

**SPEED POST**



F. No. 373/245/B/2018-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. 13/10/23

Order No. 229/23-Cus dated 12-10-2023 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. TVM-EXCUS-000-APP-361-2018 dated 07.05.2018 passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : Sh. Rajesh Thankappan, Thiruvananthapuram

Respondent : The Commissioner of Customs(P), Cochin

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**ORDER**

A Revision Application No. 373/245/B/2018-RA dated 07.08.2018 has been filed by Sh. Rajesh Thankappan, Thiruvananthapuram (hereinafter referred to as the Applicant), against the Order in Appeal No. TVM-EXCUS-000-APP-361-2018 dated 07.05.2018, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs, Thiruvananthapuram International Airport bearing no. 08/2016-17 CUS (JC) dated 13.03.2017, ordering absolute confiscation of seized foreign currency (99600 UAE Dirham), equivalent to Indian Rs. 18,08,736/-, under Section 113(d) & (e) of the Customs Act, 1962. Besides penalty of Rs. 9,00,000/- was also imposed on the Applicant, under Section 114(i) of the Act, *ibid*.

2. Brief facts of the case are that the Applicant was scheduled to depart for Dubai from Thiruvananthapuram, on 25.09.2016. He was intercepted by the officers of Customs when he was about to board the flight. Primary enquiries with the passenger did not yield any results and on a reasonable belief on account of his suspect demeanour he was taken to the Customs Departure Counter and further proceedings were carried out in the presence of two independent witnesses. On examination of his hand baggage, a brown coloured purse containing a bundle of foreign currency was found and he could not explain or produce any valid documentary evidence in support of carrying and taking the said foreign currency abroad. He was found to have a total of UAE Dirhams 99600 of different denominations, the total value of which was ascertained to be INR 18,08,736/-. The Applicant in his statement dated 29.09.2016 & 03.10.2016, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he was working as Sales Executive in the firm M/s. Next Flame General Trading LLC, Dubai for the past eleven months; that before working as Sales Executive he was doing his own business in Thiruvananthapuram; that he suffered heavy losses in his business; that his monthly income is Rs. 1,40,000/- from all sources; that his wife's family was helping him in meeting his monthly expenses; that the UAE Dirhams 99600 recovered from him belongs to him; that he had taken UAE Dirhams 53000 as friendly loan on 16.09.2016 from his friend Sh. Alikhan Aliyaru Kunju

Mohammed Asraf and the rest of the amount were the salary amount which he has received every month in Dubai which he has brought along with him during each visit to India; that he did not declare UAE Dirhams 50000 on his arrival on 18.09.2016 to India and did not obtain Currency Declaration Form from Customs as he was not aware that such a certificate is required to be obtained; that his monthly salary is UAE 5500 Dirhams; that he had salary slips and bank statement of Emirates NBD Bank for his overseas account No. 1015145925301; that in his overseas account No. 1015145925301, in addition to his salary, he was also getting commissions during some months which was getting credited to his account; that in order to avail a Credit Card Facility by way of showing more transactions, he allowed his friend Hashim to deposit and withdrew money from his account; that Hashim operates his overseas account in his absence; that in his earlier statement he had not mentioned anything about the commission amount as he had no evidence to show at that time. Now as he had produced his Overseas bank statements he is able to show the commission which he received with evidence; and that his debit card for the overseas account is with his friend Hashim.

3. The revision application has been filed, mainly, on the grounds that the lapse of not filing a declaration in CDF on 18.09.2016 was of a technical nature only; that the Applicant has not violated any of the provisions of the Customs Act or Foreign Exchange Management (Export & Import of Currency) Regulations, 2015; that the impugned currency belonged to him; and that the penalty imposed upon the Applicant is too high.

4. Personal hearings in the matter were fixed on 15.05.2023, 24.05.2023, 07.08.2023 & 25.08.2023. In the personal hearing held on 25.08.2023, in virtual mode, Ms. Priyanka Prakash, Advocate appeared for the Applicant and submitted that the Applicant is not a habitual offender; that the impugned currency should not have been confiscated absolutely and that he should have been given an option to redeem the same against redemption fine; that the penalty is excessive and harsh and that this case merits a lenient view. No one appeared from the Department's side nor has any request for adjournment been

received from them and hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is not disputed that the foreign currency was recovered from the Applicant. It is also 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 correct declaration regarding the currency being carried by him as required under Section 77 of the Customs Act, 1962, and he also did not have any documents or evidence showing lawful possession of the currency.

6.1 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."* Further, 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 that person as payment for services outside India or as honorarium, gift, etc. Furthermore, as per first proviso to Regulation 6 of Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 *"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"*. In the present case, the Applicant has failed to show compliance with the Regulations, as above as he has admitted in his statement that he did not declare UAE Dirhams 50000 on his arrival on 18.09.2016 to India and did not obtain Currency Declaration Form from Customs. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) were not fulfilled.

6.2 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 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."*

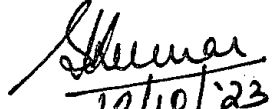
6.3 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case.

7. 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."* Thus,

the discretion exercised by the original authority could have been interfered with, only if it suffered from any of the vices indicated by the Hon'ble Court, as above. Such a case has not been made out. Therefore, the Commissioner (Appeals) has correctly refused to interfere in the matter.

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

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

  
12/10/23  
(Shubhagata Kumar)

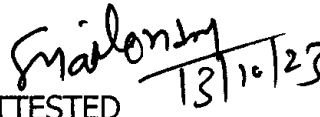
Additional Secretary to the Government of India

Sh. Rajesh Thankappan  
Thottumudumbil Veedu  
TC 31/1289(1), Chackai, Pettah P.O  
Thiruvananthapuram-695024

Order No. 229/23-Cus dated 12-10-2023

Copy to:

1. The Commissioner of Customs (P), 5<sup>th</sup> Floor, Catholic Centre, Broadway, Cochin-682031.
2. The Commissioner of Customs (Appeals), C.R Building, I.S Press Road, Cochin-18.
3. Sh. G. Prakash, 128, New Lawyers Chamber, Supreme Court, New Delhi-110001.
4. PPS to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

  
13/10/23  
ATTESTED

(शैलेन्द्र 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