

SPEED POST



F. No. 380/30/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. 17/10/23

Order No. 241 /23-Cus dated 17-10-2023 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. 403/2018 dated 21.12.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : Sh. Syed Salwan, Bhatkal

ORDER

Revision Application No. 380/30/B/SZ/2019-RA dated 26.03.2019 has been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 403/2018 dated 21.12.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 97/2016/(AP) dated 31.12.2016, passed by the Assistant Commissioner of Customs, Mangaluru International Airport, Mangaluru, vide which foreign currency i.e. 62 notes of England Pound Sterling in denomination of 50, equivalent to Rs. 3,11,240/-, recovered from Sh. Syed Salwan, Bhatkal (hereinafter referred to as the Respondent) were absolutely confiscated under Section 113(d) of the Customs Act, 1962. Besides this, a penalty of Rs. 75000/- was also imposed upon the Respondent under Section 114(i) of the Act, *ibid*.

2. Brief facts of the case are that on 06.10.2015, the Customs officers intercepted the Respondent who was destined for Dubai from Mangaluru 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 worth Rs. 21,000/- but had no foreign currency. Upon examination of his baggage, nothing incriminating was found. However, upon the search of his person, some currency notes were found concealed in the pocket of his black and grey checked trousers. On detailed examination, 62 foreign currency notes, England Pound Sterling, in denomination of 50, equivalent to Rs. 3,11,240/- as per the prevalent exchange rate as per Notification No. 97/2015-Cus dated 01.10.2015, were found. In his statement dated 06.10.2015 recorded under Section 108 of the Customs Act, 1962, the Respondent, stated inter-alia that he is into the business of garments and owns a shop named 'Muzammil Arzoo' in Dubai for the past two and half months; that during the course of his business, he visited New Delhi and after getting a few export orders, he made a plan to travel from

Mangaluru International Airport to Dubai; that since he could not furnish any valid documents to show the purchase of aforesaid foreign currency notes from an authorized money exchange dealer, the said foreign currency notes were seized by Customs and taken into possession under a mahazar dated 06.10.2015; that the impugned foreign currency notes belonged to him and were for the purpose of purchasing garments for his shop at Dubai; and that since he had no valid documents to show the purchase of currency from any authorized money-exchange dealers, he concealed the said foreign currency notes in his trousers' pocket without declaring to Customs as he attempted to pass through Customs at the Mangalore International Airport for departing to Dubai on 06.10.2015. The original authority then ordered absolute confiscation of the offending foreign currency and also imposed penalty of Rs. 75,000/-, under Section 114(i) of the Act, *ibid*, on the Respondent. Aggrieved, the Respondent herein filed appeal, which has been allowed by the Commissioner (Appeals).

3. The Revision Application has been filed by the Applicant department mainly on the grounds that the Respondent in this matter had attempted to smuggle foreign currency via concealment and by not declaring it to Customs; 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 the currency carried by the Respondent is within permissible limit is improper, as even if the amount carried is within permissible limits, the acquisition thereof has to be answered for; that the foreign currency was attempted to be improperly exported and was carried by the Respondent in a concealed manner, without having licit documents and was therefore liable for confiscation, being prohibited, and therefore penalty is imposable under Section 114(i) of the Customs Act, 1962.

4. Personal hearings were fixed on 08.09.2023, 15.09.2023, 29.09.2023 & 06.10.2023. In the hearing held on 06.10.2023, Sh. Krishna Kumar Rajagopal, Assistant Commissioner, appeared for the Applicant department and submitted that OIA is improper and that OIO should be restored, as foreign currency was sought to be taken out of the country, for

which no papers evidencing licit purchase were produced by the Respondent. The Respondent on the other hand, stated that he had brought the impugned currency from Dubai on his earlier visit and was taking it back, and that he was not required to declare the same as it was less than USD 5000 in value.

5. The Government has carefully examined the matter. It is observed that the foreign currency was admittedly recovered from the Respondent. It is also on record that the Respondent had not made any declaration 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 as above, as he has admitted in his statement that he did not possess any valid documents for the licit purchase of the foreign currency from any authorized money exchange dealer and hence he carried the impugned foreign currency notes concealed in his pocket without declaring it to Customs even when asked specifically if he was carrying any 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 impugned currency is 'prohibited goods', as the conditions subject to which the currency could have been exported are not fulfilled in the present case.

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.*" 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*". In the present case, the original authority has, after detailed consideration, as evident from para 40 of the OIO, refused redemption. Thus, the Commissioner (Appeals)' interference is incorrect.

9. The revision application is, accordingly, allowed and the Order-in-Appeal impugned herein is set aside.

Shubhagata Kumar
17/10/23

(Shubhagata Kumar),
Additional Secretary to the Government of India

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

Order No. 241/23-Cus dated 17-10-2023

Copy to:

1. Sh. Syed Salwan, S/o Sh. Syed Mohammed Sami, 22, Siddique Street, Bhatkal, N.K-581320, Karnataka.
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.

Shallendra Kumar Meena
18/10/23
ATTESTED

(शैलेन्द्र कुमार मीना)
(Shallendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली - 110011