

**SPEED POST**



F. No. 380/79/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. 26/07/24

Order No. 145 /24-Cus dated 26-07-2024 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. 95 & 96/2019 dated 17.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : Sh. Abdulla Mohamed, Kasaragod

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**ORDER**

Revision Application No. 380/79/B/SZ/2019-RA dated 25.09.2019 has been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 95 & 96/2019 dated 17.06.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 11/2019 DC AP dated 21.01.2019, passed by the Deputy Commissioner of Customs, Mangaluru International Airport, Mangaluru and allowed redemption of the foreign currency i.e. 10000 Saudi Riyals, 4650 US Dollars and 10850 UAE Dirhams amounting to Rs. 6,50,248/-, which was seized from Sh. Abdulla Mohamed, Kasaragod (hereinafter referred to as the Respondent), on a redemption fine of Rs. 1,00,000/-.

2. Brief facts of the case are that the Customs officers intercepted the Respondent who was destined for Dubai from Mangaluru on 17.03.2018 and was proceeding towards security check after completing his immigration formalities. Upon being asked about the purpose of his visit to Dubai and as to whether he had anything to declare to Customs, the Respondent replied that he had nothing to declare to Customs and that he was proceeding to Dubai, as he worked there as a Bus Driver. Upon being specifically asked as to whether he was carrying any contraband goods or Indian/Foreign currency, he replied that he was not in possession of Indian/Foreign currency. Upon enquiry about the contents of his baggage, he replied that his baggage contained shirts, trousers and other clothes and stated that it did not contain any contraband or valuable goods. Upon examination of his checked in baggage, a bundle of foreign currency notes concealed among the clothes and two bundles of foreign currency notes of various denominations concealed in the bottom of the bag were found. Assorted foreign currency as mentioned above amounting to Rs. 6,50,248/- as per the prevalent exchange rate as per Notification No. 19/2018-Cus (N.T) dated 15.03.2018 was recovered.

In his statement dated 18.03.2018 recorded under Section 108 of the Customs Act, 1962, the Respondent, stated inter-alia that the said foreign currency notes concealed were given to him by one person named Rehman from his native place, Udma, to be handed over to a contact person in Dubai who would approach him after he reached Dubai; that for this he was promised a sum of Rs. 5000/- and due to the lure of money he accepted his proposal; and that since he did not give any valid documents for having purchased the foreign currency, he asked him to conceal the foreign currency notes in the baggage and accordingly, he attempted to smuggle out the said foreign currency. The original authority ordered absolute confiscation of the offending foreign currency under Section 113(d), 113(e) & 113(h) of the Customs Act, 1962 and also imposed penalty of Rs. 2,25,000/-, under Section 114 of the Act, *ibid*, on the Respondent.

Aggrieved, the Respondent filed an appeal, which has been partly allowed by the Commissioner (Appeals), as above.

3. The Revision Application has been filed by the Applicant department, mainly, on the grounds that Commissioner (Appeals) has condoned the delay in filing of appeal by the Respondent with a delay of 23 days accepting the ground of delay that he was abroad on job commitment and was not aware of time limit despite preamble portion on the Order-in-Original clearly stating the time limit; the Respondent had attempted to smuggle foreign currency in a concealed manner; that the Commissioner (Appeals) has exercised powers beyond the statutory provisions by way of allowing redemption of currency; that the finding of Commissioner (Appeals) that only Rs. 3,29,498/- was more than the eligible limit and which can be carried without declaration, is illegal, improper and is in clear disregard to the facts and circumstances of the case; that penalty under Section 114AA is merited in the case as the Respondent has not declared the foreign currency and this amounts to false and incorrect declaration; and that the penalty imposed under Section 114 is not appropriate considering the nature of offence and not as per the statutory provisions.

