

SPEED POST



F. No. 375/45/B/2020-R.A.
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 30/3/22

ORDER NO. 113/22-Cus dated 30-03-2022 of the Government of India, passed by Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air/97/20-21 dated 18.05.2020, passed by the Commissioner of Customs (Appeal), New Delhi.

APPLICANT : Sh. Mohammad Muzammil, Bulandshahar, UP.

RESPONDENT : Commissioner of Customs, IGI airport, New Delhi.

ORDER

A Revision Application No. 375/45/B/2020-R. A. dated 21.07.2020 has been filed by Sh. Mohammad Muzammil, Bulandshahar, UP (hereinafter referred to as the Applicant) against Order-in-Appeal No. CC(A)Cus/D-I/Air/97/20-21 dated 18.05.2020, passed by the Commissioner of Customs (Appeal), New Delhi. Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs IGI Airport, New Delhi, bearing No. 470/AS/JC/2018 dated 19.11.2018 whereby assorted foreign currency, cumulatively equivalent to Rs. 10,20,546/-, which was recovered from the Applicant, has been absolutely confiscated under Section 113 of the Customs Act, 1962, read with FEMA, 1999. A penalty of Rs. 2 Lakhs has also been imposed on the Applicant under Section 114 of the Customs Act, 1962 read with Section 13 of FEMA, 1999.

2. Brief facts of the case are that the Applicant was scheduled to depart for Dubai, by Flight SG 011, on 30.12.2017, from IGI Airport, New Delhi. During scrutiny of his checked-in baggage, some objectionable image was noticed. Thereafter, on search of his checked-in baggage, two ladies' purses were found which contained assorted foreign currency, cumulatively equivalent to Rs. 10,20,546/-. The Applicant could not produce any documentary evidence in support of licit possession and export of the said currency. The foreign currency was confiscated absolutely by the Joint Commissioner of Customs, IGIA, New Delhi and a penalty of Rs. 2 lakhs was also imposed on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The revision application has been filed, mainly, on the grounds that the Applicant has been falsely implicated in the case and he declared the currency verbally to the customs officers; that the Applicant is an NRI and had brought the foreign currency on his previous visit to India; that foreign currency is not a

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prohibited item; and that the said foreign currency should have been released either unconditionally or on payment of redemption fine and penalty.

4. Personal hearing was held on 28.03.2022, in virtual mode. Ms. Sangita Bhayana, Advocate, appeared for the Applicant and reiterated the contents of the RA. She highlighted that the Applicant was an NRI with valid work visa at the relevant time. This was his hard-earned money. Hence the foreign currency may be released on payment of fine and penalty. She also relied upon the case laws emailed on 26.03.2022. None appeared for the Respondent department nor any request for adjournment has been received. Hence the matter is taken up for decision on the basis of records available.

5. The Government has examined the matter. It is evident, from the evidence on record, that the foreign currency was recovered from the Applicant. He did not declare the currency to the Customs officers at the airport under Section 77 of the Customs Act, 1962 and did not have any documents or evidence showing lawful possession of the currency. It is also observed that the foreign currency was concealed in the ladies' purses which were further put inside the checked-in baggage. In his statement recorded on 30.12.2017, the Applicant had admitted that the currency was so concealed to avoid detection. Further, in a statement recorded on 09.01.2018 (i.e., with a gap of 10 days after the first statement), the Applicant reiterated the earlier statement and again failed to furnish any documents to support the claim of ownership. Hence, the contentions that the Applicant was falsely implicated, or that he had verbally declared the currency, or that it was his hard-earned money appear to be afterthought and, hence, not acceptable.

6. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, 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, 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 Applicant has not produced any permission from the Reserve Bank of India for export of foreign currency found in his possession. He has also not shown compliance with the provisions of Regulation 3 (iii) of the FEMA (Possession and Retention of Foreign Currency) Regulations, 2001 in as much as no evidence has been produced in support of the contention that the currency was received as a remuneration and thereafter brought into India. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled.

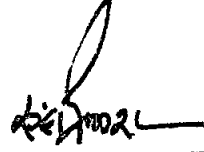
7.1 Another contention of the Applicant is that export of foreign currency is not 'prohibited'. However, the Government is not persuaded to accept this contention. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the 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"*. Further, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors [2021 (377) ELT 0145 (SC)], 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."*

7.2 As brought out in para 6 above, in this case, the conditions subject to which foreign currency could have been legally exported have not been fulfilled. Thus, following the ratio of the aforesaid judgments of the Apex Court, there is no doubt that the subject goods are 'prohibited goods'.

8. The Applicant has prayed for release of foreign currency on payment of redemption fine under Section 125 of Customs Act, 1962. The Government observes that the option to release 'prohibited goods', on redemption fine in terms of Section 125, 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 Raj Grow Impex (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 relevant considerations"*. Further, in the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344) ELT1154 (Mad.)}, the Hon'ble Madras High Court, after extensive application of several judgments of the Apex 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."* The Hon'ble High Court has further held that *"when discretion is exercised under Section 125 of the Customs Act, 1962, the twin test to be satisfied is 'relevance and reason'"*. In the present case, the original authority has refused to allow redemption keeping in view the nature of concealment and for failure of the Applicant to produce any evidence to establish ownership. Thus, the Government finds that the original authority has exercised discretion for reasonable and relevant considerations. As such, the order of original authority, as upheld by the Commissioner (Appeals), does not merit interference.

9. The decisions/orders relied upon by the Applicant are not applicable as these have been passed without noticing or following the dictum of Hon'ble Apex Court, as brought out hereinabove.

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



(Sandeep Prakash)

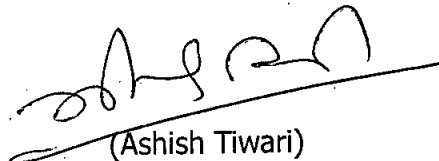
Additional Secretary to the Government of India

Sh. Mohammad Muzammil,
R/o H. No. 5, Mohalla Kasawan Uperkot,
PO & PS- Kotwali Nagar, Bulandshahar, UP-203 001.
Order No. 113/22-Cus dated 30-03-2022

Copy to:

1. The Commissioner of Customs (Appeals), NCH, New Delhi.
2. The Commissioner of Customs, IGI Airport, New Delhi.
3. Ms. Sangeeta Bhayana, Advocate, Chamber No. 707, LCB-III, Delhi High Court, New Delhi-110 003.
4. PA to A.S.(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(Ashish Tiwari)
Assistant Commissioner (RA)