

SPEED POST



F. No. 380/54/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. 86 /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. 36/2019 dated 19.03.2019, passed by the Principal Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : Shri Mohammad Neseer Billaramoole, Kasargod, Kerala

ORDER

Revision Application No. 380/54/B/SZ/2019-RA dated 09.07.2019 has been filed by the Commissioner of Customs, Mangaluru, (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 36/2019 dated 19.03.2019, passed by the Principal Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 13/2017-ADC dated 31.05.2017, passed by the Additional Commissioner of Customs, Mangaluru Customs Commissionerate, New Customs House, Mangalore and allowed redemption of the foreign currency equivalent to Rs. 5,42,655/-, which was seized from Shri Mohammad Neseer Billaramoole, Kasargod, Kerala (hereinafter referred to as the Respondent), on a redemption fine of Rs. 75,000/- and also reduced the penalty imposed, under Section 114(i) of the Customs Act, 1962, to Rs. 70,000/-.

2. The adjudicating authority vide Order-in-Original No. 13/2017-ADC dated 31.05.2017 ordered as under:

- (i) ordered absolute confiscation of the seized foreign currency notes of UAE Dirhams 29,175 in various denominations equivalent to Indian Currency of Rs. 5,42,655/- under Section 113(d) of the Customs Act, 1962, read with Section 2(18), Section 2(22), Section 2(33) & Section 11(H)(a) of the Customs Act, 1962 and Section 11 of Foreign Trade Development Regulation Act, 1992, read with Regulation 5 and Regulation 7(2) (ii) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and Section 2(c), Section 2(i), Section 2(m) of the Foreign Exchange Management Act, 1999;
- (ii) ordered appropriation of said currency equivalent to Indian Currency Rs. 5,42,655/- deposited into the Government account;
- (iii) imposed penalty of Rs. 1,65,000/- on the Respondent under Section 114(i) of the Customs Act, 1962; and,
- (iv) appropriated the advance deposit of Rs. 70,000/- paid by the passenger vide challan dated 08.09.2016 towards penalty imposed at above.

3. Brief facts of the case are that the Respondent, an Indian passport holder, had been apprehended smuggling foreign currency notes of UAE Dirhams 29,175 in various denominations equivalent to Indian Currency of Rs. 5,42,655/-, on his person, concealed in the front pocket of the trousers worn by him, before departure to Dubai from Mangalore International Airport, on 26.04.2016. He had attempted to remove the said currency from the Customs Area without making any declaration in the Customs Declaration Form. Upon an oral inquiry, he denied carrying any contraband. The original authority ordered absolute confiscation of the offending goods and also imposed penalty of Rs. 1,65,000/-, under Section 114 of the Act, *ibid*, on the Respondent. Aggrieved, the Respondent filed an appeal, which has been partly allowed by the Commissioner (Appeals), as above.

4. The Revision Application has been filed by the Applicant department, mainly, on the grounds that the Respondent had attempted to smuggle foreign currency in a clandestine manner without declaration; that the Respondent was carrying foreign currency in excess of the legally permissible limit; that the powers to impose redemption fine vests with the adjudging officer and not the appellate authority as per the Section 125 of the Customs Act and thus the appellate authority has exercised powers beyond statutory provisions; set aside Order-in-Appeal and restore the order passed by the original adjudicating authority.

5. Personal hearings were fixed on 11.03.2024 and 18.03.2024. Sh. Krishna Kumar, Assistant Commissioner appeared on behalf of the Applicant department and submitted that the Respondent had not produced any proof of licit purchase of the foreign currency and that the Commissioner (Appeal) has incorrectly granted redemption. He reiterated the grounds for the Revision Application and sought restoration of the impugned Order-in-Original. No one appeared for Respondent's side nor has any request for adjournment been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

6. The Applicant department submitted a request letter dated 13.03.2024 for condonation of delay of 07 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 taken into consideration and the delay is condoned.

7. The Government has carefully examined the matter. It is observed that the foreign currency was recovered from the Respondent's trouser pocket after he denied carrying the same. It is also on record that the Respondent had not made any declaration in this regard. Further, the Respondent did not have any valid documents or evidence to show how the currency was acquired by him. He admitted in his own statement that the impugned foreign currency was handed over to him by the travel agent who had booked his travel ticket to Dubai, for delivery at Dubai and for a consideration of Rs. 6,000/-; that he knew very well that carrying foreign currency notes in excess of the specified limit without documents out of India during travel abroad is an offence under the provisions of FEMA and the Customs Act, 1962 and he has done this willfully due to the lure of money.

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 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 Respondents) 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 cases.

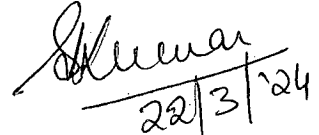
10. The Government observes that the option to release seized goods on redemption fine, in terms of the provisions of Section 125 of the Customs Act, 1962, in respect of 'prohibited goods', is discretionary. The Hon'ble Supreme Court has affirmed this position in the case of Garg Woollen Mills (P) Ltd 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 by allowing redemption.

11. Hence, the redemption of foreign currency is disallowed and the same is ordered for absolute confiscation.

12. The Commissioner (Appeals) has reduced the penalty imposed, under Section 114(i) *ibid*, from Rs. 1,65,000/- to Rs. 70,000/-. The Government observes that the amount of penalty imposed by the original authority works out to about 30% (approx.) 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.

13. The revision application is, accordingly, partially allowed as above.


22/3/24

(Shubhagata Kumar)
Additional Secretary to the Government of India

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


Order No. 86/24-Cus dated 22-03-2024

Copy to:

1. Shri Mohammad Neseer Billaramoole, S/o Shri Abdulla Rubeena Manzil, Bayarpadavu, Baya P.O., Uppala, Via Kasargod, Kerala -671322
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.

ATTESTED


22/2/24

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