

**SPEED POST**



F. No. 380/53/B/SZ/2019-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..12/06/24.

Order No. 117/24-Cus dated 12-06-2024 of the Government of India passed by Smt. Shubhagata Kumar, 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. 35/2019 dated 19.03.2019, passed by the Principal Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : Shri Rafeeq Cuttachal Mallam, Kasargod

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**ORDER**

Revision Application No. 380/53/B/SZ/2019-RA dated 15.07.2019 has been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 35/2019 dated 19.03.2019, passed by the Principal Commissioner of Customs (Appeals), Bengaluru. The Pr. Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 19/2018 dated 30.08.2018, passed by the Deputy Commissioner of Customs, Mangaluru International Airport, Mangaluru.

2. The adjudicating authority vide O-I-O No. 19/2018 dated 30.08.2018 ordered as under:

- (i) ordered confiscation of foreign currency notes of Oman Riyals 1750 equivalent to Indian Currency of Rs. 2,96,910/- under Section 113(d), read with Section 2(18), Section 2(22), Section 2(33) and Section 125 of the Customs Act, 1962, Regulation 5 and Regulation 7(2)(ii) of FEMR, 2015 and Section 2(c), Section 2(i), Section 2(m) of the FEMA,1999;
- (ii) ordered appropriation of said currency equivalent to Indian Currency Rs. 2,96,910/- to be deposited in Canara Bank towards disposal of the same in terms of Section 110(1A) of the Customs Act, 1962;
- (iii) ordered confiscation of remnants of packing material used for concealment of foreign currency under Section 118(b) and Section 119 of the Customs Act;
- (iv) imposed penalty of Rs. 60,000/- under Section 114(i) of the Customs Act, 1962;
- (v) appropriated the advance deposit of Rs. 10,000/- paid by the passenger vide challan No. 20 dated 04.03.2018 towards penalty imposed as mentioned above.

3. Brief facts of the case are that the Respondent, an Indian passport holder, had been apprehended smuggling foreign currency notes of Omani Riyals (33 notes of 50 denomination and 10 notes of 10 denomination) equivalent to Indian Currency of Rs. 2,96,910/-, kept concealed among clothes in his hand baggage, before departure to Dubai from Mangalore International Airport, on 04.03.2018. He had attempted to remove the

said currency from the Customs Area without making any declaration in the Customs Declaration Form. Upon enquiry by Customs, he denied carrying any foreign currency/contraband. Following his interception the passenger could not produce any documents evidencing licit possession of the money exchange which is in contravention of FEMA. The foreign currency were seized under a mahazar dated 03.03.2018. In his voluntary statement dated 03.03.2018 recorded under Section 108 of the Customs Act, 1962, the Applicant stated inter-alia that he was working as sales executive in M/s New Brand Ready Made Trading in Dubai for the past 4-5 years and the foreign currency was given to him by one Shri Abdulla of Kasargod to be handed over to his associate in Dubai for a consideration of Rs. 5,000/-. He admitted that he was carrying the Foreign Currency abroad without licit documents out of India and was not aware that it was an offence. The original authority adjudicated the matter vide O-I-O No. 19/2018 dated 30.08.2018 by confiscating the offending goods absolutely and also imposed penalty of Rs. 60,000/-, under Section 114(i) of the Act, *ibid*, on the Respondent. Aggrieved, the Respondent filed an appeal, which has been allowed by the Pr. Commissioner (Appeals), as above by setting aside the O-I-O. Now, the Applicant department filed this revision application.

4. The Revision Application has been filed by the Applicant department, mainly, on the grounds that the order passed by the appellate authority is not legal and not proper; that Respondent had attempted to smuggle foreign currency in a clandestine manner without declaration and without possession of licit documents; that the powers to impose redemption fine vests with the adjudging officer and not the appellate authority as per the Section 125 of the Customs Act and thus the appellate authority has exercised powers beyond statutory provisions; that the blanket findings of appellate authority that the foreign currency seized is within the permissible/eligible limit and which can be carried without declaration, is illegal and improper and is in clear disregard to the facts and circumstances of the case. The prayer is to set aside Order-in-Appeal and restore the order passed by the original adjudicating authority.

5. Personal hearings were fixed on 11.03.2024 and 18.03.2024. Shri Krishna Kumar, Assistant Commissioner appeared on 11.03.2024 on behalf of the Applicant department

and submitted that the appellate authority has released the impugned foreign currency to the Respondent which is not proper, thus the OIA should be set aside and the O-I-O be upheld. On 18.03.2024, Shri Arvind Raja, Assistant Commissioner from the Applicant department submitted that the Respondent was carrying currency out of India in violation of the applicable rules and that the O-I-A is not proper as Commissioner (Appeals) has released the foreign currency without imposition of RF which is not warranted in view of the facts of the case. Shri Rafeeq (the Respondent) submitted that he was not aware of any rules in this regard and that he did not know that he was required to declare the same to Customs. He accepted that he does not have any proof of purchase or any other documents to establish ownership of the impugned currency. Shri Raja prayed for the revision application to be granted by setting aside the O-I-A and Shri Rafeeq prayed to uphold the same.

6. The Applicant department has submitted a request letter dated 11.03.2024 for condonation of delay of 07 days in filing the instant Revision Application and stated that the delay was purely unintentional and due to oversight which may be condoned in the interest of justice as held by the Hon'ble Supreme Court in S. Saghir Ahmad and K.T. Thomas, (2008(228) E.L.T. 162(S.C)). The said request is taken into consideration and the delay is condoned.

7. The Government has carefully examined the matter. It is observed that the foreign currency was recovered from the Respondent's hand baggage in which currency was kept concealed among the clothes, whereas he had denied carrying the same when questioned. It is also on record that the Respondent had not made any declaration in this regard, as required under Section 77 of Customs Act, 1962. Further, the Respondent did not have any valid documents or evidence to show how the currency was acquired by him. He admitted in his own statement dated 03.03.2018 recorded under Section 108 of the Customs Act, 1962 that the impugned foreign currency was handed over to him by one Shri Abdulla of Kasargod to be handed over to his associate in Dubai for a consideration of Rs. 5,000/-; that he had accepted his mistake and accepted that he had committed an offence by doing so and he requested for pardon. Though, the Respondent in his reply

letter dated 17.08.2018 in response to SCN dated 30.06.2018, claimed ownership of seized currency; that he was a residence visa holder; had brought the said currency while coming to India on several occasions without any declarations as there was no requirement to declare the currency in CDF as per the RBI guidelines if the amount is less than 5000 US Dollars on each occasion and that he was carrying back the same unspent foreign currency on his return journey to Dubai; that signatures were obtained on the statement by force, coercion and undue influence. The adjudicating authority in para 25 of the said O-I-O dated 30.08.2018 has rejected the submissions of the Respondent holding that they were considered unreasonable and apparently an afterthought to somehow escape from the punishment for the offence committed by him. Therefore, the conclusion of the appellate authority in their O-I-A dated 19.03.2019 that the impugned foreign currency can be released without imposition of fine and penalty, which can be carried without declaration and set aside the order of adjudicating authority does not appear to be proper.

8. 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 Respondent has been unable to provide any such document and has thus failed to show compliance with the Regulations as above. He has admitted in his statement that he did not possess any valid documents for the licit purchase of the foreign currency and carried the said foreign currency notes under the lure of money and that Rs. 5,000/- was promised to him for doing so. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Respondents) are not fulfilled. Further, no evidence has been brought forth to establish the use of coercion, force or undue influence as claimed by the Applicant. Thus a

mere assertion without a shred of evidence cannot negate the Applicant's own signed statement under Section 108 of the Customs Act, 1962 which is admissible evidence in terms of judgement of Hon'ble Supreme Court, in the case of *Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}* and in the case of *K.I. Pavunny {1997 (90) ELT 241 (SC)}*.

9.1 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."*

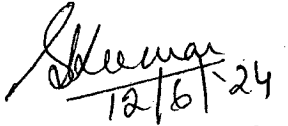
9.2 Thus, following the ratio of the aforesaid judgments, there is no doubt that the impugned currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present cases.

10. The Government observes that the option to release seized goods on redemption fine, in terms of the provisions of Section 125 of the Customs Act, 1962, in respect of "prohibited goods", is discretionary. The Hon'ble Supreme Court has affirmed this position in the case of *Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]*. 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."* Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that "*.....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer*". In the present case, the original authority has, after detailed consideration refused redemption. Hence, keeping in view the ratio of the decisions aforesaid, the Commissioner (Appeals) ought not to have interfered with the decision of the original authority by allowing redemption. Hence, the order passed by the Commissioner (Appeals) is set aside.

11. In view of the facts and circumstances of the case, there is no ground to interfere with order of adjudicating authority and the same is upheld. However, the Government finds that some relief is merited in respect of the penalty imposed. As such, the penalty imposed on the applicant is reduced to Rs. 30,000/- (Rupees Thirty Thousand only) under section 114(i) of the Customs Act, 1962.

12. The revision application is, accordingly, allowed and the Order-in-Original No. 19/2018 dated 30.08.2018 is upheld on the above terms.

  
12/6/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

The Commissioner of Customs,  
Mangaluru, New Customs House,  
Panambur, Mangaluru - 575010

Order No. 117 /24-Cus dated 12-06-2024

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. Shri Rafeeq Cuttachal Mallam, S/o Shri Ibrahim Aramana Valappu, Aramana Vallapu House, PO Patla Via Kudlu, Kasargod, Kerala - 671124.

3. Sh. S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PPS to AS(RA)
5. Guard file.
- ✓ 6. Spare Copy.
7. Notice board.

*Shailendra*  
13/06/24  
ATTESTED

(शैलेन्द्र कुमार मीना)  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi