



F. No. 373/202/B/SZ/2020-RA

F. No. 373/223/B/SZ/2020-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.....07/01/2025

Order No. 03-04 /25-Cus dated 07/01/ 2025 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 Applications, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.TCP-CUS-000-APP-57 &58-20 dated 20.07.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicants : Shri Meenakshi Sundaram, Madurai
Smt. Vetrikodi, Thiruvavur

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

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ORDER

Two Revision Application, bearing Nos. 373/202/B/SZ/2020-RA dated 14.09.2020 and 373/223/B/SZ/2020-RA dated 28.09.2020, have been filed by Shri Meenakshi Sundaram, Madurai and Smt. Vetrikodi, Thiruvavur (hereinafter referred to as the Applicant-1 and Applicant-2 respectively) against the Order-in-Appeal No.TCP-CUS-000-APP-57&58-20 dated 20.07.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli who has rejected the appeals of the Applicant- 1 & 2 and upheld the Order-in-Original No. 137/2019 dated 30.04.2019 passed by the Assistant Commissioner of Customs, Customs Airport, Tiruchirappalli.

2. Brief facts of the case are that the Applicants-1 & 2, Indian Passport holders, were scheduled to depart for Kuala Lumpur from Tiruchirappalli Airport, on 19.08.2018. They were intercepted by the officers of Air Intelligence Unit (AIU), Customs Airport, Tiruchirappalli at the departure hall of the airport, after they had cleared the immigration formalities and were about to board Air Asia flight to Kuala Lumpur. When the officers asked him whether they had any foreign currency with them, they replied in the negative. Not satisfied with their reply, the officers conducted examination of their hand luggage and recovered assorted foreign currency of Malaysian Ringgits from both the Applicants, i.e. 44 notes of 100 denomination and 357 notes of 50 denomination, totally valued at Rs. 3,78,472/- from Applicant-1 and 147 notes of 100 denomination and 271 notes of 50 denomination, totally valued at Rs. 4,80,532/- from Applicant-2 respectively. The AIU officers found that the Applicants had neither declared the foreign currency to Customs officers nor were in possession of any valid document for legal export of the foreign currency. Hence, on reasonable belief that the impugned currency were attempted to be exported out of India in contravention of the Customs Act, 1962 and other relevant laws, the officers seized them under a mahazar for taking further action.

3. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 137/2019 dated 30.04.2019 adjudicated the case by absolutely confiscating the seized foreign currency equivalent to Rs. 8,59,004/- under Section 113(d) and 113(e) of the Customs Act, 1962 read with Sections 3 and 4 of Foreign Exchange Management Act, 1999 and Regulations 5 & 7 of the Foreign Exchange Management (Export and Import of

Currency) Regulations, 2015. Besides, penalty of Rs. 38,000/- and Rs. 48,000/- were also imposed on the Applicant-1 and Applicant-2 respectively under Section 114 of the Customs Act, 1962. Aggrieved, the Applicants filed appeals before the Commissioner of Customs (Appeals-I), Chennai who has rejected the appeals of the Applicants-1 & 2 and upheld the OIO. Aggrieved by OIA, the Applicants filed the said Revision Applications.

4. The above Revision Applications have been filed by the Applicants-1 and 2 mainly on the grounds that the order of the Commissioner (Appeals) is contrary to law and facts of the case; that the foreign currency notes confiscated were not concealed anywhere, it was just kept inside applicants's handbag; that foreign currency carried by Shri Meenakshi Sundaram was for his investment in Malaysia where he is going to partner one Mr. Mubarak Ali in running a restaurant in Malaysia. Hence, the Applicant-1 procured the said foreign currency and kept it in his hand baggage. The Applicant also gave foreign currency to Smt. Vetrikodi, a relative of his friend and who was travelling alongwith him. Shri Meenakshi Sundaram has not received the money from any unknown person for monetary consideration as alleged by the Customs authorities. Both the Applicants have prayed that the impugned order of the appellate authority and the adjudicating authority be set aside and the foreign currency released on payment of redemption fine and take a lenient view on the personal penalty imposed on Applicants.

5. Personal hearings in the matter were fixed on 26.11.2024 and 19.12.2024. Sh. A. Sivakumar, Superintendent, Tiruchirappalli (Legal) appeared on 26.11.2024 on behalf of the Respondent and stated that the two RAs are the same case, as Meenakshi Sundaram was the mastermind and gave the currency to Vetrikodi. Further he stated that Meenakshi has been a habitual offender and his past cases have been mentioned in the submission. No one appeared from the Applicants' side and also no request for adjournment has been received. Therefore, it is presumed that the Applicants have nothing to add in the matter and the same is taken up for decision based on available records.

6. The Government has examined the matter. It is a fact on record that the impugned currency was concealed in a pair of black Pants and a Saree respectively, both of which were seized alongwith the impugned foreign currency. It is also on record that applicants

did not declare the foreign currency to Customs and denied possession of it when queried by Customs. Requirement of necessary declaration of the impugned goods as required under Section 77 of the Customs Act, 1962 has not been met and also Applicants did not have any documents or evidence showing lawful possession of the currency. This fact was also admitted by the Applicants in their statements given under Section 108 of the Customs Act, 1962, as also the fact that they were acting only as carriers of the said currency which did not belong to them, for monetary gain. In this regard, the Appellate Authority in para (7) of the said O-I-A pointed out that Applicant-1 is also involved in another seizure of foreign currency equivalent to Indian Rs. 4,03,256/- at Trichy Airport on 13.08.2018, making him a habitual offender. The Appellate Authority has rightly hold the contentions of the Applicants to be an afterthought and the act of smuggling is established beyond doubt. The Government therefore concurs with the decision made by the Appellate Authority.

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."* 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 can 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.

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 subject 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 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."* 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"*. Thus, the discretion exercised by the original authority ought to 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 rightly upheld the Order-in-Original.

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10. The case laws relied upon by the Applicants, in support of their various contentions, are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

11. Keeping in view facts and circumstances of the case, the penalties imposed on the applicants are just and fair.

12. In view of the above, the revision applications are rejected.

Shubhagata Kumar
4/11/2025

(Shubhagata Kumar)

Additional Secretary to the Government of India

1. Shri Meenakshi Sundaram,
S/o Shri Balusamy Chettiar,
No.6/4C/32, Thiyagarajar College Lane,
West Street, Theppakulam,
Madurai City, Tamil Nadu- 625 009
2. Smt. Vetrikodi,
W/o Shri Shinivasan,
residing at No.3/331, Main Road,
Keelathirupalakudi Alangottai,
Mannargudi TK, Thiruvavarur,
Tamil Nadu- 614 018

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Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), Coimbatore & Trichy, No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Sh. A. Selvaraj, Superintendent of Customs (Retd.), 68, Krishnamurthynagar, Tiruchirappalli- 620 021
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

Shubhagata Kumar
ATTESTED
(Shubhagata Kumar Meena)
अनुमान अतिरिक्त / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi