

SPEED POST



F.No. 372/34-39/B/2019-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... 23/12/21

Order No. 297-3 e2/21-Cus dated 23-12-2021 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 Applications filed, under Section 129 DD of the Customs Act 1962 against the Orders-in-Appeal Nos. KOL/CUS(PORT)/AA/84-89/D/2019 dated 26.06.2019 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicants : 1. Mrs. Hasina Alam, Dhaka, Bangladesh.
2. Mr. Md. Kamruzzaman, Dhaka, Bangladesh.
3. Ms. Labonno Islam, Dhaka, Bangladesh.
4. Mr. Abdul Kader Mijan, Dhaka, Bangladesh.
5. Mrs. Wahida Begum, Dhaka, Bangladesh.
6. Mrs. Shadiha Jahar Joti, Dhaka, Bangladesh.

Respondent : The Commissioner of Customs (Preventive), Kolkata.

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ORDER

Revision Applications, bearing nos. 372/34-39/B/2019-RA all dated 11.09.2019, have been filed by Mrs. Hasina Alam, Dhaka, Bangladesh (Applicant-1), Mr. Md. Kamruzzaman, Dhaka, Bangladesh (Applicant-2), Ms. Labonno Islam, Dhaka, Bangladesh (Applicant-3), Mr. Abdul Kader Mian, Dhaka, Bangladesh (Applicant-4), Mrs. Wahida Begum, Dhaka, Bangladesh (Applicant-5) & Mrs. Shadiha Jahar Joti, Dhaka, Bangladesh (Applicant-6), all citizens of Bangladesh, against the Orders-in-Appeal Nos. KOL/CUS(PORT)/AA/84-89/D/2019 dated 26.06.2019 passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the Order-in-Original No. 09/ADC(P)/CUS/WB/18-19 dated 13.06.2018 passed by the Additional Commissioner of Customs (Preventive), CC(P), Kolkata and rejected the appeals filed by the Applicants herein.

2. Brief facts of the case are that the Applicant-1 was intercepted, on 04.06.2017, at a distance of 15 meters from the Indo-Bangladesh International Border (zero point) near BP No. 18/7-S while leaving for Bangladesh, by the officers of Border Security Force (BSF). On her search, foreign currency of USD 30000/- & Bangladeshi Taka 175000/- concealed in her Bag and under garments, one (old & used) mobile phone, 100 packets of Ketosteril Tablet & 225 packets of Mycophenolate Mefetil Cellcept Tablet were recovered. The BSF personnel handed over the Applicant-1 to Petrapole Customs Preventive Unit. Customs officers thereafter seized the recovered goods, collectively valued at Rs. 25,71,610/-. The Applicant-1 failed to produce any documents to support the licit acquisition/possession/exportation/transportation of the foreign currencies and the medicines. Statement of Applicant-1 was recorded on 04.06.2017, under Section 108 of Customs Act, 1962, wherein she admitted the ownership of seized foreign currency and stated that she did not have any documents in support of licit acquisition/possession of these foreign currencies; that she had a business of clothes at Dhaka and used to purchase clothes from different shops of Kolkata; and that on the day of incident, she was going back from India to Dhaka with the foreign currencies as she did not get her choice clothes from Kolkata. The Applicant-1 in her

