

**SPEED POST**



F. No. 373/285/B/SZ/2018-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...19/9/22

Order No. 219/23-Cus dated 19.09.2023 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. 92/2018-TRY(CUS) dated 17.05.2018 passed by the Commissioner of Customs & Central Excise(Appeals), Tiruchirapalli.

Applicant : Smt. Jannathunnisa, Ramnad.

Respondent : The Commissioner of Customs(P), Tiruchirapalli.

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## **ORDER**

A Revision Application No. 373/285/B/SZ/2018-RA dated 05.09.2018 has been filed by Smt. Jannathunnisa, Ramnad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 92/2018 dated 17.05.2018 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, Customs Port, Tiruchirapalli, bearing no. 249/2017 dated 25.11.2017, wherein Indian Currency amounting to Rs. 1,50,000/-, which was recovered from the Applicant, has been confiscated absolutely under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. Besides, a penalty of Rs. 5,000/- was also imposed on the Applicant by the original authority, under Section 112(a)&(b) of the Act *ibid*.

2. The brief facts of the case are that the Applicant was intercepted by the Customs AIU officers upon her arrival from Kuala Lumpur to Tiruchirapalli, on 03.12.2016, when she was about to cross the exit gate. The officers verified with the Customs Baggage Officers and found that she did not tender the Customs Declaration Slip declaring the possession of valuables and Indian Currency prior to crossing through the exit gate. Upon being enquired whether she had brought any dutiable goods or Indian currency with her, she replied in negative. Upon examination of her hand baggage, one green colour 'Nestle Milo' bag, the officers found two bundles of Indian currency notes concealed along with her clothes. Thereafter, upon counting the bundles of Indian currency notes, i.e. one bundle with Rs. 500/- notes and another with Rs. 1000/- notes denomination, it was found to be amounting to Rs. 1,50,000/-. Upon being further questioned by the officers as to whether she was in possession of any valid document for the legal import of the aforesaid Indian currency recovered from her, to which she replied in negative. The same was confiscated absolutely by the original authority under Section

111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, vide Order-in-Original dated 25.11.2017. A penalty of Rs. 5,000/- was also imposed under Section 112(a)&(b) of the Act, *ibid*. Aggrieved, the Applicant herein filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal.

3. The revision application has been filed, mainly, on the grounds that what Applicant brought was not 'currency' on that day as after demonetization those notes were not legal tender anymore; and that therefore the Applicant was not required to declare the same under Section 77 of the Customs Act, 1962; that even if the demonetized notes are considered as negotiable instruments, as there is no requirement to declare if the amount is up to 5000 USD. It is prayed that confiscated currency be released to the Applicant.
4. Personal hearing, in virtual mode, was held on 11.08.2023. Sh. Periasamy, Advocate, appeared for the Applicant and reiterated that the currency notes of 500 and 1000 denomination were not legal tender on the date the applicant arrived in India and therefore the pax was not required to declare the same to Customs. He further stated that in any case there was no requirement to declare currency equivalent to 5000 USD. He sought a lenient view. No one appeared from the department, nor has any request for adjournment been received in this regard hence it is presumed that the department has nothing to add in the matter.
5. The Government has carefully examined the matter. The Applicant was specifically asked by the Customs Officer whether she was carrying any Indian Currency to which she replied in the negative. However, she was found to be in possession of Indian currency notes of 1000 and 500 denominations amounting to Rs.1,50,000/- which was recovered from her baggage. Thus, it is also on record that she did not declare the confiscated currency to the Customs authorities at the time of her arrival, as required under Section 77 of Customs Act, 1962, not when she was

asked if she was carrying any. Further, the Applicant failed to produce any licit documents for valid possession of the confiscated Indian currency.

6. It is contended that even if the demonetized notes are considered as negotiable instruments then there is no requirement to declare up to 5000 USD. In this connection, as per Section 6 of Foreign Exchange Management (Export & Import of Currency), Regulations, 2015 :-

*A person may -*

- a. send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques;*
- b. bring into India from any place outside India without limit foreign exchange (other than unissued notes),*

*provided that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations;*


*provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US\$10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US\$ 5,000 (US Dollars five thousands) or its equivalent.*

The word 'foreign currency notes' mentioned above in the second proviso makes it amply clear that the requirement to declare up to 5000 USD has been dispensed with in the case of foreign currency only and not in respect of Indian currency notes. Hence, this argument also does not hold water. Further, as per Section 3(1)(c), of Foreign Exchange Management (Export & Import of Currency), Regulations, 2015, import of Indian Currency above Rs. 25000/- into India without

special permit issued by the Reserve Bank of India is not permitted. In the present case, the Applicants have failed to demonstrate compliance with the Regulations as above and clearly, the conditions in respect of possession and import of Indian currency seized from the Applicant are not fulfilled. Hence, the contention of the Applicants that 500 and 1000 bank notes issued by the RBI were not "currency" and there was no necessity for the Applicant to declare them is sans merit.

Further, the Applicant's other contention is that after demonetization the currency notes of 500 and 1000 denominations lost its legal tender status. However, as per this argument, if the currency notes had lost their legal tender status and were merely worthless pieces of paper, it is inconceivable why anyone would carry them in their baggage. It is an inescapable conclusion that these notes were being brought for exchanging them for other denominations which had been allowed by the Government initially from 09.11.2016 to 30.12.2016 and later extended up to 31.03.2017. The Applicant arrived on 03.12.2016 and would have had enough opportunity to exchange these notes had she not been intercepted by Customs. Thus this argument lacks merit and cannot be accepted.

7. In view of the above, impugned Order-in-Appeal is upheld and the revision application is disposed of accordingly.

  
19/9/23  
(Shubhagata Kumar)

Additional Secretary to the Government of India

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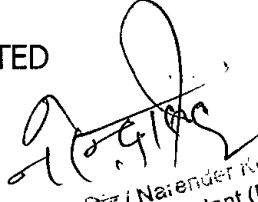
Order No. 219 /23-Cus dated 19.09.2023

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. S. Periasamy, Advocate, 5-6-51 VOC Nagar, Valluvarcolony, Madurai-625017.

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

ATTESTED

  
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