

SPEED POST



F. No. 375/53/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 04/04/22

ORDER NO. 118/22-Cus dated 01-04-2022 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. 28(SM) Cus/JPR/2020 dated 28.05.2020, passed by the Commissioner(Appeals), Central Excise & CGST, Jaipur.

APPLICANT : Sh. Mohan Das, Ajmer.

RESPONDENT : Commissioner of Customs, Jaipur.

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**ORDER**

A Revision Application No. 375/53/B/2020-R. A. dated 11.09.2020 has been filed by Sh. Mohan Das, Ajmer (hereinafter referred to as the Applicant) against Order-in-Appeal No. 28(SM) Cus/Jpr/2020 dated 28.05.2020, passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur. Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, International Airport, Jaipur, bearing No. 06/2018-Cus dated 08.03.2019, whereby Pakistani and Bangladeshi foreign currency, cumulatively equivalent to Rs. 3,60,550/-, which was recovered from the Applicant, has been absolutely confiscated under Section 113 of the Customs Act, 1962. A penalty of Rs. 3,60,550/- has also been imposed on the Applicant under Section 114 of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant was scheduled to depart for Dubai, by Flight IX 195, on 23.09.2017, from International Airport, Jaipur. During scrutiny of his baggage, some objectionable image was noticed. Thereafter, on examination of his baggage, foreign currency (Pakistani and Bangladeshi), equivalent to INR 3,60,550/-. On demand, the Applicant could not produce any legal document for licit procurement/possession of the said foreign currency, <sup>which</sup> was found concealed in a sweet box. In his statement dated 25.10.2017, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that he did not have any legal documents for procurement/possession of the said currency; and that the said currency was given to him by his close friend, Sh. Manish, to deliver it at their shop in Dubai. Further, in his letter dated 19.12.2017, the Applicant informed the Department that the said foreign currency was brought by him into India when he returned from Dubai on 15.09.2017 which may be returned to him as he had to give it back to his boss. He also produced a money receipt dated 03.12.2016 issued by some money changer, in the name of one Ishwarlal. In his subsequent statement dated 05.01.2018, the Applicant stated that his earlier statement dated 25.10.2017 was not correct. He was carrying the currency back to Dubai to be given to his boss, Sh. Mithu Bhai. In his further statement dated 05.02.2018, he also revealed that he

did not know any Ishwarlal and he did not have any transfer/purchase or legal document of the said currency issued in his favour. The Assistant Commissioner of Customs, Jaipur Airport confiscated absolutely the said currency and imposed an equal penalty of Rs. 3,60,550/- 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 foreign currency is not prohibited goods and may be released on payment of redemption fine and nominal penalty.

4. Personal hearing was granted on 23.02.2022, 09.03.2022 and 01.04.2022. Sh. B. B. Atal, AC, appeared for the respondent department on 01.04.2022, in virtual mode, and reiterated the findings of the lower authorities. None appeared for the Applicant nor any request for adjournment has also been received. Since sufficient opportunities have been granted, the matter is taken up for decision on the basis of records available.

5. The Government has examined the matter carefully. 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 sweet box which was put inside the checked-in baggage. In his statement recorded on 25.10.2017, the Applicant had admitted that the currency was given to him by someone to be handed over in Dubai. Later, he has changed his statement many times but he has not been able to furnish any documents to support the claim of his ownership of the offending currency. Hence, various claims of the Applicant, at this stage, appear to be merely afterthought and, as such, are 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. 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 It is the contention of the Applicant 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 according to the rules of reason and justice; 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, no grounds have been established to hold that the original authority has exercised discretion for considerations that are not reasonable and relevant. 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.

10. A Penalty of Rs. 3,60,550/-, i.e., value equivalent to the convertible value of the foreign currency has been imposed on the Applicant. The Government finds that the penalty imposed is on a higher side, specifically as the offending currency has been absolutely confiscated. In this light, the penalty is reduced to Rs. 90,000/-.

11. In view of the above, the revision application is rejected, except to the extent of reduction in penalty imposed, as above.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

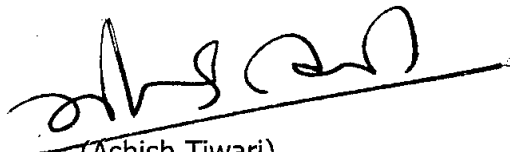
Sh. Mohan Das,  
R/o Plot No. 35, Swastik Nagar,  
Fay Sagar Road, Ajmer, Rajasthan-305 003.

Order No. \_ // 2/22-Cus dated 01-04-2022

Copy to:

1. The Commissioner (Appeals), Central Excise & CGST, NCRB, Statue Circle, Jaipur.
2. The Commissioner of Customs, NCRB, Statue Circle, Jaipur.
3. Sh. A. S. Hasija, Consultant, H-25/4, DLF City, Ph-I, Gurgaon-122 002, Haryana.
4. PA to A.S.(RA).
5. Guard File.
- ✓ 6. Spare Copy.

ATTESTED

  
(Ashish Tiwari)  
Assistant Commissioner (RA)