Statement dated 30.08.2017 claimed that she and all other Applicants had carried Bangladeshi Taka 28000-30000/- each and USD 5000/- each out of the total Bangladesh Taka 175000/- and USD 30000/- under seizure. The other five Applicants who are friends and relatives of Applicant-1 were also investigated and their statements were recorded on 30.08.2017. The Applicants, Ms. Labonno Islam, Mr. Md. Kamruzzaman and Ms. Shadiha Jahar Joti, claimed to have been carrying USD 5000/- each and different amounts of Bangladeshi currency at the time of their entry into India and the same amounts while returning on 04.06.2017. However, the Applicants, Mrs. Wahida Begum and Mr. Abdul Kader Mian gave different versions. The Applicant, Mrs. Wahida Begum claimed that while entering India, on 03.06.2017, she had carried only Bangladeshi Taka 480000/- which she did not declare at the time of entry and, thereafter, on 03.06.2017, converted Bangladeshi Taka 450000/- into USD 5000/- from a money exchanger at Kolkata; and that she had claimed ownership of 30000/- Bangladesh Taka and USD 5000/- at the directions of Applicant-1, Mrs. Hasina Alam. The Applicant, Mr. Abdul Kader Mian claimed that he only had USD 200/- and 20000/- Bangladesh Taka on his entry into India, on 03.06.2017, and while returning he was carrying USD 100/-. Sh. Abdul Kader Mian also denied the ownership of 30000/- Bangladeshi Taka and USD 5000/- which he had earlier claimed in his letter dated 06.07.2017. He further disclosed that he had signed this letter at the directions and under compulsion of Applicant-1, Mrs. Hasina Alam. The original authority ordered absolute confiscation of the foreign currency of USD 30000/- and Bangladesh Taka 175000/- and medicines found on the Applicant-1, under Sections 113(b), (d), (h) & (i) of the Customs Act, 1962. A penalty of Rs. 19,83,200/- was imposed on Applicant-1 under Section 114 of the Customs Act, 1962 whereas penalty of Rs. 50,000/- each was imposed on all other Applicants. The appeals filed by the Applicants herein were rejected by the Commissioner (Appeals), vide the impugned Orders-in-Appeal.

3. The revision applications have been filed, mainly, on the grounds that Applicant-1 and all other Applicants were carrying USD 5000/- each only which they had acquired through authorised Foreign Exchange Dealer at Dhaka on 01.06.2017;

that as per Regulation 6(b) of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015, there is no requirement to make a declaration where the value of foreign currency brought in by a person at any one time does not exceed USD 5000/-; that as per Regulation 7(4) *ibid*, any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him; that the unspent US Dollars being taken back to Bangladesh were in conformity with the Regulations aforesaid; that the Statements made earlier had been retracted and had no evidentiary value; and that no evidence has been committed making the goods liable to confiscation under Section 113 *ibid* and therefore, penalty under Section 114 *ibid* is not imposable. Accordingly, it has been prayed that the foreign currency and the mobile phone may be released and the impugned Order-in-Appeal may be set aside.

4. Personal hearing was fixed on 15.11.2021, 06.12.2021 and 22.12.2021. No one appeared for the Applicants nor any request for adjournment has been received. The Respondent department waived hearing vide letter C.No. VIII(28)654/Cus/CCP/WB/T&R/Hasina/2019/20060P dated 09.10.2019. Since sufficient opportunities have been granted to the Applicants, the case is taken up for disposal based on written submissions and records.

5.1 The Government has carefully examined the matter. The case of the department is that foreign currency, amounting to USD 30000/- and Bangladesh Taka 1,75,000/-, was recovered by the BSF personnel from Applicant-1 concealed in her Bag and undergarments along with medicines, valued at Rs. 4,88,410/-, while crossing Indo-Bangladesh border, on 04.06.2017. The case of the Applicant-1 and some of the other Applicants is that they were carrying USD 5000/- each and Bangladesh Taka ranging between 28000-30000/- each while returning to Bangladesh; and that the carriage (taking out) of such currency is covered by the Regulations *ibid*. The lower authorities have not accepted this contention of the Applicants on the ground of it being an afterthought. This finding has been challenged on the grounds that the foreign currency and medicines were planted on

Applicant-1 and the Applicant-1 out of anxiety and her medical condition could not contradict the allegations immediately thereafter. The receipts/invoices of a money exchanger at Dhaka indicating sale of USD 5000/- to each of the Applicants, on 01.06.2017, have also been cited.

5.2 The question that arises for consideration is whether the findings of the lower authorities that the defence set out by the Applicants is an afterthought, is in order. The Government observes that:

- (i) The Applicants were regular visitors to Kolkata from Bangladesh and used to purchase garments for sale at Dhaka. Therefore, they were presumably well aware of the legal requirements.
- (ii) The Applicant-1 was intercepted on 04.06.2017 when she admitted to have carried the foreign currency of USD 30000/- and Bangladeshi Taka of 1,75,000/- and medicines. It is only much later that she and other Applicants claimed ownership of USD 5000 each, even though they were travelling with Applicant-1 on the date of her apprehension, i.e., 04.06.2017. Further, though the statement dated 04.06.2017 has been retracted, it still is an admissible evidence. Hon'ble Supreme Court has, in the case of *Surjeet Singh Chhabra vs. UOI {1997 (89) ELT 646 (SC)}*, held that "*The confession, though retracted, is an admission and binds the petitioner.*"
- (iii) Two of the Applicants, namely, Mrs. Wahida Begum & Mr. Abdul Kader Mian have admitted in their statements recorded on 30.08.2018, under Section 108 of the Customs Act, 1962, that the letter, claiming ownership of USD 5000/- and Bangladeshi Taka 30000/- each by them, was signed by them under the directions of the Applicant-1. The Applicant, Mr. Abdul Kader Mian, has, in fact, also disclosed that he was compelled to do so by Applicant-1, who is his cousin sister.
- (iv) The contention that currency was planted on Applicant-1 appears to be far-fetched in as much as if all 06 of the Applicants were carrying USD 5000/- and Taka 28000-30000/- each, the BSF personnel would have had to take the currency from 05 Applicants and then collectively plant it on Applicant-1. This

is inconceivable at a busy Land Customs Station like Petrapole, which works under multi-agency environment and where several private stakeholders operate. It is also noted that while these allegations have been made against BSF personnel, no efforts to cross examine them appear to have been made.


- (v) None of the Applicants carried and produced the receipts/invoices of the money exchanger which have been, subsequently with much delay, produced before the investigating authorities. Further, two of the Applicants i.e. Mr. Abdul Kader Mian and Mrs. Wahida Begum have denied these receipts/invoices – while Mr. Kader Mian has outrightly denied purchase or possession of USD 5000/-, Mrs. Wahida Begum claims to have purchased USD 5000/- from a money exchanger at Kolkata but has produced no receipt for such a transaction.
- (vi) The Applicant-1, Mrs. Hasina Alam was evidently the leader of the Group and the owner of the boutique for which shopping was to be done. Therefore, in normal course, she would be the one who will be carrying all or atleast bulk of the currency. In any case, the version that each of them was carrying USD 5000/- and Bangladeshi Taka 28000-30000/- indicates too much of exactitude indicating an attempt to keep the FC with each of them to be within permissible limits individually.

5.3 In the above facts and circumstances, the Government is in agreement with the lower authorities that the defence of the Applicants is nothing but an afterthought. Accordingly, the order confiscating seized foreign currency does not merit revision.

6. A penalty equivalent to Rs. 19,83,200/-, which is the convertible value of USD 30000/- plus Rs. 50,000/-, has been imposed on Applicant-1. Considering the fact that the foreign currency seized from Applicant-1 has been absolutely confiscated, the Government considers it appropriate to reduce the penalty imposed on Applicant-1 to Rs. 5,00,000/-. The penalty of Rs. 50,000/- imposed on each of the

other Applicants appears to be just and fair, in the facts and circumstances of the case.

7. In view of the above, the Impugned Order-in-Appeal is upheld, except to the extent of modification in respect of penalty imposed on Applicant-1, as indicated above. The revision applications are disposed of, accordingly.


(Sandeep Prakash)

Additional Secretary to the Government of India

Mrs. Hasina Alam, Dhaka, Bangladesh (Aplicant-1),
Mr. Md. Kamruzzaman, Dhaka, Bangladesh (Applicant-2),
Ms. Labonno Islam, Dhaka, Bangladesh (Applicant-3),
Mr. Abdul Kader Mian, Dhaka, Bangladesh (Applicant-4),
Mrs. Wahida Begum, Dhaka, Bangladesh (Applicant-5) &
Mrs. Shadiha Jahar Joti, Dhaka, Bangladesh (Applicant-6)
C/o Sh. Barinder Singh & S.C. Ratho, Customs Consultants,
Tara Trade Centre, 14, Hare Street, Room No. 9, 1st Floor,
Kolkata - 700 001.

Order No. 297-302/21-Cus dated 23-12-2021

Copy to:

1. The Commissioner of Customs (Preventive), Kolkata, 3rd Floor, Customs House, 15/1, Strand Road, Kolkata - 700 001.
2. The Commissioner of Customs (Appeals), Kolkata, 3rd Floor, Customs House, 15/1, Strand Road, Kolkata - 700 001.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED