

**SPEED POST**



F. No. 373/536/B/2019-RA  
F. No. 380/80/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. 04/07/24.

Order No. 122-123/24-Cus dated 04-07-2024 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. 100-101/2019 dated 18.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Mohammed Fahique Chamundi, Bhatkal  
The Commissioner of Customs, Mangaluru

Respondent : The Commissioner of Customs, Mangaluru  
Sh. Mohammed Fahique Chamundi, Bhatkal

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**ORDER**

Revision Application Nos. 373/536/B/2019-RA dated 20.12.2019 & 380/80/B/SZ/2019-RA dated 25.09.2019 have been filed by Sh. Mohammed Fahique Chamundi, Bhatkal (hereinafter referred to as the Applicant) and the Commissioner of Customs, Mangaluru, (hereinafter referred to as the department), against the Order-in-Appeal No. 100-101/2019 dated 18.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 44/2018-ADC dated 27.12.2018 & its corrigendum dated 27.12.2018, passed by the Additional Commissioner of Customs, Mangaluru International Airport, Mangaluru by setting aside the penalty imposed upon the Applicant under Section 114AA of the Customs Act, 1962. Vide the aforementioned Order-in-Original, assorted foreign currency notes equivalent to Indian Rs. 14,71,410/- recovered from the Applicant were absolutely confiscated under Section 113 (d), (e) & (h) of the Customs Act, 1962. Besides, penalties of Rs. 4,50,000/- and Rs. 2,25,000/- were imposed upon the Applicant under Sections 114 & 114AA, respectively of the Act, *ibid*.

2. Brief facts of the case are that the Applicant who was travelling to Dubai from Mangaluru on 31.12.2017 was intercepted by Customs officers as he was proceeding towards security check after completing his immigration formalities. Upon being asked about the purpose of his visit to Dubai and whether he had anything to declare to Customs, the Applicant replied that he had nothing to declare to Customs and that he was proceeding to Dubai on tourist visa as his father was working as a salesman. Upon being specifically asked as to whether he was carrying any contraband goods or Indian/Foreign currency, he replied that he had no foreign currency. On enquiry about the contents of the baggage, he informed that it contained only personal effects and it did not contain any contraband or valuable goods. Upon open examination of one of his checked-in baggage, it was found to contain three packets of pasta macroni of 1 Kg each. One bundle of paper like items were found wrapped in newspaper in one such packet. On open examination of that packet, it was found to contain currency notes of various denominations of different

countries which was found to be equivalent to Rs. 14,71,410/- as per the prevalent exchange rate Notification No. 118/2017-Cus. (N.T) dated 21.12.2017.

In his statement dated 31.12.2017 recorded under Section 108 of the Customs Act, 1962, the Applicant, stated inter-alia that he did not possess any documents to show licit possession of the said foreign currency notes of different denominations; that the seized foreign currency notes were handed over to him by one of his customers named Shabbir in Bhatkal, to be handed over to one of his contact person at the Dubai airport; that Shabbir promised to pay him Rs. 10,000/- after he handed over the same to the contact person in Dubai; that he accepted this proposal due to lure of money and tried to smuggle the same without declaring to the Customs; and that he carried the said foreign currency notes without declaring to Customs by way of concealment.

The matter was adjudicated vide aforesaid order dated 27.12.2018. Aggrieved, the Applicant and the department both filed appeals before the Commissioner (A) who modified the OIO as mentioned above.

3. The Revision Application has been filed by the Applicant mainly on the grounds that the applicant was not aware of the customs formalities as he had entered the airport for the first time; that he declared the possession of foreign currencies before the Customs officers; that the said foreign currency was brought by his father on his previous visits; that he was intercepted near the check-in counter while he was proceeding to issue a boarding pass and not at the Customs area; and that foreign currency is not a prohibited item. It is further prayed that the foreign currency be allowed to be redeemed on payment of reasonable redemption fine on the amount which was in excess of the allowed limit and penalty imposed upon the applicant under Section 114 may kindly be dropped.

4. The Department has filed the revision application on the grounds that the penalty under Section 114AA was rightly imposed by the original adjudicating authority and needs to be restored as non-declaration amounts to filing of wrong declaration; and that the penalty of Rs. 4,50,000/- imposed upon the Applicant under Section 114(i) is not appropriate considering the nature of offence and not as per statutory provisions.

5. Personal hearing was fixed on 08.05.2024 but rescheduled on the request of Sh. Sameer Kashimji, Authorized Representative of the applicant. P.H was held on 05.06.2024 in which Sh. Sameer Kashimji, Advocate appeared for the applicant and submitted that this is a case of seizure of foreign currency worth Rs. 14,71,410/- in a concealed manner. The advocate submitted that the applicant was not given an opportunity to declare the impugned goods by Customs; that the impugned currency belonged to his father and he had given it to his son for managing expenses in Dubai until he secured a job there; that he was unaware of the rules in this regard as he was travelling for the first time and that the impugned foreign currency should be allowed for redemption upon nominal RF/PP. Sh. Aravinda Raja, Assistant Commissioner submitted on behalf of the department that the OIO is proper and should be upheld; that deterrent action should be taken against such persons. Upon being asked the reason to delay in filing the RA, Sh. Kashimji stated that the CoD is submitted and the delay is within the condonable period.

