

SPEED POST



F.No. 373/49/B/SZ/2023-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.. 03/10/24

Order No. 208/24-Cus dated 03-10-2024 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. COC-CUSTOM-PRV-APP-129-22-23 dated 28.02.2023 passed by the Commissioner (Appeals), Central Tax, Central Excise & Customs, Kochi.

Applicant : Shri Ashraf Balanadukam, Kasaragod

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

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ORDER

A Revision Application No. 373/49/B/SZ/2023-RA dated 31.07.2023 has been filed by Shri Ashraf Balanadukam, Kasaragod (hereinafter referred to as the Applicant/passenger), against Order-in-Appeal No. COC-CUSTOM-PRV-APP-129-22-23 dated 28.02.2023, passed by the Commissioner (Appeals), Central Tax, Central Excise & Customs, Kochi who has partially allowed the appeal against the Order-in-Original No. 10/2019-AIU dated 07.01.2019 passed by the Deputy Commissioner of Customs, International Airport, Calicut and ordered for the release of the foreign currency equivalent to US\$ 5000 (equivalent to Rs. 3,47,750/-) only, as per the then Notification No. 02/2019-Customs (N.T.) dated 03.01.2019 on payment of redemption fine of Rs. 80,000/- under Section 125 of the Customs Act, 1962. The seized foreign currency over and above US\$ 5000 were absolutely confiscated and the penalty imposed on the Applicant was upheld by the Appellate Authority. Aggrieved by the O-I-A, the Applicant filed this Revision Application.

2. Brief facts of the case are that the Applicant, an Indian Passport holder, was scheduled to depart for Dubai from Calicut International Airport, Kerala, on 04.01.2019. He was intercepted by the Customs officers at the security hold area of the International departure terminal of the airport while attempting to illegally export foreign currency. On detailed examination of his hand baggage, the officers recovered a bundle of 2600 Euro (€) and 5600 Pound Sterling (£) which were kept in a concealed manner. During personal hearing the Applicant had stated before the LAA that he had attempted to carry the amount for his business purposes. The LAA found that the Applicant did not have any valid document to prove that the foreign currency was procured from an authorized money exchange dealer. The LAA held that the Applicant had violated the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations (hereinafter referred to as FEMR), 2015 issued under Section 6 of FEMA, 1999. The currency was seized under a Mahazar dated 04.01.2019 on a reasonable belief that the said item is liable for confiscation under the provisions of the Customs Act, 1962. The Applicant has requested for waiver of Show Cause Notice. Therefore, vide aforesaid O-I-O dated 07.01.2019, the Adjudicating Authority ordered for absolute confiscation of foreign currency of 2600 Euro (€) and 5600 Pound Sterling (£) (cumulatively equivalent to Rs. 6,81,070/-) under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962. Besides, a penalty of Rs. 10,000/- was also imposed on the Applicant under Section 114 of the Customs Act, 1962. The matter was adjudicated vide order dated 07.01.2019. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who modified the Order-in-Original as mentioned above.

3. The instant revision application has been filed mainly on the grounds that the order of Appellate Authority is not justified giving an option to the appellant an option to redeem the confiscated foreign currency equivalent to only US\$ 5000 on payment of redemption fine under Section 125 of the Customs Act, 1962 without giving an option to redeem the remaining foreign currency; that the Applicant is a bonafide passenger with a valid passport, the currency he carried was his own unspent foreign currency which was brought during his previous visits to India on more than one occasion. Since the amount

brought each time was less than USD 5000, he had not declared the same in CDF; there was no concealment of foreign currency and he had carried the currency in his hand baggage because of security reasons; foreign currency is not a prohibited items and carrying back any unspent amount is not an offence. It is prayed that the impugned O-I-O and O-I-A may be set aside and Applicant may be given an option to pay fine on the remaining amount in lieu of confiscation.

4. Personal hearing in the matter was fixed on 20.09.2024. The Applicant appeared and submitted that the delay in filing the RA is due to his eye treatment as he lost vision and that he has forwarded the document with his young daughter's help. He further submitted that he used sell garments in Dubai and the impugned currency was his own earnings which he had brought to India over multiple trips. When asked whether he had filled any CDFs on these trips he replied in the negative. He stated that he is disabled due to his eyesight; that he has four daughters to care for and no other able bodied person in his family therefore leniency should be shown & the currency be returned to him. Ms. Latha R. Assistant Commissioner, appeared on behalf of the Respondent department and stated that his earnings in Dubai would be in Dirham or Riyal but he was caught with USD and Pound Sterling, with no valid documents, therefore the O-I-A should be upheld.

5. The Government observes that the instant revision application has been filed with a delay of around 34 days after the expiry of three months from the date of receipt of O-I-A. In terms of sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. 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 delay is due to Applicant's sickness and due to loss of his eyesight was not in a position to approach his counsel and to immediately follow up the appeal and was not aware of the time limit. In this connection the applicant has furnished supporting medical documents. Therefore, the delay is condoned.

6. The Government has examined the matter. The foreign currency was recovered from the hand bag of the applicant only upon the examination of his baggage by Customs. It is 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 declaration regarding the currency being carried by him as required under Section 77 of the Customs Act, 1962. He also did not have any documents or evidence showing lawful possession of the currency.

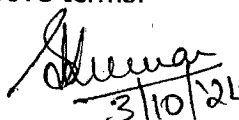
7. As per Regulation 5 of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2015, *"Except as otherwise provided in these regulations, no person shall, without the general or special permission of Reserve Bank, export or send out of*

India, or import or bring into India, any foreign currency." 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. Therefore, the impugned currency notes were liable for confiscation and the Applicant is liable for penalty.

8. The Government observes that, in terms of Section 125 of the Customs Act, 1962, the option to release 'prohibited goods', on redemption fine, 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 Raj Grow Impex (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; has to be based on relevant considerations."* Further, in the case of P. Sinnasamy (supra), it has been held that *"when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason"."* 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 could have been interfered with only if it suffered from any of these vices. In the present case, the Appellate Authority has for relevant and reasonable considerations recorded in paras 4.6, 4.7 & 4.8 of the OIA exercised the discretionary powers vested under Section 125 of the Customs Act, 1962 by allowing release of the foreign currency equivalent to US\$ 5000 (equivalent to Rs. 3,47,750/-) only, as per the Notification No. 02/2019-Customs (N.T.) dated 03.01.2019 on payment of redemption fine of Rs. 80,000/- under Section 125 of the Customs Act, 1962. The Government finds that the decision of the Appellate Authority appears to be just & fair and requires no interference.

9. In view of the facts and circumstances of the case, however, the penalty imposed under Section 114 of the Customs Act, 1962 is reduced from Rs. 10,000/- to Rs. 5,000/- and the OIA is modified to this extent.

10. In view of the above, the revision application is disposed of on above terms.


3/10/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Shri Ashraf Balanadukam,
S/o Shri Ibrahim Balanadukam,
Balanadukam House,
P.O. Muliya, Kasaragod – 671 542.

Order No. 208/24-Cus dated 03-10-2024

Copy to:

1. The Commissioner of Central Tax, Central Excise & Customs (Appeals), Central Revenue Building, I.S Press Road, Kochi-682018.
2. The Commissioner (Preventive), Cochin, 5th Floor, Catholic Centre, Broad Way, Cochin - 682031.
3. Sh. Sameer Kashimji, Advocate, 22 Sweet Home Apartments, Britto Lane, Falnir, Mangaluru – 575001 (Karnataka).
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

Shailendra
3/10/24
ATTESTED (शैलेंद्र 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