

SPEED POST



F. No. 380/49/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. 19/01/24

Order No. 24/24-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. 1039/2017 dated 27.12.2017, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : Sh. Nousad Ahammed, Kasaragod

ORDER

Revision Application No. 380/49/B/SZ/2018-RA dated 09.04.2018 has been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 1039/2017 dated 27.12.2017, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 98/2016(AP) dated 20.01.2017, passed by the Assistant Commissioner of Customs, Mangaluru International Airport, Mangaluru and allowed redemption of the assorted foreign currency of 4600 Euro amounting to Rs. 3,32,580/-, which was seized from Sh. Nousad Ahammed, 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. 1,00,000/- to Rs. 50,000/-.

2. Brief facts of the case are that the Customs officers intercepted the Respondent on the basis of a tip off who was destined for Dubai from Mangaluru on 11.11.2015 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 in possession of Indian currency of Rs. 10,000/- but no 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 bundle of foreign currency notes was found secreted in one of the front pockets of the trouser worn by the Respondent. A total of 4600 Euros were recovered in the denominations of 200,100 and 50 amounting to Rs. 3,32,580/- in total as per the prevalent exchange rate as per Notification No. 106/2015-Cus (N.T) dated 05.11.2015.

The Respondent filed a Writ Petition before the Hon'ble high Court of Karnataka for release of passport and foreign currency. The Hon'ble High Court of Karnataka vide order dated 12.02.2016 in Writ Petition No. 53209/2015 (T-TAR) ordered the Respondent to appear before the Assistant Commissioner of Customs, Mangalore International Airport at 11 a.m. on 15.02.2016 and cooperate with the authorities in the enquiry and also ordered the Respondent to furnish material to show that he had legally acquired the currency.

In his statement dated 15.12.2015 recorded under Section 108 of the Customs Act, 1962, the Respondent, stated inter-alia that the amount of 4600 Euro was brought by him when he came to India on 29.10.2015 and the same was being taken back by him when he was departing for Dubai on 11.11.2015; that he did not have any documents to show the purchase of subject foreign currency; that the money belonged to him which he had saved from earnings abroad; and that he drew his salary in UAE Dirham but he got it exchanged to Euro as it has high value and it is easy to carry with less denomination. To a specific question as to what was the reason for making so many trips abroad even though he was working as a store worker in Dubai and how could he afford so many trips, he stated that he was free to travel as many times he wanted and he need not state any reasons for the same. However, he stated that he was working in a cargo clearance firm in Dubai and he was frequently visiting India as he was asked by his firm to attend its clearances in India.

The original adjudicating authority ordered absolute confiscation of the impugned foreign currency under Section 113(d) of the Customs Act, 1962 and also imposed penalty of Rs. 1,00,000/-, 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 Commissioner (A) did not record findings as to whether the passenger had produced any material evidence or whether the currency was acquired legally which was also questioned by the Hon'ble High Court of Karnataka; 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 Euro 4600 is just nominally above the eligible limit which can be carried without declaration, is illegal and improper; that there was no need to reduce the penalty by Commissioner (Appeals) as the Respondent had not produced any material evidence to show that the currency was legally acquired.

4. Personal hearing was fixed on 10.08.2023. However, on the request of Sh. Abdul Shukoor, Advocate on behalf of the Respondent, it was postponed to 22.09.2023. The hearing was further postponed to 13.10.2023 as none appeared from the side of Applicant department. In the hearing held on 13.10.2023, no one appeared from either side. Since sufficient opportunities of personal hearing have been granted the matter is being taken up for disposal.

5. The Government has carefully examined the matter. It is observed that the undeclared foreign currency was, recovered from the Respondent who could not produce any documents or evidence to establish lawful acquisition of the currency. 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, as above as he has admitted in his statement he did not possess any valid documents for the licit purchase of the foreign currency. 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.

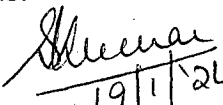
8. The Government observes that the option to release seized goods on redemption fine, in terms of the provisions of Section 125 of the Customs Act, 1962, in respect of 'prohibited goods', is discretionary. The Hon'ble Supreme Court has affirmed this position in the case of Garg Woollen Mills (P) Ltd 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 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. 1,00,000/- to Rs. 50,000/-. The Government observes that the amount of penalty imposed by the original authority works out to about 30% of the value of the offending goods, which was on the higher side. This has been reduced by the Commissioner (Appeals) and it serves the interest of justice, given the facts and circumstances of the case.

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


19/11/24
(Shubhagata Kumar),

Additional Secretary to the Government of India

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

Order No. 24 /24-Cus dated 19-11-2024

Copy to:

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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.


22/11/2024
ATTESTED

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