

**SPEED POST**



F. No. 373/202-A/B/2018-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 18/11/22

Order No. 355/22-Cus dated 18-11-2022 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 AIRPORT C.Cus.I. No. 60/2018 dated 26.04.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Mohamed Rasik Syed Ahamed Khan, Ramnad

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

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**ORDER**

A Revision Application No. 373/202-A/B/2018-RA (previously allocated No. 373/100/B/2016-RA) dated 11.06.2018 has been filed by Sh. Mohamed Rasik Syed Ahamed Khan, Ramnad (hereinafter referred to as the Applicant), against the Order in Appeal AIRPORT C.Cus.I. No. 60/2018 dated 26.04.2018, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs (Adjudication-Air), Chennai, bearing no. 181/2017-18 dated 18.12.2017, ordering absolute confiscation of seized assorted foreign currencies, equivalent to Indian Rs. 2,78,220/-, under Sections 113(d) and 113(h) of the Customs Act, 1962. Besides penalty of Rs. 28,000/- was also imposed on the Applicant, under Section 114(i) of the Act, *ibid*.

2. Brief facts of the case are that the officers of DRI, based on specific intelligence that a group of passengers travelling from Chennai by Sri Lankan Airlines Flight No. UL126 bound to Singapore, on 05.05.2016, via Sri Lanka would be distributing foreign currency to the passengers who are travelling up to Colombo and would collect it during the course of journey, intercepted 27 passengers including the Applicant herein. On persistent enquiry, some passengers accepted that foreign currency was handed over to them by regular traders operating at Chennai Airport for handing over the same to their person travelling in the same flight bound to Singapore via Sri Lanka and that they had no knowledge about the person who is receiving the foreign currency; that they further informed that they assisted in the smuggling of foreign currency for a monetary benefit of Rs. 500/-. Some passengers including the Applicant herein informed that they did not possess any valid purchase documents. As the Applicant did not possess general or special permission from the Reserve Bank of India to deal in foreign exchange and to possess or retain any foreign exchange and to export the same out of India the original authority confiscated the impugned currency absolutely and also imposed personal penalty vide Order-in-Original as mentioned above, which has been upheld in appeal.

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 07.11.2022. No one appeared for either side nor any request for adjournment has been received. Advocate for the Applicant has waived hearing vide letter dated 22.10.2021. Hence, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is evident that the foreign currency was recovered from the Applicant. It is on record that the Applicant had not made any declaration in respect of the currency 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 recorded immediately after seizure do not appear to have been retracted by the Applicant. As such, the contention that there was no concealment or misdeclaration are factually incorrect.

6.1 Regulation 5 of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015, 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 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."*

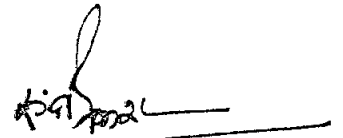
6.3 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case. The Applicant's contentions to the contrary are incorrect.

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. Such a case is not made out. 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

Sh. Mohamed Rasik Syed Ahamed Khan  
9/96F, North South Street  
Erwadi, Ramnad-623515

Order No. 355/22-Cus dated 18-11-2022

Copy to:

1. The Commissioner of Customs (Appeals-I), 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.

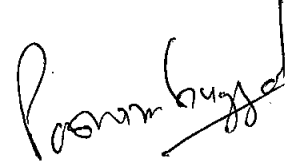
4. PA to AS(RA).

5. Guard file.

✓ 6. Spare Copy.

7. Notice Board.

ATTESTED



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