

**SPEED POST**



F.No. 373/181/B/SZ/2020-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 20/11/24....

Order No. 232 /24-Cus dated 20-11-2024 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 Airport. Cus. I. No. 161/2020 dated 27.07.2020, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Sickander, Tiruchirappalli

Respondent : The Principal Commissioner of Customs, Chennai-I

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**ORDER**

A Revision Application No.373/181/B/SZ/2020-RA dated 13.08.2020 has been filed by Shri Sickander, Tiruchirappalli (hereinafter referred to as the Applicant/passenger/pax), against the Order-in-Appeal Airport. Cus. I. No. 161/2020 dated 27.07.2020, passed by the Commissioner of Customs (Appeals-I), Chennai who has upheld the Order-in-Original No. 474/2019-20-Commissionerate-I dated 30.03.2020 passed by the Assistant Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, Chennai-I.

2. Brief facts of the case are that the Applicant, an Indian Passport holder, was scheduled to depart for Kuala Lumpur from Anna International Airport, Chennai, on 09.12.2018. He was intercepted by the officers of Air Intelligence Unit (AIU) while he was proceeding to the Security hold area in the departure terminal of the Airport on a reasonable suspicion that he might be carrying Indian/Foreign currency either in his baggage or in person. As the passenger's replies were not convincing and on the suspicion that foreign currency might be concealed in his baggage, he was brought for a thorough examination. During search, in the presence of two independent witnesses and Superintendent of Customs, foreign currency viz., 47 Notes of EURO of 50 denomination were found kept concealed in a black colour wallet. The passenger was nervous and on persistent questioning, he admitted concealing foreign currency in his rectum and volunteered to eject the same. 29 nos. USD of 100 denomination were recovered from his rectum and total value of seized currency as per the prevailing exchange rate furnished in CBEC notification No. 96/2018-Customs (N.T.) dated 06.12.2018 was Rs. 3,88,677/-. As the Applicant did not possess any valid document/permit from RBI as required under FEMA for export of the recovered foreign currency because he attempted to smuggle them out of India by concealing them in his rectum and did not declare them to the Customs, the recovered foreign currency notes equivalent to Rs. 3,88,677/- were seized in presence of independent witnesses under a mahazar under Section 110 of the Customs Act, 1962 read with Foreign Exchange Management (Export and Import of currency) (Amendment) Regulations, 2015 read with FEMA, 1999 for further action.

3. In his voluntary statement dated 19.12.2018 recorded under Section 108 of the Customs Act, 1962, the Applicant inter-alia stated that the seized foreign currency

belonged to him and he had carried them for business purpose; that he did not possess any valid document/permit/license from RBI as required under FEMA for export of foreign currency to prove the licit origin and legal acquisition. He also admitted that he knew that carrying foreign currency without valid documents in a concealed manner and not declaring to Customs is an offence. He vide his letter dated 17.11.2018 waived the requirement of Show Cause Notice.

4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 474/2019-20-Commissionerate-I dated 30.03.2020 adjudicated the case by absolutely confiscating the seized foreign currency equivalent to Rs. 3,88,677/- under Section 113(d), (e) & (h) alongwith material objects used to conceal the impugned currency viz. wallet, adhesive tape and paper under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 39,000/- was also imposed on the Applicant under Section 114(i) of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai who has rejected the appeal and upheld the OIO. Aggrieved by OIA, the Applicant filed this Revision Application.

5. The instant revision application has been filed mainly on the grounds that the order of the lower authority is against law, weight of evidence, and probabilities of the case; that the seized foreign currency belonged to Applicant and he had carried the above said foreign currency for business purpose; that the seized currency is not a prohibited item but a restricted one and the adjudicating authority ought to have released the seized currency on payment of redemption fine and penalty; that the seized currency is within permissible limit of US \$5000. The prayer is to release the foreign currency on payment of nominal redemption fine and reduce the personal penalty imposed.

6. Personal hearings in the matter were fixed on 14.10.2024 and 25.10.2024. But, no one appeared either from the Applicant's side or from the Respondent's side. On behalf of the Applicant, Smt. P. Kamalamalar, Advocate vide her letter dated 25.10.2024 reiterated the written submissions and requested that the order be passed on that basis. The Deputy Commissioner of Customs (AIU, Chennai Airport Commissionerate) on behalf of the Respondents requested for rejection of the revision Application of the Applicant vide letter dated 25.10.2024.

7. The Government has examined the matter. It is a fact on record that the foreign currency was recovered from the Applicant in his wallet and also ingeniously concealed inside his rectum. The Applicant had denied possession of the currency carried by him even after being questioned by the Customs officers. Thus, it is evident that the Applicant violated the requirement of Section 77 of the Customs Act, 1962, and also did not have any documents or evidence showing lawful acquisition of the currency. Moreover, the applicant in his own statement under section 108 of the Customs Act, 1962 has accepted his role in smuggling foreign currency carried by him, despite being aware of it being against the law. Further, the entire proceedings have been covered under a Mahazar which has been signed by two independent witnesses. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. As such the culpability of the Applicants is established. Also, the appellate authority in para (7) of the said O-I-A observed that the act of smuggling and attempt to export currency in an ingenious method of rectum concealment shows that he has done it with the intent to smuggle for monetary consideration. The act of smuggling is established beyond doubt. The Government therefore concurs with the decision made by the Appellate Authority and it appears to be just & fair.

8. 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.

9.1 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."*

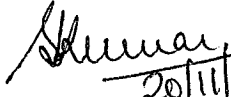
9.2 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case.

10. 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."* 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". Thus, the discretion exercised by the original authority ought to have been interfered with, only if it suffered from any of the vices indicated by the Hon'ble Court, as above. Such a case is not made out. As such, the Commissioner (Appeals) has rightly upheld the Order-in-Original.

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

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

  
20/11/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

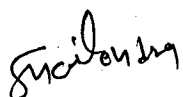
Shri Sickander,  
S/o Shri Gani,  
No. 55, Kaveri Park, Old Karur Road,  
Melachinthamani, Tiruchirappalli Urban,  
Pin - 620 002, Tamil Nadu, India

Order No. 232/24-Cus dated 20-11-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3<sup>rd</sup> floor, New Custom House, GST Road, Meenambakkam, Chennai - 600016.
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार - Govt. of India  
20/11/24