

**SPEED POST**

F. No. 375/07/B/2021-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHICAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 23/05/22

ORDER NO. 150/22-Cus dated 23-05-2022 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. 51(SM)CUS/JPR/2020 dated 18.09.2020, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

APPLICANT : Sh. Suresh Singh Rawat, Ajmer.

RESPONDENT : Commissioner of Customs, Jaipur.

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**ORDER**

A Revision Application No. 375/07/B/2021-R.A. dated 04.01.2021, has been filed by Sh. Suresh Singh Rawat, Ajmer (hereinafter referred to as the Applicant) against Order-in-Appeal No. 51(SM)CUS/JPR/2020 dated 18.09.2020, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur. Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, International Airport, Jaipur, bearing No. 09/2019-CUS-AC dated 30.08.2019, wherein, foreign currency (Saudi Riyals and UAE Dirhams), equivalent to Rs. 8,73,622/-, has been confiscated absolutely. Penalties of Rs. 8,73,622/- and Rs. 20,000/- under Section 114 and 114AA of the Customs Act, 1962, respectively, have been imposed on the Applicant.

2. Brief facts of the case are that the Applicant, scheduled to depart to Dubai on 30.07.2018, was intercepted at the International Airport, Jaipur. On examination of the baggage of the Applicant, foreign currency (Saudi Riyals and UAE Dirhams), equivalent to Rs. 8,73,622/-, was recovered for which he did not have any legal documents or permission from RBI. In his statement dated 30.07.2018, tendered under Section 108 of Customs Act, 1962, the Applicant stated that the foreign currency notes along with the trolley bag from which they were recovered were given to him by one Madan Tawani for delivery at Dubai; and that he agreed to illegally export the foreign currency in greed of expenditure of ticket to Dubai. The said foreign currency was confiscated absolutely by the original authority under Sections 113(d) and 113(e) of the Customs Act, 1962 and a penalty of Rs. 8,73,622/- was imposed on the Applicant under Section 114 of the Customs Act. Penalty of Rs. 20,000/- was also imposed under Section 114AA of the Act *ibid*. Aggrieved, the Applicant filed an

appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal.

3. The revision application has been filed by the Applicant canvassing that the said foreign currency was Applicant's own money earned while doing job in Dubai, which had been brought from Dubai by him and was being taken back; that the foreign currency was duly declared to the customs authorities at the time of import; that the currency was not concealed; and that foreign currency is not a prohibited item for export outside India.

4. Personal hearing in the matter was held on 17.05.2022. Sh. Arun Goyal, Advocate appeared for the Applicant and reiterated the contents of the RA and the written submissions dated 13.05.2022. He highlighted that:

(i) The Applicant was an NRI and seized foreign currency was his own money earned abroad (which was earlier brought into the country) that was being taken abroad.

(ii) In the alternate he requested that the goods may be released on RF and PP may be reduced.

Sh. B. B. Atal, AC appeared for the Respondent department and supported the orders of lower authorities.

5. The Government has carefully examined the matter. It is evident, from the evidence on record, that the foreign currency was recovered from the Applicant, which was not declared by him to the customs authorities. 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 under Section 77 of the Customs Act, 1962, and did not have any documents or evidence showing lawful possession of

the currency. The Applicant has claimed that the seized foreign currency was his own hard-earned money, which was brought by him during his previous visits but no evidence has been produced to substantiate this claim. It is claimed that while coming into India for the first time when he had carried Saudi Riyals 40,000/-, he had made a Declaration before the Delhi Airport Customs and that the department ought to have confirmed this position. However, the Government is not persuaded by this argument. It is trite that evidence to support the defence has to be submitted/led by the defendant. In case, the Applicant had indeed made such a declaration, in normal course, he would have retained a copy, failing which it was open to the Applicant to approach the authorities, if required, even under RTI Act. Further, this claim was not made at the time of recording of his voluntary statement dated 30.07.2018. It is also correctly observed by the original authority that the claim of keeping foreign currency untouched for a long period of time appears to be improbable. Thus, the subject contention appears to be nothing but an afterthought.

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 *ibid*. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) are not fulfilled.

7. The Applicant has contended that the seized foreign currency is not 'prohibited goods'. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* [1983 (13) ELT 1439 (SC)], 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 (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."* In view of the position explained in para 6 above, the conditions subject to which the currency could have been exported, have not been met in the present case. Hence, following the dictum of Hon'ble Supreme Court, the seized foreign currency is to be held as "prohibited goods".

