

SPEED POST



F. No. 380/46/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. 22/03/24

Order No. 84/24-Cus dated 22-03-2024 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. 21/2019 dated 08.02.2019, passed by the Principal Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : Shri Iqbal Choori Abdulla, Kasargod

ORDER

Revision Application No. 380/46/B/SZ/2019-RA dated 07.06.2019 has been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 21/2019 dated 08.02.2019, passed by the Principal Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 33/2018-ADC dated 17.10.2018, passed by the Additional Commissioner of Customs, Mangaluru Customs Commissionerate, New Customs House, Mangaluru, vide which foreign currency notes comprised of 5,000 US Dollars, 18,150 UAE Dirhams, 45 Kuwait Dinar and 220 Bahrain Dinar equivalent to Indian Currency Rs. 6,77,112/-, recovered from Shri Iqbal Choori Abdulla, Kasargod (hereinafter referred to as the Respondent) were absolutely confiscated under Section 113(d), Section 113(e) and Section 113(h) of the Customs Act, 1962, read with Section 2(18), Section 2(22), Section 2(33) & Section 11(H)(a) of Customs Act, 1962 and Regulation 5 & Regulation 7(2)(b) of Foreign Exchange Management (Export and Import of Currency) regulations, 2015 and Section 2(c), Section 2(i) and Section 2(m) of Foreign Exchange Management Act, 1999 and Section 11 of Foreign Trade (Development & Regulation) Act, 1992. A black coloured trolley bag used to conceal the foreign currency, was also confiscated. Besides this, penalty of Rs. 2,05,000/- under Section 114(i) and Rs. 1,02,000/- under Section 114AA of the Customs Act, 1962 were also imposed on the Respondent.

2. Brief facts of the case are that on 28.10.2017, the Customs officers intercepted the Respondent, an Indian passport holder, 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 had no foreign currency. Upon examination of his baggage i.e. one black coloured trolley bag with blue, pink and yellow prints with words 'Fashion' printed all over it,

bundles of assorted foreign currency notes were found which were concealed inside the baggage. On detailed examination, foreign currency notes comprised of 5,000 US Dollars, 18,150 UAE Dirhams, 45 Kuwait Dinar and 220 Bahrain Dinar, equivalent to Indian Currency Rs. 6,77,112/- as per the prevalent exchange rate as per Notification No. 96/2017- Customs(N.T.) dated 18.10.2017, were found. In his statement dated 28.10.2017 recorded under Section 108 of the Customs Act, 1962, the Respondent, stated inter-alia that he was working in sales in Ajman based firms 'SALAH STATIONARY TRADING' for last one year; he had no valid documents with him to show its purchase from any authorized exchange dealer and informed that the subject foreign currency notes were arranged by him from his relatives and friends to invest in stationery business in Ajman, Dubai; he did not have any valid documents for the aforesaid foreign currency and carried the said foreign currency notes without declaring to Customs while he attempted to depart to Dubai through Mangalore International Airport. He also admitted that he was aware that carrying foreign currency notes without licit documents out of India during travel abroad is an offence under the provisions of FEMA and Customs Act, 1962. The said foreign currency notes were seized by Customs and taken into possession under a mahazar dated 28.10.2017. The black coloured trolley bag used to conceal the foreign currency, was also seized. The original authority then ordered absolute confiscation of the offending foreign currency and also imposed penalty of Rs. 2,05,000/- under Section 114(i) and Rs. 1,02,000/- under Section 114AA of the Customs Act, 1962. Aggrieved, the Respondent filed an 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 without imposition of fine and penalty; that the finding of Commissioner (Appeals) that the currency being carried by the Respondent was within permissible limit is improper; 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) and 114AA of the Customs Act, 1962.

4. Personal hearings were fixed on 11.03.2024 and 18.03.2024. In the hearing held on 11.03.2024, Sh. Krishna Kumar Rajagopal, Assistant Commissioner, appeared for the Applicant department and submitted that OIA is improper and reiterated all the grounds stated in their Revision Application and seeks restoration of OIO. No one appeared from the Respondent side nor has any request for adjournment been made.

5. The Applicant department has submitted a request for condonation of delay of 02 days in filing the instant Revision Application and stated that the delay was purely due to oversight and unintentional which may be condoned in the interest of justice as held by the Hon'ble Supreme Court in S. Saghir Ahmad and K.T. Thomas, (2008(228) E.L.T. 162(S.C). The said request is considered and delay is condoned.

6. The Government has carefully examined the matter. It is observed that the foreign currency was recovered from the Respondent who had not made any declaration to Customs in this regard. Further, he could not have any valid documents or evidence to establish lawful possession of the currency.

7. 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.

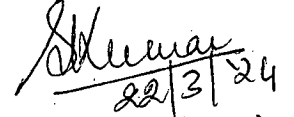
8.1 The Government observes that in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term *"Any prohibition" means every prohibition. In other words, all types 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."*

8.2 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.

9. 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 20 of the OIO, refused redemption. Thus, the Government holds that the Order of Commissioner (Appeals) setting aside the O-I-O cannot be sustained.

10. The revision application is, accordingly, allowed and the Order-in-Appeal impugned herein is set aside and Order-in-Original No. 33/2018-ADC dated 17.10.2018 is restored.



(Shubhagata Kumar)

Additional Secretary to the Government of India


The Commissioner of Customs,
Mangaluru, New Customs House,
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Order No. 84 /24-Cus dated 22-03-2024

Copy to:

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3. PPS to AS(RA)
4. Guard file.
5. Spare Copy.
6. Notice board.

ATTESTED



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