

SPEED POST



F.No. 373/158/B/SZ/2020-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. 09/08/24.

Order No. 160/24-Cus dated 09-08-2024 of the Government of India passed by Smt. Shubhagata Kumar, 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. TCP-CUS-000-APP-054-20 dated 30.06.2020 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

Applicant : Shri Yasin Sikkandar, Madurai

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli.

ORDER

A Revision Application No.373/158/B/SZ/2020-RA dated 24.07.2020 has been filed by Shri Yasin Sikkandar, Madurai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-054-20 dated 30.06.2020, passed by the Commissioner of Customs & Central Excise(Appeals), Tiruchirapalli who has upheld the Order-in-Original No. 10/2019-20 dated 25.09.2019 of the Joint Commissioner of Customs (Preventive), Ramanathapuram.

2. Brief facts of the case are that the Applicant was scheduled to depart for Singapore from Madurai Airport, on 05.12.2018. On specific intelligence, he was intercepted by the officers of DRI at the departure hall of the Airport after he had cleared immigration formalities and was on his way to board Air India Express flight to Singapore. The officers questioned the Applicant as to whether he was carrying foreign currency with him, either in his person or in his hand/checked-in luggage, for which he replied in the negative. Not satisfied with his reply, the officers conducted a search of his person and examination of his hand/checked-in baggage and recovered the foreign currency, from his purse, inner garment and shoulder bag as detailed below:

From where recovered	Name of currency	Denomination	No. of Notes	Total Currency value	Value in INR
Purse	USD	100	10	1000	71,500
Around Waist	USD	100	122	12200	8,72,300
	Euro	500	6	3000	2,44,500
		50	100	5000	4,07,500
Shoulder Bag		100	55	5500	3,93,250
TOTAL					19,89,050

3. Further, Shri Yasin Sikkandar admitted that he did not declare the possession or carrying of foreign currency to Customs officers though he knew that smuggling of foreign currency out of India was an offence. The said foreign currency notes did not belong to him but was given by one Shri Subramaniam of Madurai; that he was a mere carrier and that he had indulged in such offence only for monetary consideration. As the Applicant did

not possess any valid documents/permit from RBI, he was unauthorized to deal in foreign currencies in terms of Foreign Trade Policy of 2015-2020, Section 3 & 4 of Foreign Exchange Management Act, 1999 and Regulation 5 and 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and Foreign exchange Management (Possession and retention of Foreign Currency) Regulations, 2015., and as he attempted to smuggle the same out of India by concealing them in his person and in his shoulder baggage, by not declaring the same to Customs, the aforesaid assorted foreign currency notes recovered from him totally equivalent to Indian Rs. 19,89,050/- alongwith packing material were held to be liable for confiscation under the provisions of Customs Act, 1962, and hence the officers seized the same under the Customs Act, 1962 read with the FEMA, 1999 under Mahazar dated 05/06.12.2018 in presence of independent witnesses.

4. In his voluntary statement recorded under Section 108 of the Customs Act, 1962, the Applicant inter-alia stated that he was operating as a trader since 2010; that he used to carry commercial items to Singapore and used to get Rs. 5,000/- per visit, as profit; that he got introduced to one Shri Subramaniam of Madurai who gave him foreign currency many times and he had carried and delivered them at Singapore to a certain Money Exchange as instructed by Shri Subramaniam; that Shri Subramaniam would bear the one way fare to Singapore if the foreign currency were delivered to his accomplice; that the seized foreign currency belonged to Shri Subramaniam and that he did not know the residential address of Shri Subramaniam.

5. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 10/2019-20 dated 25.09.2019 and has ordered for:

(i) Absolute confiscation of the foreign currency as detailed in the above table totally valued at INR Rs. 19,89,050/-, seized from the Applicant under Section 113(d) and 113(e) of the Customs Act, 1962, Para 2.45 of Foreign Trade Policy of 2015-2020, Section 3 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 1999, Regulation 5 & 7 of the Foreign Exchange Management (Possession and retention of Foreign Currency) Regulations, 2015;

(ii) Confiscation of the packing material, with no commercial value, used for concealing the foreign currency notes in the smuggling activity, under Section 119 of the Customs Act, 1962; and,

(iii) Imposition of penalty of Rs. 2,00,000/- under Section 114(i) of the Customs Act, 1962.

