ Babloo Gupta and Sh. Ram Gupta were also summoned. In their respective statements dated 28.06.2019, 11.07.2019, 17.09.2019, 24.09.2019, 01.10.2019, they admitted that they had handed over the foreign currency to the intercepted persons. The assorted foreign currency collectively valued at Rs. 1,18,65,734/- was confiscated under Section 113 of the Customs Act, 1962 but was allowed to be redeemed. The baggage/ packing materials used for concealing & carrying the recovered foreign currency were also confiscated under Section 118 & 119 of the Customs Act, 1962. Penalties as mentioned in para 1, were imposed on the Respondents under Section 114 of the Customs Act, 1962.

2.2 Aggrieved, the Applicant department filed an appeal before the Commissioner (Appeals), on the ground that the original authority had erred in granting redemption to the passengers who were not actual owners; and

that seized foreign currency was prohibited goods which should have been absolutely confiscated. However, the Commissioner (Appeals) rejected the appeal.

3. The revision application has been filed by the Applicant department, mainly, on the grounds that the Respondents were not the legitimate owners of the confiscated foreign currency and they were not having any licit documents; that it is an admitted fact that the Respondents were carriers only and not the owner of confiscated currency; that option of allowing to redeem the confiscated foreign currency on payment of redemption fine is not sustainable and is bad in law, as the Respondents could not satisfy the conditions for export of foreign currency as mandated vide RBI Circulars/Regulations/Notifications, hence the decision of adjudicating authority and as upheld by appellate authority to release the confiscated foreign currency after deducting the permissible amount of US \$ 2000 or its equivalent, is gross violation of discretionary power conferred upon him under the provisions of Section 125 of the Customs Act, 1962; that the Respondents were carrying the confiscated foreign currency willfully with the intent to smuggle it out of country and they neither having any licit documents and nor produced any such documents during the adjudication proceedings and thus rendering it as 'prohibited goods' liable for absolute confiscation as defined under Section 2(33) of the Act, *ibid*, for non-compliance of conditions subject to which the goods are permitted to be exported; that the confiscated foreign currency was possessed in violation of the provisions of the FEMA, 1999; that the penalty imposed under Section 114 of the Act, *ibid* appears to not to be in consonance of the gravity of offence committed by the Respondents; that the OIA be quashed in as much

as no benefit to the Respondents may be given for redemption of the impugned foreign currency; that proposed penalty under Section 117 has been erroneously overlooked by the adjudicating authority and as such the OIA upholding the OIO is not proper.

4. Sh. Ajay Mishra, ADC appeared in the hearing held, in virtual mode, on 05.09.2022 for the Applicant department and reiterated the contents of the RA. Sh. Arun Dhiman, Advocate appeared for the Respondents. After proceeding with the matter for sometime, he requested for a short adjournment. Accordingly, the PH was adjourned to 07.09.2022. In the hearing held on 07.09.2022, in virtual mode, Sh. Arun Dhiman, Advocate supported the Orders of lower authorities for reasons mentioned therein. At his request, Sh. Dhiman was permitted to file a compilation by afternoon. Sh. Ajay Mishra, ADC had nothing further to add.

5. Sh. Arun Dhiman, Advocate, vide his email dated 07.09.2022 (3.59 PM), received after the hearing, submitted that the revision application supplied to his client was incomplete, and, in response to his last email, only two documents were supplied by the department. Therefore, appropriate directions may be passed to the department to provide a fully paginated complete set of revision application with annexures so that he can submit his written response along with relevant case laws. The Government has considered this submission and observes that in pursuance to the revision application, notices were issued to the Respondents herein by this office on 06.07.2022. In the written reply of Sh. Shib Shanker Nandan, which is on record, there is no mention of documents being incomplete. Written replies have not been filed by other Respondents. In response to the hearing notice

dated 23.08.2022, the hearing was held on 05.09.2022. The hearing was again held on 07.09.2022 and concluded. In the hearing held on 07.09.2022, the learned Advocate for the Respondents sought and was granted liberty to file compilation of case laws. However, instead of filing the compilation, the issue of allegedly incomplete set of documents being supplied has been raised in the aforesaid email. It is apparent that, at no stage, till after the conclusion of hearing, was this issue raised. In fact, arguments were advanced in favour of the impugned order. As such, the subject submission appears to be nothing but an after thought and a dilatory tactic. Accordingly, the same is rejected.

