

SPEED POST



F.No. 373/144/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. 24/09/24.

Order No. 199/24-Cus dated 24-09-2024 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 No. TCP-CUS-000-APP-015-20 dated 02.03.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore @ Trichy.

Applicant : Shri Abdul Nafik, Malaysia

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

.....

ORDER

A Revision Application No. 373/144/B/SZ/2020-RA dated 22.07.2020 has been filed by Shri Abdul Nafik, Malaysia (hereinafter referred to as the Applicant), against Order-in-Appeal No. TCP-CUS-000-APP-015-20 dated 02.03.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore @ Trichy who has partially allowed the appeal of the Applicant against the Order-in-Original No. 148/2019 dated 30.04.2019 passed by the Assistant Commissioner of Customs (Preventive), Trichy. The Applicant has also submitted a request for condonation of delay in filing the said RA.

2. Brief facts of the case are that the Applicant, a Malaysian Passport holder, was scheduled to depart for Kuala Lumpur from Trichy Airport, on 08.12.2018. He was intercepted by the officers of Air Intelligence Unit, Customs Airport, Trichy near the customs counter next to immigration check at the departure hall of the airport. The officers examined his baggage in the presence of two independent witnesses and found 29,250 Malaysian Ringgits (50 and 100 denominations) equivalent to Rs. 5,01,053/- which was kept in a green colour Adidas Sport Hip pouch inside his stroller bag. The officers enquired the Applicant as to why he did not declare the Foreign Currency in hand luggage, the Applicant had replied that he did not possess valid documents for the legal export of foreign currency and he did not declare the possession of foreign currency when enquired. Hence, on the reasonable belief that the impugned currency were attempted to be exported out of India in contravention of the Customs Act, 1962 and other relevant laws, the officers seized them under a mahazar for taking further action.

3. In his voluntary statement dated 08.12.2018 recorded under Section 108 of the Customs Act, 1962, the Applicant inter-alia stated the sequence of events and recovery of foreign currency as stated in the mahazar. He further stated that he did not possess documents for the legal possession of the foreign currency; that he carried 37,000 foreign currency viz. Malaysian Ringgits from Malaysia when he arrived on 03.12.2018 to see his mother; that he spent some of this money in India and remaining 29,250 Malaysian Ringgits are carried while boarding to Malaysia on 08.12.2018; that the seized foreign currency belong to him; that he did not possess any evidence for the exchange of foreign

currency; that he did carry the foreign currency without declaring to the Customs officers; that he knew that carrying foreign currency without documents is an offence.

4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 148/2019 dated 30.04.2019 adjudicated the case by absolutely confiscating the seized foreign currency notes equivalent to Rs. 5,01,053/- under Section 113(d) & (e) of the Customs Act, 1962 read with Sections 3 and 4 of FEMA, 1999 and Regulations 5 and 7 of the Foreign Exchange Management (Export and Import of currency) Regulations, 2015 and imposed personal penalty of Rs. 50,000/- on the Applicant under Section 114(i) of the Customs Act, 1962.

5. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai who has partially allowed the appeal and ordered for the release of impugned foreign currency notes on payment of fine of Rs. 50,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 and upheld the personal penalty imposed on the Applicant. Aggrieved by the said order, the Applicant filed this Revision Application.

6. The instant revision application has been filed mainly on the grounds that import of foreign currency and subsequent export is not prohibited; that there was no concealment and that he has not violated any law in force in India knowingly. The prayer is to reduce the redemption and penalty imposed on the Applicant.

7. Personal hearings in the matter were fixed on 14.06.2024 and 08.07.2024. Shri Selvaraj, Advocate appeared physically on 08.07.2024 on behalf of the Applicant and submitted that the Applicant is a Malaysian citizen and a well to do businessman there; that the impugned currency belonged to him; that he did not declare the currency at the time of arrival into India as he was under the impression that foreign nationals can bring any amount of foreign currency without declaring the same; that Commissioner (Appeals) has allowed redemption of the currency which has been taken back by the Applicant, but he seeks reduction in penalty imposed. No one appeared for the Respondent. Hence, it is presumed that the Respondent department has nothing to add in the matter.

8. The instant revision application has been filed with a delay of 39 days i.e. after the expiry of three months from the date of receipt of O-I-A. However, as per proviso to sub-section (2) of the Section 129DD of the Customs Act, 1962 provides discretion to the Government to allow an application to be presented within a further period of three months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of three months. The cause of delay is stated to be the Applicant's illness; that he was under medical treatment during this period. Further, the Hon'ble Supreme Court vide its order dated 10.01.2022, has excluded the period from 15.03.2020 till 28.02.2022 in computing the period of limitation during the COVID/lockdown period. Therefore, the delay is condoned.

9. The Government has examined the matter. The impugned currency has already been redeemed by the Applicant in pursuance of Commissioner Appeals' order allowing redemption against payment of redemption fine. The subject RA has been filed solely for reduction in penalty. The Government observes that the quantum of penalty imposed works out to around 10% of the value of the foreign currency. In this context, it is further observed that the Applicant not only failed to declare the currency to Customs but also denied possession of the same when pointedly asked by Customs if he was carrying any. Therefore, the intent to conceal and attempt to take the currency out of India is quite clear. If the currency was legally acquired, he ought to have declared the same without any hesitation. He did not do so. Hence, there is no doubt that he willingly chose to not declare the currency so as to evade detection and when caught, denied the same. Therefore, there is no ground for reduction in penalty.

10. 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. Therefore, the impugned currency notes were liable for confiscation and the Applicant is liable for penalty. However, the appellate authority, taking a lenient view as explained in para (8) & (9) of the O-I-A, has allowed redemption of the seized currency under Section 125 of the Customs Act, 1962 which appears to be just & fair and requires no interference.

11. In the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is neither harsh nor excessive.

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

Shubhagata Kumar
24/9/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Abdul Nafik,
S/o Shri Ahmed Jalaludeen,
No. 1116, Mukim 8,
Permatang sintok 13100 penaga,
Pulau Pinang, Malaysia

Order No. 199/24-Cus dated 24-09-2024

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), Coimbatore & Trichy, No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Sh. A. Selvaraj, Superintendent of Customs (Retd.), 68, Krishnamurthynagar, Tiruchirappalli-620021
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

Shailendra Kumar Meena
24/9/24
ATTESTED (शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार, दिल्ली-110011