

SPEED POST



F. No. 380/06/B/2016-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 26/9/22

Order No. 296 /22-Cus dated 23-09-2022 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 C.Cus-I No. 574/2015 dated 28.09.2015, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Commissioner of Customs, Chennai-I, Airport Chennai.

Respondent : Sh. Mohamed Muneer Abdul Majeed, Ramanathapuram.

ORDER

A Revision Application No. 380/06/B/2016-RA dated 28.01.2016, has been filed by the Commissioner of Customs, Chennai-I Commissionerate, Airport Chennai (hereinafter referred to as the Applicant department) against the Order-in-Appeal C.Cus-I No. 574/2015 dated 28.09.2015, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant department against the Order-in-Original, bearing no. 46/2015-16 JC dated 28.04.2015, passed by the Joint Commissioner of Customs, Anna International Airport, Chennai, wherein foreign currency comprising Euro 14000, equivalent to Rs. 10,06,600/-, was confiscated under Sections 113(d), 113(e), & 113(h) of the Customs Act, 1962. However, the same was ordered to be redeemed on payment of fine of Rs. 3,75,000/- under Section 125 of the Customs Act, 1962. Besides, a penalty of Rs. 1,00,000/- was also imposed on Sh. Mohamed Muneer Abdul Majeed, Ramanatapuram (hereinafter referred to as the Respondent) under Section 114(i) of the Act, *ibid*.

2. Brief facts of the case are that the Customs officers intercepted the Respondent herein, on 22.01.2015, at the Customs Area at New International Terminal, Anna International Airport, Chennai, when he was scheduled to depart for Singapore, after completion of immigration formalities. The officers asked him specifically whether he was carrying any Indian/foreign currency to which he replied in negative. The search of his hand baggage resulted in recovery of Euro 14,000 (total value in convertible INR 10,06,600/-). In his statement dated 22.01.2015, tendered under Section 108 of Customs Act, 1962, the Respondent, *inter-alia*, stated that an unknown person handed over the hand baggage containing the said currency outside the departure terminal of Chennai International Airport; and that he was told that he would be paid Rs. 4000/- after handing over the currency to a person outside the Singapore airport; and that he has committed the offence for the first time and for monetary benefit and requested to be pardoned. Vide written submission dated 04.03.2015, the Respondent submitted that the said currency is not prohibited under the Act, *ibid* and pleaded for the release of the said currency. The original authority confiscated the foreign currency amounting to INR 10,06,600/-, and allowed its

redemption on payment of fine of Rs. 3,75,000/- and also imposed penalty of Rs. 1,00,000/- on the Respondent under Section 114(i) of the Customs Act, 1962. Aggrieved, the Applicant department filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed canvassing that the Respondent has not obtained any permission from Reserve Bank of India as required under the Foreign Exchange Management Regulations, 2000; that the goods are to be treated as prohibited goods and liable to absolute confiscation as the Respondent did not take any permission from Reserve Bank of India or any authority; that the Respondent did not declare the foreign currency possessed by him as required under Section 77 of the Customs Act, 1962 and thus rendered the said foreign currency liable for absolute confiscation; that the Respondent is not entitled to benefit of Section 125 of the Act, *ibid* as he is merely the carrier and the currency did not belong to him; and that, therefore, absolute confiscation may be ordered.

4. Personal hearing was fixed on 23.09.2022. Applicant department, vide e mail dated 22.09.2022, has submitted that they have already made their submissions through appeal application and there is no further submission to be made from their side. Sh. K. Mohamed Ismail, Advocate for the Respondent, vide letter dated 22.10.2021, requested that ~~waive~~ personal hearing may be waived and their personal appearance and arguments may also be waived

5. The Government has carefully examined the matter. The issue of liability to confiscation of the seized foreign currency, under Section 113 of the Act, and penalty imposed on the Respondent have attained finality as the orders of the lower authorities, in this respect, have not been challenged by the Respondent herein. Therefore, the question that remains for consideration is whether seized foreign currency is to be treated as "prohibited goods" and, consequently, whether it was mandatory for the original authority to order redemption under Section 125 of the Act, as held by the Commissioner (Appeals).

6.1 The Government observes that as per Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, "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 Respondent has not shown compliance with these Regulations.

6.2 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"*. 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."*

6.3 In the present case, it is not even contended by the Respondent that the conditions subject to which foreign currency could have been legally exported have been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'. As such, the Commissioner

(Appeals) has erred in holding that the seized foreign currency is not prohibited goods.

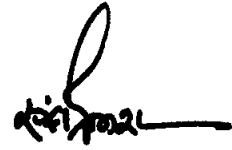
7.1 The original adjudicating authority has allowed the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962 on the grounds of "currencies not being prohibited goods". This position has also been upheld by the Commissioner (Appeals). However, as brought out in preceding paras, the orders of the lower authorities, in this respect, cannot be sustained.

7.2 The Government observes that, 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 Raj Grow Impex (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; has to be based on relevant considerations."* Further, 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."*

7.3 In the present case, the original authority has ordered redemption on a finding that the subject foreign currency was not prohibited goods, which finding, as brought out in the preceding paras, is patently illegal. Thus, the Government holds

that the order of original authority allowing redemption of confiscated foreign currency, as upheld by the Commissioner (Appeals), cannot be sustained

8. In view of the above, revision application is allowed and the subject foreign currency is ordered to be confiscated absolutely.



(Sandeep Prakash)

Additional Secretary to the Government of India

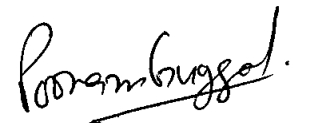
The Commissioner of Customs,
Chennai-I Commissionerate, Anna International Airport, Meenambakkam
Chennai – 600027.

Order No. 296/22-Cus dated 23-09-2022

Copy to:-

1. Sh. Mohamed Muneer Abdul Majeed, 3/14, East ST.SP. Pattoma, Thiruvadanai TK, Ramanathapuram-623406.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Sh. K Mohamed Ismail (Adv.), New No. 102(Old No. 271), Linghy Chetty Street, Chennai - 600001
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED


(Poonam Guggal)
Subdt. (R.A.)