

SPEED POST



F.No. 373/130/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..17/10/22

Order No. 319/22-Cus dated 17-10-2022 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 Application under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. C.Cus.I. No. 75/2019 dated 19.03.2019 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Ibrahim Sha, Chennai.

Respondent : Commissioner of Customs, Airport, Chennai

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ORDER

A Revision Application No.373/130/B/2019-RA dated 15.04.2019 has been filed by Sh. Ibrahim Sha, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus.I. No. 75/2019 dated 19.03.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original of the Assistant Commissioner of Customs (Adjudication-Air), Chennai, bearing no. 175/2018-19-Commissionerate-I dated 30.11.2018, ordering absolute confiscation of assorted foreign currency notes, equivalent to Indian currency Rs.5,81,478/-, under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962. Besides, penalty of Rs.60,000/-was also imposed on the Applicant, under Section 114(i) of the Act, ibid.

2. Brief facts of the case are that the Applicant was scheduled to depart for Dubai from Chennai airport, on 08.06.2018. The Applicant was intercepted by the Officers of AIU after he had cleared Customs & immigration check. The Applicant was asked specifically whether he was carrying any contraband or Indian/Foreign currency beyond the permissible limit, to which he replied in negative. The baggage of the Applicant was searched and the foreign currency viz. 61 Nos. of Kuwait Dinar notes of denomination 20, 24 Nos. of Omani Rial notes of denomination 50, 05 Nos. of Omani Rial notes of denomination 20, 01 Nos. of Omani Rial notes of denomination 10, 02 Nos. of Omani Rial notes of denomination 05, 10 Nos. of UAE Dirham notes of denomination 500, totally equivalent to Indian Rs. 5,81,478/-, wrapped within a black colour polythene cover which were kept concealed inside the inner pocket of the hand baggage, was recovered. On being asked, the Applicant could not produce any licit document in support of legal acquisition, possession and/or exportation of the foreign currency notes and hence, the same were seized, under Section 110 of the Customs Act, 1962. The Applicant in his statement dated 08.06.2018, recorded under Section 108 of the Customs Act, 1962, stated that the recovered foreign currency was given to him by a person named Gulam Khadar with the instruction to handover it to an unknown person

outside Dubai Airport; that he did not possess any valid documents or permit for legal export of foreign currency; that he was well aware that smuggling of Indian/Foreign currencies by non-declaring to Customs and without any valid permit is an offence.

3. The revision application has been filed, mainly, on the ground that the export of foreign currency is not prohibited and, hence, may be released on payment of redemption fine and penalty.

4. Personal hearing in the matter was fixed on 30.09.2022 and 17.10.2022. None appeared on behalf of the Applicant or the Respondent Department on any of the above mentioned dates. The Advocate for the Applicant has, vide letter dated 16.10.2022, waived hearing. Hence, the case is taken up for final decision on the basis of available records.

5. The Government has carefully examined the matter. It is evident that the foreign currency was recovered from the Applicant, which was concealed inside his hand baggage. It is brought out that the Customs officers asked the Applicant as to whether he was carrying any foreign currency to which he replied in negative. Thus, it is evident that the Applicant did not declare the currency, 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.

6.1 Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 (as amended), 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.*" Further, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 (as amended), 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 produce any legal documents for licit possession of the confiscated currency or any permission from the Reserve Bank of India for export of foreign currency found in the hand baggage in concealed manner. He has also not shown compliance with the provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2000, as amended. Thus, it is clear that the conditions in respect of possession and export of 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 goods are '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 Applicant has prayed that the foreign currency should be released on payment of redemption fine. 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 Courts, as above. Such a case is not made out. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter.

8. The case laws relied upon by the Applicant in support of his various contentions are not applicable in the facts of this case and keeping in view the dictum of Hon'ble Supreme Court and Hon'ble Delhi High Court, as above.

9. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

10. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Ibrahim Sha,
No. 10, Abdul Kareem Cross Street,
Triplicane, Chennai-600005

Order No. 319/22-Cus dated 17-10-2022

Copy to:

1. The Commissioner of Customs, Airport, New Custom House, Meenambakkam, Chennai-600027

2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Sh. S. Palanikumar & P. Kamalamalar, Advocate, No. 10, Sunkurama Street, Second Floor, Chennai-600001.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED



17.10.2022

(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