4. Personal hearing was held on 15.03.2024. Sh. Mitosh Raghavan, Deputy Commissioner appeared for the Applicant department and submitted that this is a case of export of currency in which the Commissioner (Appeals) has incorrectly allowed redemption against redemption fine. He sought setting aside of the OIA and imposition of higher penalty on the respondent. Since no one appeared for the respondents, a final opportunity for personal hearing was given on 22.03.2024. Sh. Arvind Raja, Assistant Commissioner appeared for the Applicant department and reiterated the submissions made during the previous hearing. Again, no one appeared for the side of respondent. Since sufficient opportunities have been provided, and no response has been received, the matter is being taken up for disposal.

5. The Government has carefully examined the matter. It is observed that the respondent was carrying foreign currency in excess of the permitted amount, without any evidence of lawful purchase, in a concealed manner, which he failed to declare even when pointedly asked by Customs if he was carrying any. It is also observed that he admitted to carrying this with full awareness that it was against the rules to do so, and did not declare it to customs in order to evade detection. He has admitted this in his statement recorded under section 108 of the Customs Act.

6. The Applicant department has contended that Commissioner (Appeals) has condoned the delay in filing of appeal by the Respondent with a delay of 23 days accepting the ground of delay that he was abroad on job commitment and was not aware

of time limit despite preamble portion on the Order-in-Original clearly stating the time limit. The proviso to Section 128(1) states:-

*"the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days".*

A reading of above proviso makes it clear that it is the discretion of the Commissioner (Appeals) whether to allow the appellant to file appeal in further extended period of thirty days. The appeal is statutorily condonable if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days. Hence, the condonation of delay by Commissioner (Appeals) merits no interference.

7. 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 Respondent has failed to show compliance with the Regulations, and he has admitted in his statement he did not possess any valid documents for the licit purchase of the foreign currency and he carried the said foreign currency notes lured by the promised remuneration of Rs. 5000/-. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) were not fulfilled. Further, Section 77 of the Customs Act, 1962 states *"The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."* The respondent did not fulfil the requirement of Section 77 as above despite being repeatedly asked.

8.1 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."*

8.2 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.

9. 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) E.L.T. 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 para 32 to 34 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"*. There is nothing in the OIA to suggest and establish that the order of the original adjudicating authority had any "patent illegality" or was "tainted by oblique motive".

10. It is further observed that the Commissioner (Appeals) has allowed redemption on the ground that the seized foreign currency being equivalent of Rs. 6,50,248/- is a mere 3,29,498/- more than the eligible limit which can be carried without declaration. This view does not appear to be correct as the Respondent had not fulfilled the condition subject to which he could retain or export the impugned currency as stated in para 7 above and hence was not eligible to carry the same out of India. He could have carried the same had he been able to produce evidence of lawful purchase acquisition of the impugned currency which he was unable to do. Further, in the case of P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, the Hon'ble Madras High Court has 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 this case the reason for which discretion has been exercised is that the foreign currency was just Rs. 3,29,498/- more than the eligible limit, which is incorrect.

11. As far as imposition of penalty under Section 114AA is concerned the Government concurs with the findings of the Commissioner (Appeals) which he has noted in para 19 of his order that demand has not been raised in the Show Cause Notice to impose penalty under the said Section and hence he could not go beyond the scope of Show Cause Notice and impose penalty under Section 114AA.

12. In view of the facts and circumstances of the case, the penalty imposed under Section 114 is just and fair.

13. In view of the above, the absolute confiscation of the impugned currency by the original adjudicating authority is upheld and the order of Commissioner (Appeals) is set aside to this extent.

14. The revision application is, accordingly, partially allowed.

*Shubhagata Kumar*  
26/7/24

(Shubhagata Kumar),  
Additional Secretary to the Government of India

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

Order No. 145 /24-Cus dated 26-07-2024

Copy to:

1. Sh. Abdulla Mohamed, S/o. sh. Abdul Rahman, Yerool House, 2-343, Bare Village, Udma P.O., Kasaragod District, Kerala-671319.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. PPS to AS(RA)
4. Guard file.
5. Spare Copy.
6. Notice board.

*Shailendra*  
26/7/24  
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