

SPEED POST



F. No. 380/18/B/SZ/2019-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. 19/01/24

Order No. 23/24-Cus dated 19-01-2024 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 Application, filed under Section 129DD of the Customs Act, 1962, against the Order-in-Appeal No. 378/2018 dated 30.11.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : Sh. Hassainar Aramana Valappu, Kasaragod

ORDER

Revision Application No. 380/18/B/SZ/2019-RA dated 12.02.2019 has been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 378/2018 dated 30.11.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 18/2018 dated 26.08.2018, passed by the Deputy Commissioner of Customs, Mangaluru International Airport, Mangaluru and allowed redemption of the assorted foreign currency amounting to Rs. 3,56,995/-, which was seized from Sh. Hassainar Aramana Valappu, Kasaragod (hereinafter referred to as the Respondent), on a redemption fine of Rs. 30,000/- and also reduced the penalty imposed, under Section 114(i) of the Customs Act, 1962, from Rs. 50,000/- to Rs. 25,000/-.

2. Brief facts of the case are that the Customs officers on the basis of a tip off intercepted the Respondent who was destined for Dubai from Mangaluru on 25.10.2017 and was proceeding towards security check after completing his immigration formalities. Upon being asked about the purpose of his visit to Dubai and as to whether he had anything to declare to Customs, the Respondent replied that he had nothing to declare to Customs and that he was proceeding to Dubai, as he worked there. Upon being specifically asked as to whether he was carrying any contraband goods or Indian/Foreign currency, he replied that he was not in possession of Indian currency or foreign currency. When he was asked about the contents of his hand bag he replied that it contained only personal effects and that it did not contain any contraband or valuable goods. Upon examination of his bag, it was found to contain personal effects and nothing objectionable was found. Upon the search of his person, a black coloured wallet was found containing assorted foreign currencies to the tune of Rs. 3,56,995/- in total as per the prevalent exchange rate as per Notification No. 96/2017-Cus (N.T) dated 18.10.2017.

In his statement dated 25.10.2017 recorded under Section 108 of the Customs Act, 1962, the Respondent, stated inter-alia that the said foreign currency equivalent to Rs. 3,56,995/- were handed over to him by one Sh. Arif when he was in Kasaragod few days

ago; that Sh. Arif instructed him to hand over the foreign currency to a person who would approach him in Dubai and that he did not know the identity of the person to whom the currency notes were to be handed over in Dubai and that he had done this for lure of money as Sh. Arif had paid him commission of Rs. 10,000/- for the said work; and that he carried the said foreign currency notes by concealing the black-coloured wallet which was secreted in front pocket of his trousers without declaring to Customs while he attempted to pass through Customs Channel at the airport.

The original authority ordered absolute confiscation of the offending foreign currency under Section 113(d) of the Customs Act, 1962 and also imposed penalty of Rs. 50,000/-, under Section 114(i) of the Act, *ibid*, on the Respondent. Aggrieved, the Respondent filed an appeal, which has been partly allowed by the Commissioner (Appeals), as above.

3. The Revision Application has been filed by the Applicant department, mainly, on the grounds that the Respondent had attempted to smuggle foreign currency in a concealed manner; that the Commissioner (Appeals) has exercised powers beyond the statutory provisions by way of allowing redemption of currency; that the finding of Commissioner (Appeals) that just Rs. 35,557/- is above the eligible limit which can be carried without declaration, that reduction in penalty ordered by Commissioner (Appeals) is not supported by any findings.

4. Personal hearings were fixed on 08.09.2023, 15.09.2023 & 29.09.2023. No one appeared for either side on any of the dates. As such, it is presumed that neither side has anything to add in the matter. Hence, the matter is being taken up for disposal based on available records.

5. The Government has carefully examined the matter. It is observed that the foreign currency was recovered from the Respondent and he admitted to the same in his statement. It is also on record that the Respondent had not made any declaration Under Section 77 of the Customs Act, 1962 in this regard. Further, the Respondent did not have any documents or evidence showing lawful possession of the currency.

6. 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. In the present case, the Respondent has failed to show compliance with the Regulations, rather he has admitted in his statement he did not possess any valid documents for the licit purchase of the foreign currency, and that he did this for a monetary consideration. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) were not fulfilled.

7.1 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 its judgment, 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."*

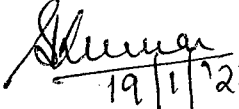
7.2 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present cases.

8. The Government observes that the option to release seized goods on redemption fine, in terms of the provisions of Section 125 of the Customs Act, 1962, in respect of 'prohibited goods', is discretionary. The Hon'ble Supreme Court has affirmed this position in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. 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.*" In the present case, the original authority has, after detailed consideration (as evident from para 31 of the OIO), refused redemption. Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that "*.....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer*". Hence, keeping in view the ratio of the decisions aforesaid, the Commissioner (Appeals) has erred by interfering in the matter.

9. Hence, the redemption of foreign currency is disallowed and the Order-in-Original is upheld to this extent.

10. The Commissioner (Appeals) has reduced the penalty imposed, under Section 114(i) *ibid*, from Rs. 50,000/- to Rs. 25,000/-. The Government observes that the amount of penalty imposed by the original authority works out to about 14% of the value of the offending goods, which was on the higher side. This has been reduced by the Commissioner (Appeals) and it appears to be fair and just, given the circumstances of the case.

11. The revision application is, accordingly, disposed of in above terms.


19/1/24

(Shubhagata Kumar),

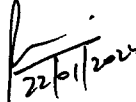
Additional Secretary to the Government of India

The Commissioner of Customs
New Customs House, Panambur
Mangaluru- 575010

Order No. 23/24-Cus dated 19-01-2024

Copy to:

1. Sh. Hassainar Aramana Valappu, S/o Sh. Ibrahim Aramana Valappu, Aramana Vallapu House, PO Patla, Via Kudly, Kasaragod-671124, Kerala.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. PPS to AS(RA)
4. Guard file.
- ✓ 5. Spare Copy.
6. Notice board.


22/01/2024

ATTESTED

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