6.1 On merits, the Government observes that the Commissioner (Appeals) has held that offending foreign currency is liable to confiscation under Section 113 of the Customs Act, 1962 as "prohibited goods". He has also upheld the penalties imposed on the Respondents herein under Section 114 of the Act. These findings of the Commissioner (Appeals) have acquired finality as the Respondents have not challenged them under appropriate proceedings. Therefore, the issues that are left to be decided are:

- (i) Whether the Commissioner (Appeals) ought to have upheld the redemption of confiscated foreign currency by original authority?
- (ii) Whether sufficient penalty has been imposed under Section 114 of the Customs Act, 1962?
- (iii) Whether the Respondents are liable to penalty under Section 117 of the Customs Act, 1962 in addition to the penalty imposed under Section 114 of the Act, *ibid*?

6.2.1 The original authority has allowed the release of impugned goods on payment of redemption fine under Section 125 of Customs Act, 1962 on the grounds that the foreign currency is freely exportable upto a certain limit not exceeding US \$ 2000 or its equivalent. Thus, the original authority appears to have proceeded on the lines that if the currency upto US \$ 2000 is freely exportable, currency over and above this limit should also be allowed to be redeemed. This line of reasoning is erroneous – if the currency in excess of the statutorily prescribed limit is also allowed to be redeemed merely because currency is freely exportable upto a certain limit, it will defeat the very purpose of prescribing such limit.

6.2.2 The action of original authority allowing redemption to the carriers of foreign currency is erroneous for another reason as well. Section 125 of the Act provides that, in case of prohibited goods, the option of redemption may be given to the "owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized." In the present case, the original authority has clearly found that the offending foreign currency was handed over to the intercepted carriers, namely, Sh. Rajendra Chaurasia, Sh. Santosh Kumar, Sh. Himanshu Gupta, Sh. Pintu Patel and Sh. Lal Ji, by the other Respondents, namely, Sh. Shib Shanker Nandan, Sh. Nand Kishore Gupta, Sh. Prabhu Nath Gupta, Sh. Ganesh Shanker Gupta @ Babloo Gupta and Sh. Ram Gupta. These persons had, in turn, procured the foreign currency through illegal means. These findings of the original authority have not been interfered by the Commissioner (Appeals). Thus, it is apparent that the redemption of the foreign currency has been allowed to the persons, who are not the owners thereof, even when the owners are known.

As such, the original authority has, by allowing redemption to the persons from whom the goods were seized even when owners of such goods were known, acted in contravention of Section 125 and the order of redemption is, accordingly, patently illegal.

6.2.3 In terms of Section 125 of the Customs Act, 1962, 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. Raj Grow Impex LLP & Ors {2021-TIOL-187-SC-CUS-LB}, 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; has to be based on relevant considerations.*" In the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court has held that "*non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference.*" 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.*"

6.2.4 In the present case, as already brought out above, the order of original authority granting redemption to the carriers is patently illegal. Further, the discretion to grant redemption has been exercised for erroneous considerations. As such, the Commissioner (Appeals) has erred in upholding the same. The Government, thus, holds that the offending currency, allowed to be redeemed, is liable to absolute confiscation.

6.3 It is also contended by the Applicant department that the penalty imposed under Section 114 of the Act, *ibid* appears not to be in consonance of the gravity of offence committed by the Respondents. In the facts and circumstances of the case, the penalty imposed is on a lower side. Accordingly, the penalty imposed is increased to Rs. 4,00,000/- on Sh. Rajendra Chaurasia and to Rs. 2,00,000/- each, on Sh. Santosh Kumar, Sh. Himanshu Gupta, Sh. Pintu Patel, Sh. Lal Ji, Sh. Shib Shanker Nandan, Sh. Nand Kishore Gupta, Sh. Prabhu Nath Gupta, Sh. Ganesh Shanker Gupta @ Babloo Gupta and Sh. Ram Gupta.

6.4 In the facts and circumstances of the case and as sufficient penalty has, now, been imposed under Section 114, the Government is not inclined to interfere with orders of lower authorities in respect of proposal to impose penalty under Section 117.

6.5 In the RA, it has also been contended that the action of original authority releasing foreign currency even upto the limit of US \$ 2000 was incorrect and the entire amount ought to have been confiscated. The Government, however, observes from the impugned OIA (specifically para 3) that this issue was apparently not raised before the Commissioner (Appeals).

Therefore, without traversing the merit of this contention, the Government finds that no relief can be considered in revision, on this count.

7. In view of the above, the revision application is partially allowed and the seized foreign currency, allowed to be redeemed by the lower authorities, is ordered to be absolutely confiscated. Further, the penalties imposed, under Section 114 ibid, on the Respondents herein are increased as indicated in para 6.3 above. The orders of the lower authorities are modified to this extent.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs (Preventive),
5th & 11th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow (UP)

Order No. 290/22-Cus dated 08-09-2022

Copy to:

1. Sh. Rajendra Chaurasia, S/o Late Antoo Chaurasia, 6/1, Height Road, Liluh, Howrah-711 204, Kolkata.
2. Sh. Rajendra Chaurasia, S/o Late Antoo Chaurasia, Village-Jungle Dumri, No. 2 Tola, Baraipur, P.S Gulriha, Gorakhpur-273306 (UP).
3. Sh. Santosh Kumar, S/o Late Ram Swaroop, 17/7 Brojen Mukherjee Road, Behala, Kolkata-700034.
4. Sh. Santosh Kumar, S/o Late Ram Swaroop, besides Ansari Vastralaya, Gauri Bazar, Deoria-274202(UP).
5. Sh. Himanshu Gupta, S/o Shri Kishan Chand Gupta, Village/Post-Gajpur, PS Gagaha, Gorakhpur-273411.
6. Sh. Pintu Patel, S/o Shri Paras Patel, 3B Chowringhee Lane, Ground Floor, New Market, Kolkata-700016.
7. Sh. Pintu Patel, S/o Shri Paras Patel Village Sarharwa Mathia, PS Darauli, Dist. Siwan, Bihar-841239.

8. Sh. Lal Ji, S/o Late Bihari Lakhuapakad Aria, PO-Belghat Khajani, Gorakhpur-273001.
9. Sh. Shib Shankar Nandan @ Bapi S/o Mr. Subal Chandra Nandan, 110E, Netaji Subhas Road, Behala SO, Kolkata-700034.
10. Sh. Shib Shankar Nandan @ Bapi S/o Mr. Subal Chandra Nandan @ B-88, New Market, Kolkata-700087.
11. .Sh. Nand Kishore Gupta, S/o Late Ramashray Gupta, Village/Post Gajpur, PS Gagaha, Gorakhpur-273411.
12. Sh. Prabhu Nath Gupta, S/o Shri Kishan Chand Gupta, Village/Post Gajpur, PS Gagaha, Gorakhpur-273411.
13. Sh. Ganesh Shankar Gupta, 51/1/3, Brojen Mukherjee Road, Behala, Kolkata-700034.
14. Sh. Ganesh Shankar Gupta, C/o M/s. Om Fancy Dresses besides HDFC Bank, Gola Road, Barhalganj, Gorakhpur-272304.
15. Sh. Ram Gupta, 17/7, Brojen Mukherjee Road, PS Behala, Kolkata-700034.
16. Sh. Ram Gupta, C/o M/s. Inner Beauty, Sadar Street, New Market, Kolkata-700087 .
17. Sh. Ram Gupta, Village/Post- Ramnagar Karjaha, PS Khorabar, Gorakhpur-273202.
18. The Commissioner of Customs (Appeals), Customs, CGST & Central Excise, 3/194, Vishal Khand, Gomti Nagar, Lucknow-226024 (UP).
19. The Additional Commissioner of Customs (Preventive), 5th Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-226 024 (UP).
20. Sh. Arun Dhiman, Advocate, M/s GLX Law Officers, [email-info.glxlaw@gmail.com](mailto:info.glxlaw@gmail.com), Mobile No. 98919-72707.
21. PA to AS(RA).
22. Guard File.
23. Spare Copy.

ATTESTED



08.09.22

(लक्ष्मी राघवन)

(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