

**SPEED POST**



F.No. 373/120/B/SZ/2020-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. 12/09/24.

Order No. 193/24-Cus dated 12-09-2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal Airport. Cus. I. No. 113/2020 dated 24.03.2020, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Mohamed Saleem, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

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**ORDER**

A Revision Application No.373/120/B/SZ/2020-RA dated 26.06.2020 has been filed by Shri Mohamed Saleem, Chennai (hereinafter referred to as the Applicant/passenger/pax), against the Order-in-Appeal Airport. Cus. I. No. 113/2020 dated 24.03.2020, passed by the Commissioner of Customs (Appeals-I), Chennai who has upheld the Order-in-Original No. 356/2019-20-Commissionerate-I dated 19.02.2020 passed by the Joint Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, Chennai-I.

2. Brief facts of the case are that the Applicant, an Indian Passport holder, was scheduled to depart for Singapore from Anna International Airport, Chennai, on 21.01.2019. He was intercepted by the officers of Air Intelligence Unit in the Departure Terminal of Anna International Airport after clearing immigration and proceeding to the security hold area, on a reasonable suspicion that he might be carrying Indian/Foreign currency or contraband either in his baggage or in person. On examination of his checked-in baggage, two white gunny bags containing 14 kgs shark fins were found. In one of the gunny bags, assorted foreign currency equivalent to Indian Rs. 32,95,715/- were found inside two brown paper packets concealed amidst the shark fins. In respect of Shark fins, a certificate was issued by the Wildlife inspector, Wild Life Crime Control Bureau, Chennai, Southern Region that there was a probability of it being a CITES listed species and export of Shark fins is prohibited as per the export policy. As the passenger did not possess any valid document/permit to prove the licit origin and legal acquisition of the said currencies and Shark fins and as he attempted to smuggle the same out of India by way of concealment and non-declaration to Customs, the aforesaid foreign currency totally amounting to Rs. 32,95,715/- and Shark fins valued at Rs. 7,87,500/- were seized in the presence of independent witnesses under a mahazar under Section 110 of the Customs Act, 1962 read with Foreign Exchange Management (Export and Import of currency) (Amendment) Regulations, 2015 read with FEMA, 1999 read with FEMA, 199 and Wild Life Protection Act, 1972 for further action.

3. In his voluntary statements dated 21.01.2019 & 28.01.2019 recorded under Section 108 of the Customs Act, 1962, the Applicant inter-alia stated that the brown carton box containing the foreign currency and the Shark fins was given to him by a person named Ali

outside the Chennai airport to hand over the same to an unknown person outside the Singapore airport for a monetary benefit of Rs. 10,000/-; admitted that he was well aware that smuggling of foreign currency by way of concealment and without valid documents was an offence under Customs Act, 1962. Since, the Applicant had attempted to smuggle out foreign currency and Shark fins from India by way of concealment and non-declaration to Customs by which he had contravened the provision of Customs Act, 1962 and thus he had committed an offence punishable under Sections 132 and 135 (1) (a) & (b) of Customs Act, 1962. He was, therefore, arrested on 21.01.2019 under Section 104 of the Customs Act, 1962 and was later released on bail.

4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 356/2019-20-Commissionerate-I dated 19.02.2020 adjudicated the case and absolutely confiscated the seized foreign currencies equivalent to Rs. 32,95,715/- and 14 kg shark fins valued at Rs. 7,87,500/- under Section 113(d) & (e) of the Customs Act, 1962 read with Foreign Exchange Management (Export and Import of currency) (Amendment) Regulations, 2015 and the Wild Life Protection Act, 1972. Personal penalty of Rs. 8,00,000/- was also imposed on the Applicant under Section 114 of the Customs Act, 1962.

5. Aggrieved, the Applicant filed appeal before the Commissioner of Customs (Appeals-I), Chennai who has rejected the appeal and upheld the OIO. Aggrieved by OIA, the Applicant filed this Revision Application.

6. The instant 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 seized money belongs to him and he kept it in carton box for safety purpose and there is no ingenious concealment; that the seized currency is not a prohibited item but is a restricted item and the adjudicating authority ought to have released the seized currency on payment of redemption fine and penalty; that the seized currency is within permissible limit of US \$5000. The prayer is to release the foreign currency on payment of nominal redemption fine and reduce the personal penalty imposed.

7. Personal hearings in the matter were fixed on 12.06.2024, 21.06.2024 and 10.07.2024. Smt. P. Kamalamalar, Advocate appeared on 10.07.2024 on behalf of the

Applicant and reiterated the written submissions. Shri S. Ramesh, Assistant Commissioner of Customs (Legal & Review), Chennai-I vide letter dated 12.06.2024 submitted that the Applicant did not declare the impugned currency, which was found concealed amidst the shark fins, that the goods are prohibited since the conditions prescribed for import or export of goods are not complied with, and that the imposition of redemption fine & penalty is just and fair. Therefore, it is prayed that the appeal filed by the Applicant be set aside.

8. The Government has examined the matter. It is not disputed that the foreign currency ingeniously concealed which were found concealed amidst the shark fins. The recovered Shark fins were also prohibited items as per the export policy and a certificate to this effect was issued by the Wildlife inspector, Wild Life Crime Control Bureau, Chennai, Southern Region. The Applicant has not made any submission in his revision application regarding Shark fins. As regard the seized foreign currency, it is on record that the Applicant had not made any declaration in respect of the assorted currency carried by him which was ingeniously concealed amidst the Shark fins, which by itself is a prohibited item. 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. It is seen that Applicant in his voluntary statement admitted that impugned goods did not belong to him and that he acted as a carrier for monetary benefit. The Appellate Authority in para (6) & (7) of the said O-I-A has also pointed out the action of the passenger in concealing the currency ingeniously has contradicted his stand. Therefore, the Commissioner (Appeals) has rejected the Applicant's claim regarding ownership of the foreign currency an afterthought. The Government concurs with the findings of Commissioner (Appeals) and finds that the decision made by the Appellate Authority is well reasoned and proper.

9. 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 can 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.

10. As regard the contention of the Applicant that the seized currency is within permissible limit of US \$5000, the Appellate Authority in para (8) has already discussed it in detail and rejected the submission and concluded that the impugned currency had not been acquired through legal channel, in violation of the prevalent Customs, FEMA and RBI notifications. Therefore, the Government finds no infirmity with the decisions of appellate authority.

11.1 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."*

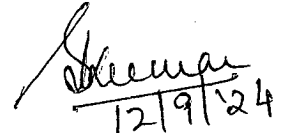
11.2 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case.

12. 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.*" In the present case, the absolute confiscation has been ordered as the Applicant, acting as a carrier, was smuggling large amount of foreign currency by ingenious concealment, while also attempting to smuggle out Shark fins which are also prohibited item. Thus, no case for interference with the discretion exercised by the lower authorities is made out. The case laws relied upon by the Applicant are not applicable in the facts and circumstances of the present case as the redemption has been denied for reasonable and relevant considerations and, as such, fulfils the test laid down by Raj Grow Impex. As such, the Commissioner (Appeals) has rightly upheld the Order-in-Original.

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

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

  
12/9/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Mohamed Saleem,  
S/o Shri Mohamed Shahul Hameed,  
No. 13/23, Marakkayar Lebbai Street,  
Mannady, Chennai – 600 001

Order No. 193/24-Cus dated 12-09-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3<sup>rd</sup> floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.

4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

*Shailendra*  
12/9/24

(शैलेन्द्र कुमार मीना)  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
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नई दिल्ली / New Delhi