

SPEED POST



F.No. 373/386/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. 28/2/24

Order No. 58/24-Cus dated 28-02-2024 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 129DD of the Customs Act 1962, against the Order-in-Appeal No. C. Cus. I No. 208/2019 dated 18.09.2019 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant

: Shri Rizwan Rasool Khan, Chennai

Respondent

: The Principal Commissioner of Customs, Chennai-I

ORDER

A Revision Application No.373/386/B/SZ/2019-RA dated 30.09.2019 has been filed by Shri Rizwan Rasool Khan, Chennai (hereinafter referred to as the Applicant), against the Order in Appeal No. C. Cus. I No. 208/2019 dated 18.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals-I) has upheld the Order-in-Original of the Assistant Commissioner of Customs (Adjudication-AIR), Chennai –I Commissionerate, Chennai Airport and Air Cargo Complex, Chennai, bearing no. 49/2019-20-Commissionerate-I dated 17.05.2019, ordering absolute confiscation of seized foreign currency viz. 105 numbers of USD denomination 100, equivalent to Indian Rs. 7,48,125/-, under Section 113(d), (e) & (h) of the Customs Act, 1962 read with FEM (Import and Export of Currency) (Amendment) Regulation-2015 and order for absolute confiscation of material object i.e. adhesive tape used to conceal the above said foreign currency under Section 119 of the Customs Act, 1962. Besides penalty of Rs. 75,000/- 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 Kuala Lumpur from Anna International Terminal of Chennai Airport by Air Asia Flight No. AK-12/16.11.2018. 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 upon a reasonable belief, on account of his suspect demeanor, he was taken to the Customs Departure Counter and further proceedings were carried out in AIU room of the Anna International Airport for thorough examination of his baggage and search of his person. During personal search, foreign currency of 35 numbers of USD notes of 100 denomination were found concealed inside the inner pocket of the shirt worn by him. As the Applicant was noticed to be nervous and on persistent questioning, he had admitted to have concealed foreign currency in his rectum and volunteered to eject the same through normal course and ejected two bundles wrapped with white colour adhesive tape. On cut opening the said bundles 70 numbers of USD of denomination 100, 35 nos. from each

packet were recovered. Thus, totally 105 numbers of USD of denomination 100 equivalent to Indian Rs. 7,48,125/- was recovered. As the Applicant did not possess any valid document/permit from RBI as required under FEMA for export of the impugned currencies and as he attempted to smuggle the same by concealing them in his rectum and not declaring the same to the Customs, the recovered foreign currency was seized under a mahazar on 17.11.2018 under Section 113(d), (e) & (h) of the Customs Act, 1962 read with FEM (Import and Export of Currency) (Amendment) Regulation-2015. A voluntary statement was recorded from the Applicant immediately after seizure wherein he stated that he was doing textiles business out of which he earned around Rs. 15,000/- per month and the recovered foreign currency did not belong to him and the same was given to him by one person name 'Kamarudeen' outside the Chennai Airport to hand it over them to an unknown person outside the Kuala Lumpur Airport, Malaysia who would identify him and receive the currency and it was done for a monetary benefit of Rs. 5,000/-. He requested vide his letter dated 17.11.2018 that the case might be adjudicated without issue of show cause notice. Further, vide above said Order-in-Original bearing no. 49/2019-20-Commissionerate-I dated 17.05.2019, the impugned currencies were confiscated absolutely. Besides, penalty was also imposed on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, which has been rejected.

3. The revision application has been filed mainly on the grounds that the order of the lower authority is contrary to law, weight of evidence, circumstances and probabilities of the case; that the seized currency is not a prohibited item but is a restricted item and the lower authority ought to have released the seized currency on payment of redemption fine and penalty; that the Applicant had not violated any of the provisions of the Customs Act or Foreign Exchange Management (Export & Import of Currency) Regulations, 2015. The prayer is to set aside the order and set aside/reduce the penalty imposed.

4. Personal hearing in the matter was granted on 14.02.2024. Smt. P. Kamala Malar, Advocate appeared on behalf of the Applicant and prayed for a lenient view and requested for release of the impugned goods and reduce the penalty imposed. No one appeared from the department's side nor has any request for adjournment been received, hence it is presumed that the department has nothing to add in the matter.

5. The Government has examined the matter. It is observed that it is an undisputed fact on record that the impugned currency had been ingeniously concealed inside the body of the Applicant, who had not made any declaration regarding the currency being carried by him, as required under Section 77 of the Customs Act, 1962, and who did not have any documents or evidence showing lawful possession of the currency. This fact was also admitted by the Applicant in his statement, as also the fact that he was acting only as a carrier of the said currency which did not belong to him for monetary gain.

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.*" 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 could 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.

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*

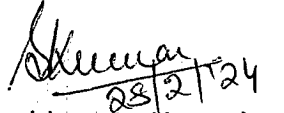
prohibition". The provisions of Section 113(d) are in pari-materia with the provisions of Sections 111 (d). In the case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are 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 case.

8. 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 is not made out. As such, the Commissioner (Appeals) has correctly upheld the Order-in-Original.

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

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


28/2/24
(Shubhagata Kumar)

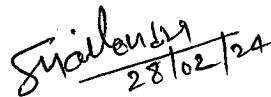
Additional Secretary to the Government of India

Shri Rizwan Rasool Khan,
S/o Shri Rasool Khan,
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Order No. 58 /24-Cus dated 28-02-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd 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. Shri S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001
4. PPS to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board


28/02/24
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