6. Aggrieved, the Applicant filed appeal before the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli who has rejected the appeal and upheld the OIO. Aggrieved by OIA, the Applicant filed this Revision Application.

7. The revision application has been filed mainly on the grounds that the order of the lower authority is contrary to law, weight of evidence, circumstances and probabilities of the case; that the recovered foreign currency was belonging to him and he was carrying the impugned currency to meet the expenses abroad; that the seized currency is not a prohibited item but is a restricted item and the lower authority ought to have released the seized currency on payment of redemption fine and penalty; that the Applicant had not violated any of the provisions of the Customs Act or Foreign Exchange Management (Export & Import of Currency) Regulations, 2015. The prayer is to set aside the order and set aside/reduce the penalty imposed.

8. In the personal hearing held on 10.07.2024, in virtual mode, Smt. P. Kamala Malar, Advocate appeared for the Applicant and stated that impugned goods in this case are foreign currency and the Applicant does not have evidence of acquisition of the same and reiterated the submission made in the revision application. Sh. Manimaran, Superintendent appeared on behalf of the Respondent and submitted that the Applicant was not eligible to bring currency greater than USD 300 and prayed for the OIA to be upheld.

9. The Government has examined the matter. It is not disputed that the foreign currency was recovered from the Applicant. It is also on record that the Applicant had not made any declaration in respect of the currency carried by him. Thus, it is evident that the Applicant did not make a correct declaration regarding the currency being carried by him as required under Section 77 of the Customs Act, 1962, and also did not have any documents or evidence showing lawful possession of the currency.

10. As regards, the contention of the Applicant claiming that he is the owner of impugned goods at later stage, it is evident that the Applicant was intercepted by the officers of Customs at the departure hall of the Airport after he had cleared immigration formalities and was on his way to board Air India Express flight to Singapore. The Applicant has admitted in his voluntary statement under Section 108 of the Customs Act, 1962 that the foreign currency did not belong to him and the same was handed over to him by one Shri Subramaniam of Madurai with instructions to deliver them to his accomplice at Singapore; that he was a mere carrier and that he had indulged in such an offence only for monetary consideration with full awareness that carrying foreign currency and attempt to smuggle it by way of concealment, non-declaration to Customs, without possession of any valid permit/license/document, is an offence. The relevant sequence of events has been recorded in the Mahazar in the presence of independent witnesses also substantiating the attempt of the Applicant to smuggle the confiscated goods. In this context, the judgement of *Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}*, is pertinent wherein *Hon'ble Supreme Court held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}*, the *Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction*. In the present case, the Applicant has admitted his involvement in the case of smuggling due to lure of earning easy money. The material on record also does not contain anything to suggest that the Applicant was coerced into making the statement under section 108 or any evidence to establish licit ownership of the impugned currency. If indeed the statement was not voluntary, it was open to the applicant to represent the same to Commissioner (Appeals) and establish lawful possession of the currency. Therefore, there is no doubt that the statement tendered was voluntary. As such, it is evident that the foreign currency did not belong to the Applicant as has been claimed by him subsequently appear to be an afterthought.

11. 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." Furthermore, in terms of Regulation 3(iii) of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, 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 failed to show compliance with the Regulations, as above. Thus, it is clear that the conditions in respect of possession and export of and foreign currency (seized from the Applicant) are not fulfilled.

12.1 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."*

12.2 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 case.

13. 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.)]. In the case of UOI &Ors vs. M/s Raj Grow Impex LLP & Ors (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 based on the relevant considerations". 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.*" Thus, the discretion exercised by the original authority ought to have been interfered with, only if it suffered from any of the vices indicated by the Hon'ble Court, as above. Such a case is not made out. As such, the Commissioner (Appeals) has rightly upheld the Order-in-Original.

14. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

15. In view of the above, the revision application is rejected.

Shubhagata Kumar
9/8/24

(Shubhagata Kumar)
Additional Secretary to the Government of India

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Order No. 160 /24-Cus dated 09-08-2024

Copy to:

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2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Shri S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

Sarabjeet Singh
09/8/24

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