

SPEED POST



F. No. 373/286/B/SZ/2018-RA
F. No. 373/287/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...19/9/23

Order No. 220-22/23-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 Applications, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 93 & 94/2018-TRY(CUS) dated 17.05.2018 passed by the Commissioner of Customs & Central Excise(Appeals), Trichy.

Applicant : Sh. Zakir Hussain, Malaysia
Smt. Sithiaysha, Ramnad

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

ORDER

Revision Application Nos. 373/286/B/SZ/2018-RA & 373/287/B/SZ/2018-RA dated 05.09.2018 has been filed by Sh. Zakir Hussain, Malaysia & Smt. Sithiaysha, Ramnad (hereinafter referred to as Applicant-1 & Applicant-2 respectively) against the Order-in-Appeal No. 93 & 94/2018 – TRY (CUS) dated 17.05.2018 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, Customs Port, Trichy, bearing no. 248/2017 dated 25.11.2017, wherein Indian Currency amounting to Rs. 4,81,500/-, which was recovered from both the Applicants, 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, penalties of Rs. 5,000/- each were also imposed on both the Applicants by the original authority, under Section 112(a)&(b) of the Act *ibid*.

2. The brief facts of the case are that both the Applicants were intercepted by the Customs AIU officers upon their arrival from Kuala Lumpur at Trichy, on 28.11.2016. The AIU officers verified with the Customs Baggage Officers and found that they did not tender the Customs Declaration Slip declaring the possession of valuables and Indian Currency prior to crossing the Green Channel. Upon being enquired whether they had brought any dutiable goods with them, they replied in negative. Upon examination of their baggage, the officers found seven bundles of Indian currency notes i.e. four bundles of Rs. 500/- denomination and three bundles of Rs. 1000/- denomination. After inventorising it was found that Indian Currency worth Rs. 2,81,500/- was recovered from Applicant-1 and Rs. 2,00,000/- were recovered from Applicant-2. Thus, total Indian Currency amounting to Rs. 4,81,500/- was recovered from both of them. Upon being further questioned by the officers as to whether they were in possession of any valid document for the legal import of the aforesaid Indian currency recovered from them, they replied in the negative. The same was then 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. Penalties of Rs. 5,000/- each were also imposed under Section 112(a)&(b) of the Act, *ibid*. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the same.

3. The revision applications have been filed on the grounds that what the Applicants brought into India was not 'currency' on that day, post demonetization, those notes were not legal tender; that the Applicants were not required to declare the same under Section 77 of the Customs Act, 1962, even if the demonetized notes are considered as negotiable instruments as there is no requirement to declare currency up to 5000 USD. It is prayed that confiscated currency be released to the Applicants.

4. Personal hearing, in virtual mode, was held on 11.08.2023. Sh. Periasamy, Advocate, appeared for the Applicants and reiterated that the currency notes of 500 and 1000 denomination were not legal tender and therefore the applicants were not required to declare the same to Customs. He further stated that there was no requirement to declare currency equivalent to 5000 USD, and sought a lenient view. No one appeared from the department nor has any request for adjournment has been received. As such, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is noted that the Applicants were specifically asked by the Customs Officer whether they were carrying any Indian Currency to which they replied in the negative. However, upon search they were found in possession of Indian currency amounting to Rs.4,81,500/- which was recovered from their baggage. It is also on record that they did not declare the impugned currency to the Customs authorities at the time of their arrival, as required under Section 77 of Customs Act, 1962. Further, the Applicants failed to produce any licit documents for valid possession of the said impugned Indian currency.

6. The Applicants' main contention is that after demonetization the currency notes of 500 and 1000 denominations lost its legal tender status. However, this argument is untenable, because had the currency notes been 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 Applicants arrived on 28.11.2016 and would have had enough opportunity to exchange these notes had they not been intercepted by Customs. Thus this argument lacks merit and cannot be accepted. Further, it has been contended that even if the demonetized notes are considered as negotiable instruments then there is no requirement to declare the same if the aggregate value of foreign currency notes

brought at any one time does not exceed 5000 USD. In this connection, Section 6 of Foreign Exchange Management (Export & Import of Currency), Regulations, 2015 states that:-

"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."

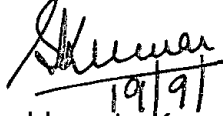
The words 'foreign currency notes' mentioned in the second proviso above, makes it amply clear that the requirement to declare up to 5000 USD has been dispensed with in the case of foreign currency only and not in respect of Indian currency. Hence, this argument also does not hold water.

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 comply with the Regulations as above and it is clear that the conditions in respect of possession and import of Indian currency (seized from the Applicant) have not been 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 and unacceptable.

As regards absolute confiscation of the goods i.e. Indian currency notes is concerned, it is well established from the foregoing paras that the conditions for import of Indian currency notes have not been complied with and as such, the

goods became 'prohibited'. In the case of 'prohibited' goods, it is the discretion of original adjudicating authority whether to release the goods on payment of redemption fine or not. Here the original adjudicating authority has not allowed redemption of the goods which has been upheld by the Appellate authority. As such, the Government finds no reason to interfere with the orders of lower authorities.

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


19/9/23
(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 220-221/23-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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