6. The Government has carefully examined the matter. It is observed that the OIA impugned herein was received by the Applicant on 29.06.2019 whereas the subject revision application has been filed on 20.12.2019. As per sub-section (2) of Section 129DD, a revision application shall be made within a period of three months from the date of communication to the applicant of the order against which the application is being made. Further, in terms of proviso to said sub-section (2), the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months. In the subject case, the revision application has not been filed within the normal limitation period of 03 months. There is an inordinate delay of about 83 days. The Government observes that there are three other revision applications filed by the same advocate wherein all identically worded applications for condonation of delay have been filed and the delay has been sought to be explained in following terms:-

"1. That the applicant was out of station for his job-related commitment and was not able to contact his counsel to file revision application.

2. That the applicant was not in a position to follow up the appeal immediately as he was unable to come to his home town because of his job commitment and was not aware about the time limit. Hence the delay.

3. That the said delay caused for filing this appeal is neither intentional nor deliberate, but only for the reason stated above. However, the said revision application has been filed will within the condonable period."

No documentary proof or substantiation of any kind has been placed on record to explain the delay. The statement that the delay falls within the condonable period does not constitute "sufficient cause" under Section 129DD of the Customs Act, 1962. It would, thus, appear that request for condonation of delay has been made in a mechanical and perfunctory manner, without any consideration for the factual position. In the conspectus of these facts and circumstances, the Government is constrained to hold that the request for condonation of delay cannot be accepted. Hence the revision application of the applicant is rejected as time barred.

7. Now coming to the revision application filed by the department, it is observed that the foreign currency was, concealed in a macroni packet in the applicant's bag. It is also on record that the Applicant had not made any declaration in this regard. Further, the Applicant did not have any documents or evidence showing lawful possession of the currency and he has admitted to the same. Thus the intent to evade is evidently clear.

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.*" Further, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, any person resident in India can retain foreign currency not exceeding US \$ 2000 or its equivalent in aggregate, subject to the condition

that such currency was acquired by that person as 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 discussed above. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) were not fulfilled.

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 subject 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*

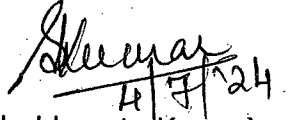
*quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive."* In the present case, the original authority has, after detailed consideration (as evident from paras 22.1 to 22.2 of the OIO), refused redemption. Further, 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"*. Hence, keeping in view the ratio of the decisions aforesaid, the Commissioner (Appeals) has correctly refused redemption of the impugned currency.

11.1 The Commissioner (Appeals) has relied upon an earlier Order of the Revisionary Authority wherein the Authority referred to the objective of introduction of Section 114AA, as explained in the para 63 of the report of Parliament's Standing Committee on Finance (2005-06), to hold otherwise. It is trite that in construing a statutory provision, the first and foremost rule of interpretation is the literal rule of interpretation {M/s. Hiralal Ratanlal vs. STO, AIR 1973 SC 1034 & B. Premanand & Ors. Vs. Mohan Koikal & Ors. (2011) 4SCC 266}. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to other principles of interpretation {Swedish Match AB vs. SEBI AIR 2004 SC 4219}. In the present case, the words of Section 114AA are absolutely clear and unambiguous. There is nothing in the plain language of Section 114AA to even remotely suggest that the provisions thereof are not applicable in baggage cases. The Revisionary Authority, Delhi vide its order 143/23-Cus dated 03.04.2023 also held the non-imposition of penalty under Section 114AA to be incorrect as the Applicant in that case was found to have made an incorrect declaration. In the instant case, the Applicant has failed to declare the impugned currency to Customs but also denied possession of the same when asked by Customs, which is on record.

11.2 Thus, the Government holds that the setting aside of penalty imposed under Section 114 AA, on the Applicant by Commissioner (Appeals) cannot be sustained and is set aside to this extent.

12. Coming to the plea of the department for increase in penalty imposed under Section 114(i), the Government finds that the penalty imposed on the Applicant is approximately 31% of the value of the impugned goods and therefore there appears to be no case for increase in penalty.

13. In view of the above, RA No. 380/80/B/SZ/2019-RA filed by the department is partially allowed and the Order-in-Appeal impugned herein is modified as per para 11.2 above. RA No. 373/536/B/2019-RA is rejected on grounds of non-maintainability as it is barred by limitation.


  
4/7/24  
(Shubhagata Kumar),  
Additional Secretary to the Government of India

1. Sh. Mohammed Fahique Chamundi  
S/o. Sh. Mohammed Farooque Chamundi  
H. No. 34, Chamundi House  
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2. The Commissioner of Customs,  
New Customs House, Panambur,  
Mangaluru-575010.

Order No. 122-123/24-Cus dated 04-07-2024

Copy to:

1. The Commissioner of Customs (Appeals), BMTc Building, Above BMTc Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. Sh. Sameer Kashimji, Advocate, 22, Sweet Home Apartments, Britto Lane, Falnir, Mangaluru-575001.
3. PPS to AS(RA)
4. Guard file.
5.  Spare Copy.
6. Notice board.

  
04/07/24  
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