

SPEED POST



F.No. 380/13/B/2021-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. 11/4/22...

Order No. 132/22-Cus dated 11-04-2022 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(AIRPORT)/AKR/658/2021 dated 13.08.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant: Commissioner of Customs (Airport & Admn.), Kolkata.

Respondent : Sh. Ankit Bansal, Kolkata.

ORDER

A Revision Application No. 380/13/B/2021-RA dated 06.12.2021 has been filed by the Commissioner of Customs (Airport), Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(AIRPORT)/AKR/658/2021 dated 13.08.2021, passed by the Commissioner of Customs (Appeals), Customs House, Kolkata. The Commissioner (Appeals) has modified the Order-in-Original No. 49/2020/AC dated 28.09.2020 passed by the Assistant Commissioner of Customs, AIU Cell, NSCBI Airport, Kolkata, wherein, USD 4312/-, out of USD 5000/- recovered from Sh. Ankit Bansal, Kolkata (hereinafter referred to as the Respondent), were confiscated absolutely and a penalty of Rs. 3 lakhs was imposed by the original authority. The Commissioner (Appeals) has allowed the release of USD 4312/-, being covered by three cash memos produced by the Respondent. Penalty of Rs. 3 lakhs imposed by the original authority, has also been set aside by the Commissioner (Appeals).

2. The brief facts of the case are that the Respondent was intercepted, on 28.10.2018, while departing for Kunming from NSCBI Airport, Kolkata. The Customs officers asked him specifically if he was carrying any Indian/foreign currency beyond the permissible limit, to which he replied in negative. On search of his hand bag, USD 5000/-, equivalent to Rs. 3,63,000/-, were recovered. He could not produce any licit document in support of acquisition, possession and/or legal exportation of the said foreign currency and the same were detained for production of relevant documents. On 01.11.2018, the Respondent submitted money exchange receipts for USD 4500/-. The Respondent, in his statement dated 20.12.2018, tendered under Section 108 of the Customs Act, 1962, admitted that he had not declared the said

foreign currency to the Customs even on being specifically asked; that the said currency was recovered from him upon a search in the presence of two witnesses; and that out of the total USD 5000/-, USD 3000/- were his own and the rest USD 2000/- were of his boss, Sh. Khrikshon Lyngkhai. The original authority, vide the OIO dated 28.09.2020, confiscated the foreign currency of USD 4312/-, under Section 113(d) of Customs Act, 1962 and imposed a penalty of Rs. 3 lakhs/- under Section 114 of the Act *ibid*. USD 688/- were released to the Respondent. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), who, vide the impugned OIA, has allowed the release of USD 4312/-, being covered by three cash memos produced by the Respondent. Penalty of Rs. 3 lakhs imposed by the original authority, has also been set aside.

3. The revision application has been filed, mainly, on the ground that the cash memos submitted by the Respondent are dated 27.10.2018, i.e., a day before the scheduled departure of the Respondent but the actual transaction has taken place on 29.10.2018, a day after the date of scheduled departure. Hence, this is an afterthought to stake claim of the illegally acquired foreign currency which was attempted to be taken out of the country. A written reply dated 03.01.2022 and 12.01.2022 has been filed by the Respondent.

4. Personal hearing was held on 08.04.2022, in virtual mode. Sh. D. K. Ramuka, Superintendent, appeared for the Applicant and reiterated the contents of the RA. He highlighted that a Cash Memo showing purchase of USD 3500/- has been produced which indicates it was an ICICI inline transaction whereas the payment was made two days after the interception, by RTGS. Hence document produced cannot be relied upon. Ms. Sukanya

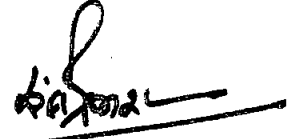
Roy, Authorised Representative appeared for the Applicant and reiterated the contents of the written reply dated 03.01.2022.

5. 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 under Section 77 of the Customs Act, 1962. It has been admitted by the Applicant 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 at the time of departure. The Applicant has, however, subsequently produced cash memos evidencing purchase of USD 4500/-. The Commissioner (Appeals) has interfered with the Order of the original authority relying upon the Cash Memos produced. However, the Government finds that the Cash Memos issued cannot be relied upon for the following reasons:

- (i) The Cash Memos, as the title itself suggests, are issued for cash transactions by the customers whereas in the subject case no cash has been paid by the Applicant.
- (ii) The Cash Memos are dated 27.10.2018 whereas payments have been made on 29.10.2018, i.e., after the currency was seized.
- (iii) The cash Memos indicate "ICICI Online Transaction" whereas there was no online transaction at the stage of issue thereof.
- (iv) The Cash Memos are manually issued.

It is, thus, apparent that the Cash Memos appear to have been issued post-facto and, hence, cannot be relied upon. Therefore, the Commissioner (Appeals) has erred in doing so.

6. In view of the above, the impugned Order-in-Appeal dated 13.08.2021 is set aside and the Order-in-Original No. 49/2020/AC dated 28.09.2020 is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs, Airport & Admn.,
NSCBI Airport,
Kolkata-700052.

Order No. _ 132_/22-Cus dated 11-04-2022

Copy to:

1. Sh. Ankit Bansal, Flat-2C, Mani Uday Building, 16, May Fair Road, Kolkata-700 019.
2. The Commissioner of Customs (Appeals), 15/1, 3rd Floor, Customs House, Strand Road, Kolkata – 700001.
3. PA to AS(RA).
4. ~~Guard File.~~
5. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (RA)