8.1 The original authority has denied the release of impugned goods on payment of redemption fine under Section 125 of Customs Act, 1962. The Government observes that the option to release seized goods on redemption fine, in respect of "prohibited goods", 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.)].

8.2 The Applicant has, however, relied upon the judgment dated 17.02.2022 of the Hon'ble Rajasthan High Court, in the case of Manoj Kumar Sharma Vs. UOI & Ors [CWP No. 12001/2020] to seek redemption of the foreign currency. The Government finds that the Hon'ble Court has agreed with the judgment of Hon'ble Gujarat High Court, in the case of Bhargavraj Rameshkumar Mehta Vs. UOI [2018 (361) ELT 260 (Guj)], wherein it is held that for the purposes of Section 111 *"---goods, import of which is conditional, would fall within the definition of prohibited goods if such conditions are not complied with."* The Hon'ble High Court has, however, subsequently in its judgment distinguished between the interpretation of "prohibited goods" in respect of Section 125 and that in respect of Section 112 read with Section 111 in following terms:

*"This view may seem incongruent with the view expressed by Gujarat High Court in case of Bhargavraj Rameshkumar Mehta (supra) which we have also followed in this judgment but flavours of Section 112 and 125 of the Customs Act are entirely different. Section 125 on the other hand pertains to option to pay fine in lieu of confiscation. As noted sub-section (1) of Section 125 comes in two parts. Whenever confiscation of goods is authorised under the*

*Act, as per sub-section (1) of Section 125 the adjudicating officer has a discretion to offer redemption fine in lieu of confiscation in case of goods importation or exportation whereof is prohibited. In all other cases there is a statutory mandate on the adjudicating officer to offer such redemption fine. If the interpretation of Section 112 and 125(1) is not reconciled as above, this latter portion of sub-section (1) of Section 125 which covers all cases except where the importation or exportation of the goods is prohibited, would become otiose."*

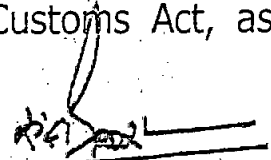
Thus, Hon'ble Rajasthan High Court has, in effect, held that while the goods, import/export of which is conditional, have to be considered as "prohibited goods" for the purposes of imposition of penalty under Section 112/114, however, for the purposes of Section 125 such goods cannot be considered to be so. The Government respectfully observes that this distinction drawn by the Hon'ble Rajasthan High Court is at variance with the judgment of Hon'ble Supreme Court in the case of Raj Grow Impex (supra). The Supreme Court has, in Raj Grow Impex, held that the goods which were imported beyond permissible quantity and without licence (i.e., in contravention of the conditions) were "prohibited goods" and thereafter proceeded to hold such goods liable to absolute confiscation, i.e., without affording the option of redemption under Section 125. The judgment in Raj grow Impex case has not been considered by the Hon'ble Rajasthan High Court in the case of Manoj Kumar Sharma.

8.3 In the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (supra), the Hon'ble Supreme Court has also 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 based on the relevant considerations".* In the present case, the original authority has refused to grant redemption in the background that the Applicant acted merely as a carrier of the seized currency. No case for interference with the discretion so exercised by the original authority is, therefore, made out.

9. It is observed that a penalty of Rs. 8,73,622/- has been imposed on the Applicant which is equal to the convertible value of the foreign currency seized. The penalty imposed is on a higher side, specially keeping in view the fact that the foreign currency has been confiscated absolutely. Accordingly, the penalty imposed, under Section 114 of the Customs Act, 1962, is reduced to Rs. 2.25 lakhs.

10. The revision application is allowed partly only to the extent of reduction in penalty under Section 114 of the Customs Act, as above.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Suresh Singh Rawat,  
S/o Sh. Kana Singh  
Tehsil Masuda, Dolatpura (Jamola)-305 001,  
Ajmer (Rajasthan).

Order No. 150/22-Cus dated 23-05-2022

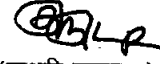
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1. Commissioner of Customs, NCRB Statue Circle, C-Scheme,  
Jaipur- 302 005 (Rajasthan)



2. Commissioner (Appeals), Customs, Central Excise & CGST  
NCRB Statue Circle, C-Scheme, Jaipur- 302 005 (Rajasthan)
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ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
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Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
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