

SPEED POST



F. No. 373/212/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. 23/12/22

Order No. 398 /22-Cus dated 23-12-2022 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 filed, under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. 475/2016 dated 30.06.2016 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Mohammed Firoos, Kasargod

Respondent : Commissioner of Customs, Mangaluru

.....

ORDER

A Revision Application No. 373/212/B/2016-RA dated 18.10.2016 has been filed by Sh. Mohammed Firoos, Kasargod (hereinafter referred to as the Applicant), against the Order in Appeal No. 475/2016 dated 30.06.2016, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, Mangaluru International Airport, Mangaluru, bearing no. 05/2016 (AP) dated 24.01.2016, ordering absolute confiscation of seized foreign currency (4400 Euro), equivalent to Indian Rs. 3,10,490/-, under Section 113(d) of the Customs Act, 1962. Besides penalty of Rs. 1,00,000/- 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 Mangaluru, on 30.10.2015. He was intercepted by the officers of Customs while he was proceeding to security check after completing immigration formalities. On enquiry, he informed that he had nothing to declare to Customs and he was proceeding to Dubai to work as a salesman in a supermarket. When specifically asked to state as to whether he was carrying any contraband goods or any Indian/foreign currency, he informed that he was in possession of Indian currency amounting to Rs. 100/- and that he had no foreign currency with him. The search of his person resulted in the recovery of a bundle of foreign currency (4400 Euro), amounting to Rs. 3,10,490/-, which was secreted in one of the front pockets of the trouser worn by him. The Applicant in his statement dated 30.10.2015, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he was working as a salesman in a Supermarket in Dubai; that he needed money to set up his own business so he readily agreed to the offer given by M/s. SA Travels, C/o M/s. Orbit Tours and Travels, Pallikere, Kanhangad as he could earn some easy money accordingly and gave his consent to carry the foreign currency notes to Dubai; that at the time of collecting his travel tickets, the travel agent informed him that if he carried some amount of foreign currency notes to Dubai and hand over the same to his associate in Dubai, he would be paid good remuneration; that due to the lure of money, he readily agreed to the offer as he could earn some easy money and accordingly, gave his consent to carry the foreign currency notes with him to Dubai, though he knew that it was not allowed without proper money exchange documents; that he was asked not to declare to Customs about the possession of foreign currency notes with him; that he was informed by the travel agent that after he reached Dubai, one person in Dubai would call him over his mobile number and would collect the said foreign currency notes from him; and that the said foreign currency notes were not his own, but given to him by the travel agent for handing over to his associate in Dubai.

3. The revision application has been filed, mainly, on the grounds that the adjudicating authority has passed the order dated 24.01.2016 without giving an opportunity to the Applicant even though he has retracted the statement; that the

Applicant had filed W.P No. 53208/2015 before the Hon'ble Karnataka High Court and the adjudicating authority ought to have waited for the outcome of the said Writ Petition before deciding the case; that currency is not prohibited goods and ought to have been released; that currency seized from him was not concealed in an ingenious manner; and that the currency seized belonged to him.

4. In the personal hearing held on 21.12.2022, in virtual mode, Sh. KPA Shukoor, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that the Applicant is not a habitual offender and there was no ingenious concealment. Sh. Vasudeva Naik, AC supported the orders of the lower authorities.

5.1 The Government has carefully examined the matter. At the outset, it is observed from the website of Hon'ble Karnataka High Court that the W.P No. 53208/2015 (T-TAR) was dismissed as infructuous by the Hon'ble Court, vide Order dated 20.04.2016, since the passport of the Applicant had been released. Thus, this W.P had no bearing on the merits of the present case.

5.2 It is not disputed that the foreign currency was recovered from the Applicant. It is also 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. 100/- on his person. Eventually even this was found to be incorrect and a large amount of foreign currency was found on him. 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.

5.3 As regards, the retraction filed by the Applicant vide letter dated 19.11.2015, it is evident that the Applicant was intercepted by the officers of Customs near the Customs counters in the Departure Hall of the Mangalore International Airport while he was proceeding to security check after completing his immigration formalities. Therefore, the relevant sequence of events recorded in the Panchnama also substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. It is also observed that the issue of retraction was never raised before the original authority. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. In the present case, the Applicant has admitted his involvement in the case of smuggling due to lure of earning easy money. The admissions made are corroborated by other material on record, as discussed hereinabove. Therefore, there is no doubt that the statement tendered were voluntary. As such, it is evident that

the foreign currency did not belong to the Applicant as has been claimed by him, subsequently.

6.1 As per Regulation 5 of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015, *"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 and foreign currency (seized from the Applicant) are not fulfilled.

6.2 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."*

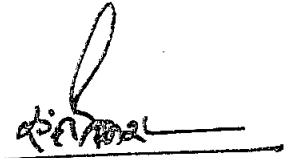
6.3 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case.

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. As such, 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

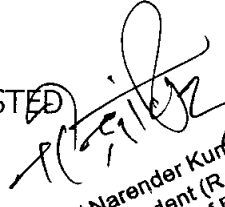
Sh. Mohammed Firoos
S/o Sh. Mahin Kunnariyath
Faisal Villa, Bekal, Kunnil Iliyas Nagar
Bekal Fort PO
Kasargod District
Kerala-671316

Order No. 398 /22-Cus dated 23-12-2022

Copy to:

1. The Commissioner of Customs (Appeals), C.R Building, P.B No. 5400, Queens Road, Bengaluru-560001.
2. The Commissioner of Customs, New Custom House, Panambur, Mangaluru-575010.
3. Sh. K.P.A Shukoor, Advocate, United Law Chambers, 2nd Floor, Krishnaprasad Building, K.S Rao Road, Mangaluru-575001.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED


नरेंद्र कुमार सिंह / Narender Kumar Singh
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 606, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066