

SPEED POST



F. No. 380/01/B/2020-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.....17/02/22

Order No. 5/22-Cus dated 17-02-2022 of the  
Government of India passed by Sh. 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. KOL/CUS/(A/P)/102/2019 dated 27.09.2019,  
passed by the Commissioner of Customs  
(Appeals), Kolkata.

Applicant: Commissioner of Customs, NSCBI Airport, Kolkata.

Respondent: Sh. Rinku Kumar Puri, Delhi.

**ORDER**

A Revision Application No. 380/01/B/2020-RA dated 08.01.2020, has been filed by the Commissioner of Customs, NSCBI Airport, Kolkata (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. KOL/CUS/(A/P)/102/2019 dated 27.09.2019, passed by the Commissioner of Customs(Appeals), Kolkata. The Commissioner (Appeals) has allowed the appeal filed by Sh. Rinku Kumar Puri, Delhi (hereinafter referred to as the Respondent) against the Order-in-Original, bearing No. 136/2018 ADC dated 31.05.2018 passed by the Additional Commissioner of Customs, AIU, NSCBI Airport, Kolkata, wherein foreign currency comprising Euro 24000/- , equivalent to Rs. 17,79,600/-, was absolutely confiscated under Sections 113(d), 113(e), & 113(h) of the Customs Act, 1962, read with Foreign Exchange Management Act, 1999 and Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Besides, a penalty of Rs. 17,79,600/- was also imposed on the Respondent herein, under Section 114 of the Act, *ibid*. The Commissioner (Appeals) has allowed the redemption of the said foreign currency on payment of redemption fine of Rs. 4,12,400/- and a personal penalty of Rs. 1,81,456/- on the Respondent.

2. Brief facts of the case are that the DRI officers, acting on an intelligence, got the Respondent offloaded on 10.08.2017, from Flight No, 6E 75, bound for Bangkok and asked him if he was carrying any contraband items or Indian/foreign currency more than the permissible limit to which he replied in negative. On search of his hand baggage, Euro 24000/- equivalent to INR 17,79,600/-, were recovered which were concealed in three MDH Meat Masala packets. In his statement dated 10.08.2017 tendered

under Section 108 of the Customs Act, 1962, the Respondent admitted the recovery of the foreign currency from his baggage. He also stated that he could not produce any licit documents in support of legal acquisition, possession & exportation of the foreign currency recovered from him; that the recovered currency did not belong to him; and that the foreign currency notes were given to him by someone who met him outside Kolkata Airport; and that he had done this mistake for greed of some money. The original authority absolutely confiscated the said currency under Sections 113(d), 113(e), & 113(h) of the Customs Act, 1962, read with Foreign Exchange Management Act, 1999 and Foreign Exchange Management (Export and Import of Currency) Regulations, 2015. Besides, a penalty of Rs. 17,79,600/- was also imposed on the Respondent under Section 114 of the Customs Act. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals) which was allowed and the said foreign currency was allowed to be redeemed on payment of Rs. 4,12,400/- as RF and the penalty was reduced to Rs. 1,81,456/-.

3. The revision application has been filed canvassing that the Respondent had violated the provisions of Section 77 of the Customs Act by not declaring the offending foreign currency to the customs officers while departing for Bangkok; that the Respondent admitted his guilt in his voluntary statement which was never retracted; and that foreign currency is covered in the definition of "prohibited goods" and hence the order of the Commissioner (Appeals) merits to be set aside.

5.

4. Personal hearings were fixed on 13.12.2021, 17.01.2022, 02.02.2022 & 16.02.2022. On 02.02.2022, Sh. Jitendra Kumar, Superintendent, appeared, in virtual mode, for the Applicant department and reiterated the contents of the RA. Sh. Rinku Kumar Puri, Respondent, appeared, in virtual mode and submitted that his consultant is seriously ill. Hence, he may be given one last opportunity to engage another Counsel to defend his case. Upon being pointed out that this is the third opportunity, Sh. Puri admitted that the notices for previous two hearings were received by him but due to his personal difficulties he could not engage another Counsel. He once again pleaded for one last opportunity. In view of the above, one last opportunity was granted on 16.02.2022 making it clear that no further opportunity shall be granted in any event. The matter was again heard, in virtual mode, on 16.02.2022. Sh. Jitendra Kumar, Superintendent appeared for the Applicant department and supported the order of the original authority. He highlighted that:

- (i) Currency was concealed in MDH Packets.
- (ii) The Applicant is not the owner of the currency.

Hence, option of redemption should not be granted. None appeared for the Respondent. A request dated 15.02.2022 for adjournment has been received, on behalf of the Respondent, which is not accepted as four opportunities have already been granted. Further, on the last date, i.e., 02.02.2022, it was made clear that no further opportunity shall be granted in any event. Therefore, the matter is taken up for disposal based on records.

5. The revision application has been filed with a delay of 04 days. Delay is condoned.

6. The Government has carefully examined the matter. It is observed that the foreign currency, which was recovered from the Respondent, was not declared to the Customs officers as required in terms of Section 77 of the Customs Act, 1962. It has been admitted by the Respondent in his statement tendered under Section 108 of the Customs Act, 1962, that he did not declare the currency to the Customs officers at the airport and did not have any documents or evidence showing lawful possession of the currency. Further, the foreign currency was concealed in the packets of MDH Meat Masala. The manner of concealment makes it manifestly apparent that it was a conscious attempt at smuggling.

7.1 The Commissioner (Appeals) has held that the foreign currency is not prohibited goods.

7.2 The Government observes that as per Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, *"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, 2000, 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 Respondent has not produced any permission from the Reserve Bank of India for export of foreign currency found in his possession, as required in terms of Regulation 5 of FEMA Regulations, 2000.

7.3 The Commissioner (Appeals) has accepted the contention of the Respondent herein that the foreign currency of Euro 24000/- was collected by way of gifts/honorarium @ Euro 3000/- on each of eight previous foreign visits of the Respondent. However, the Government is not persuaded by this argument as:

- (i) No details regarding the gifts/honorarium are forthcoming.
- (ii) In the immediate aftermath of the incident, the Respondent had, in his statement recorded under Section 108 of the Customs Act, 1962, admitted that he had no evidence showing lawful possession of the currency. The Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. UOI {1997 (89) ELT 646 (SC)}, held that a confession statement made before a Customs officer is an admission and is binding.
- (iii) The foreign currency was found concealed in MDH Meat Masala packets. There would be no need for the Respondent to indulge in such ingenious concealment if the foreign currency was legally acquired.

Thus, the Commissioner (Appeals) has erred in accepting this contention of the Respondent herein. As such, it is held that the Respondent has also not shown compliance with the provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2001. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Respondent) are not fulfilled. The Respondent has also not shown compliance with Regulation 7 of the Foreign Exchange Management (Realization, Repatriation and Surrender of foreign exchange) Regulations, 2015.

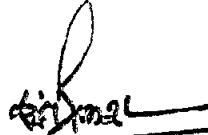
7.4 In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors [1971 AIR 293], the Hon'ble Supreme Court has held that for the purpose of Section 111(d) of the Customs Act;

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)], which is a case relating to export of goods, 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 dated 17.06.2021, 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."*

7.5 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods' and the Commissioner (Appeals) has erred in holding otherwise. Further, being 'prohibited goods', the redemption thereof is discretionary, in terms of Section 125 of the Customs Act, 1962. The discretion exercised by the original authority can be interfered with only if it has not been exercised for relevant and reasonable considerations, as held by the Apex Court in Raj Grow Impex (supra). The Commissioner (Appeals) has, on the other hand, interfered with the discretion exercised by the original authority on the grounds that are found to be non-sustainable, as brought out hereinabove.

8. In view of the above, the impugned Order-in-Appeal dated 27.09.2019 is set aside and the Order-in-Original No. 136/2018-ADC dated 31.05.2018 is restored. However, the penalty imposed

by the original authority is reduced to Rs. 5,00,000/-. The revision application is disposed of, accordingly.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

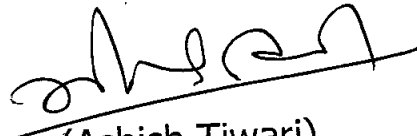
The Commissioner of Customs,  
(Airport & Admn.), NSCBI Airport,  
Kolkata – 700052.

Order No. \_ 51/22-Cus dated 17-02-2022

Copy to:-

1. Sh. Rinku Kumar Puri, S/o Sh. Inder Sain Puri, JG 3/251 C, Vikas Puri, New Delhi – 110018.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700001.
3. M/s S.S. Arora & Associates, B-1/71, Safdarjung Enclave, New Delhi – 110029.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED

  
(Ashish Tiwari)

Assistant Commissioner (RA)