

**SPEED POST**



F. No. 380/05/B/2022-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...04/10/22

Order No. 307/22-Cus dated 04-10-2022 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 Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 221-CUS/APPL/LKO/2022 dated 29.03.2022 passed by the Commissioner of Customs (Appeals), 3/194, Vishal Khand, Gomti Nagar, Lucknow.

Applicant : Commissioner of Customs (Preventive), Lucknow.

Respondents : 1. Ms. Sukanya Junsing, Thailand.  
2. Sh. Ravivant Singh, Kolkata.  
3. Sh. Rajesh, Kolkata.

**ORDER**

A Revision Application, bearing No. 380/05/B/2022-RA dated 03.06.2022, has been filed by the Commissioner of Customs (Preventive), Lucknow (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 221-CUS/APPL/LKO/2022 dated 29.03.2022, 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. 80/JC/2020-21 dated 17.02.2021, passed by the Joint Commissioner of Customs (Preventive), Lucknow, wherein assorted foreign currency equivalent to INR 34,60,516/-, was confiscated under Section 113 of the Customs Act, 1962. However, redemption of the confiscated currency was allowed on payment of a redemption fine of Rs. 8,00,000/- to the Respondent, namely, Ms. Sukanya Junsing. Besides, penalty of Rs. 3,00,000/- each was imposed upon the Respondents, namely, Ms. Sukanya Junsing (Respondent-1), Sh. Ravivant Singh, Kolkata (Respondent-2) and Sh. Rajesh, Kolkata (Respondent-3), under Section 114 of the Customs Act, 1962.

2.1 Brief facts of the case are that, on 09.04.2019, the CISF Officers at Lal Bahadur Shastri International Airport, Babatpur, Varanasi intercepted a lady passenger, namely, Ms. Sukanya Junsing of Thailand nationality and handed her over to the Customs officers. Upon search of her person and baggage foreign currency worth Rs. 34,60,516/-, was recovered. On being asked by the Customs officer, she could not produce any valid documents with respect to recovered assorted foreign currency. She admitted to carrying huge amount of foreign currency concealed in her baggage and body parts without having any licit documents and without making any declaration before the

Customs as required under law. In her statement dated 09.04.2019, Respondent-1 stated that her daughter's friend Sh. Rajesh, i.e, Respondent-3 arranged her tickets and accommodation and told her to stay at Hotel Gautam after her arrival in India where his friend would hand over her the foreign currency for carrying the same to Thailand. She admitted that two men, whose names and addresses she did not know, handed over the foreign currency to her with the direction to conceal the same and to hand over the same to Respondent-3 on arrival in Thailand. In her statement dated 17.05.2019, Respondent-1 stated that her hotel bills were paid by Sh. Ram Pravesh whose phone number and address she did not know; that Sh. Ravivant Singh (Respondent-2) gave her the dollars and other foreign currency in the hotel and directed her how to conceal the foreign currency in her luggage and in her body parts. The original authority, vide Order-in-Original dated 17.02.2021, confiscated the assorted foreign currency, collectively valued at Rs. 34,60,516/-, under Section 113 of the Customs Act, 1962 but allowed it to be redeemed on payment of fine of Rs. 8,00,000/-. The baggage/ packing materials used for concealing & carrying the recovered foreign currency were also confiscated, under Section 118 & 119 of the Customs Act, 1962, & a penalty of Rs. 3,00,000/- was imposed on each of 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 investigation has revealed that it is a case of outright smuggling; that the accused was not the legitimate owner of the seized foreign currency as she could not produce any licit documents for procurement of the foreign currency and she was carrying it willfully with the intent to smuggle it out of the country; that the seized

foreign currency was 'prohibited goods' and, hence, the same was liable for absolute confiscation. The Commissioner (Appeals), however, dismissed the appeal of the Applicant department.

3. The revision application has been filed by the Applicant department, mainly, on the grounds that the Respondent-1 was not the legitimate owner of the confiscated foreign currency as she was not having any licit documents; 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; 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; and as such the OIA upholding the OIO is not proper. In pursuance of RA, notices were issued to the Respondents, on 07.07.2022, which have remained unanswered.

4. Personal Hearing was granted on 07.09.2022, 19.09.2022 and 30.09.2022. In the hearing held on 30.09.2022, in virtual mode, Sh. Krishna Kumar, Superintendent appeared for the Applicant and reiterated the contents of the RA. He also submitted that in a similar case, the GOI has, vide Order No. 290/2022-Cus dated 08.09.2022, allowed the RA filed by the department. No one appeared for the Respondents nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for final disposal based on records and oral submissions made by the Applicant department.

5.1 The Government has carefully examined the matter and 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". 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?

5.2 The original authority has allowed the release of foreign currency 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. The Government finds that 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. Further, the present case involves concealment in body parts by a foreign national who was admittedly acting as a carrier. The original authority has also failed to appropriately consider this <sup>relevant</sup> aspect.

5.2.2 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."*

5.2.3 In the present case, as already brought out above, 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.

5.3 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. The Government observes that Respondent-1 was willingly indulging in smuggling of foreign currency, including by concealment in the body parts. Other two Respondents, who appear to be masterminds, failed to join investigation even once. Thus, in these facts and circumstances of the case, the Government finds that the penalty imposed is on a lower side. Accordingly, the penalty imposed is increased to Rs. 6,00,000/- on each of the Respondents.

संज्ञित न्यायिक प्रणाली के तहत  
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6. In view of the above, the revision application is 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 5.3 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),  
 5<sup>th</sup> & 11<sup>th</sup> Floor, Kendriya Bhawan,  
 Sector-H, Aliganj, Lucknow (UP)

Order No. 307/22-Cus dated 03-10-2022

Copy to:

1. Ms. Sukanya Junsing, M-10, T-Nakron Sawhan Tok, A-Mung, Nakron Sawhan, Thailand-6000

2. Sh. Ravivant Singh, S/o Sh. Shyamjit Singh, R/o 35/2B, AJC Bose Road, Kolkata-700017.
3. Sh. Rajesh, S/o Late Ramashray, 39, Picnic Garden Road, Kolkata-700039.
4. The Commissioner of Customs (Appeals), Customs, CGST & Central Excise, 3/194, Vishal Khand, Gomti Nagar, Lucknow-226024 (UP).
5. The Joint Commissioner of Customs (Preventive), 5<sup>th</sup> Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-226 024 (UP).
6. PA to AS(RA).
7. Guard File.
8. ✓ Spare Copy.

ATTESTED



अश्वनी कुमार लो / Ashwani Kumar Lau  
अधीक्षक / Superintendent (R.A. Unit)  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
Room No. 606, 6th Floor, B-Wing  
14, Hudco Vishala Building, New Delhi-110066