

SPEED POST



F. No. 373/179/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...30/9/22.....

Order No. 305/22-Cus dated 30-09-2022 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. 277/2016 dated 04.07.2016 passed by the Commissioner of Customs (Appeals), Chennai.

Applicant : Sh. Maddi Narayana, Vijayawada

Respondent : Pr. Commissioner of Customs (Airport), Chennai

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ORDER

A Revision Application No. 373/179/B/2016-RA dated 01.09.2016 has been filed by Sh. Maddi Narayana, Vijayawada (hereinafter referred to as the Applicant), against the Order in Appeal No. 277/2016 dated 04.07.2016, passed by the Commissioner of Customs (Appeals), Chennai. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs (Adjudication-Air), Chennai, bearing no. 526 dated 31.03.2016, ordering absolute confiscation of seized assorted foreign currencies and Indian currencies, equivalent to Indian Rs. 58,29,225/-, under Sections 113(d), 113(e) and 113(h) of the Customs Act, 1962. Besides penalty of Rs. 6,00,000/- 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 Dubai from Chennai, on 11.07.2015. He was intercepted by the officers of Customs at Airport when he approached the Security Hold Area after the completion of the immigration formalities. The Applicant was asked specifically whether he was carrying any Indian/ Foreign currency with him, to which he replied that he was carrying some foreign and Indian currency on his person and no currency in his checked-in baggage. The search of

● his person and his checked in baggage resulted in the recovery of assorted foreign currency, amounting to Rs. 43,36,725/- and Indian currency of Rs. 14,92,500/- (totally amounting to Rs. 58,29,225/-), which were kept concealed by him under the zipped portion of the bottom portion of the stroller and inside a folded blue and violet colour bed sheet. The Applicant in his statement dated 11.07.2015, recorded under Section 108 of the Customs Act, 1962, inter alia, stated that he did not have any document/permission issued by any authority for the legal export of the seized foreign currencies; that he was carrying the same to Dubai to become a partner in a restaurant business run by his friend named Suresh; that the seized currencies belonged to him; and that he was aware that he was not allowed to carry so much of Indian and foreign currency notes outside India without proper authorization from RBI or other competent authority.

3. The revision application has been filed, mainly, on the grounds that true declaration has been made by the Applicant before the concerned officers at airport and nothing was concealed nor misdeclared by the Applicant; that the request for release of the above currencies was not at all considered by the lower authorities; and that the subject matter of currency under seizure was neither prohibited nor notified under the Customs Act.

4. Personal hearing was fixed on 30.09.2022. No one appeared for either side nor any request for adjournment has been received. The advocate of Respondent, vide letter dated 22.10.2021, waived the hearing. Hence, the matter is taken up for final disposal based on records.

5. The Government has carefully examined the matter. It is evident that the foreign and Indian currency was recovered from the Applicant, which was kept concealed by him under the zipped portion of the bottom portion of his stroller and inside a folded blue and violet colour bed sheet. It is on record that the Applicant had not made any declaration in respect of the currency carried by him. It is only after he was intercepted and asked by the Customs Officers that he informed carrying of only Rs. 7500/- and some foreign currency on his person. Eventually this was also found to be incorrect and a large amount of foreign and Indian currency was found concealed in his checked-in baggage. Thus, it is evident that the Applicant did not make a correct declaration regarding the currency being carried by him 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. The contents

of the statement dated 11.07.2015 do not appear to have been retracted by the Applicant.

As such, the contentions that there was no concealment or misdeclaration are factually incorrect.

6.1 As per Section 3(1)(a), of Foreign Exchange Management (Export & Import of Currency), Regulations, 2015, export of Indian Currency above Rs. 25000/- out of India without special permit issued by the Reserve Bank of India is not permitted. Further, Regulation 5 of the Regulations, *ibid*, 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."* Furthermore, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, 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 has failed to show compliance with the Regulations, as above. Thus, it is clear that the

conditions in respect of possession and export of Indian and foreign currency (seized from the Applicant) are not fulfilled.

6.2 The 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 currency is '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 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 Court, as above. Rather, the original authority has, after due application of mind, ordered absolute confiscation for the relevant and reasonable consideration recorded in paras 30 & 31 of the Order-in-Original. 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

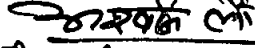
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Order No. 305722-Cus dated 30-09-2022

Copy to:

1. The Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai-600001.
2. The Pr. Commissioner of Customs (Airport), Chennai-1, New Custom House, Meenambakkam, Chennai-600027.
3. Sh. K Mohamed Ismail, Advocate & Notary Public, New No. 102, linghi Chetty Street, Chennai-600001.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED



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