

F. No. 375/38/B/2023-RA
F. No. 375/39/B/2023-RA
F. No. 375/40/B/2023-RA
F. No. 375/43/B/2023-RA

SPEED POST



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F. No. 375/43/B/2023-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. 28/03/25

Order No. 30-33/25-Cus dated 28-03-2025 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 Applications, filed under Section 129DD of the Customs Act,
1962, against the Order-in-Appeal No. CC(A)/Customs/D-I/Air/265-
269/2022-23 dated 25.05.2022, passed by the Commissioner of
Customs (Appeals), New Delhi.

Applicants : Sh. Shamsher Singh, Panipat.
Sh. Gurpreet Singh, Panipat.
Sh. Jograj, Patiala.
Sh. Shakti Mehta, Panipat.

Respondent : The Commissioner of Customs (Airport), New Delhi.

ORDER

Four Revision Application Nos. 375/38/B/2023-RA, 375/39/B/2023-RA, 375/40/B/2023-RA & 375/43/B/2023-RA all dated 02.03.2023 have been filed by Sh. Shamsheer Singh, and Sh. Gurpreet Singh of Panipat, Sh. Jograj of Patiala and Sh. Shakti Mehta of Panipat (hereinafter referred to as Applicant-1, Applicant-2, Applicant-3 & Applicant-4 respectively), against the Order-in-Appeal No. CC(A)/Customs/D-I/Air/265-269/2022-23 dated 25.05.2022, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeals filed by all the applicants against the Order-in-Original No. 304/Adjn./ADC/2018 dated 31.07.2018, passed by the Additional Commissioner of Customs, Airport, New Delhi. Vide the aforesaid Order-in-Original foreign currency i.e. Euro 1,75,000 recovered from Applicant-1, Euro 1,75,500 recovered from Applicant-2 and Euro 40,000 recovered from Applicant-3 were absolutely confiscated under section 113(d) of the Customs Act, 1962 alongwith packing material used for concealing the seized currency under Section 118(b) and Section 119 of the Customs Act, 1962. Besides penalties of Rs. 54,56,000/- each were imposed upon all the applicants and one Farooq Sheikh and one Vishal Mehta under Section 114 the Act, *ibid*.

2. Brief facts of the case are that the officers of Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter referred to as DRI), based on specific information, intercepted Applicants-1, 2 & 3 who were destined for Dubai from New Delhi on 05.10.2016 when they were proceeding for security check after clearing immigration. Upon being asked whether they were carrying any contraband/prohibited items, they replied in the negative. Since the DRI had specific information, their baggage was searched, however, nothing incriminating was found. Thereafter, before the commencement of a search of their person, Applicant-1 & Applicant-2 voluntarily admitted that foreign currency notes were concealed in their turbans. Further, all the three applicants also admitted that foreign currency notes were also concealed by them in their rectum. Thereafter, 781 Euros of denomination 500 each, i.e. totally 3,90,500 Euros

equivalent to INR 2,88,97,000/-(as per Notification No. 121/2016-Customs (N.T) dated 15.09.2016) were recovered from the three applicants. As all three passengers failed to produce any documents evidencing licit possession and export of the said foreign currency in violation of the provisions of Foreign Exchange Management Act (FEMA), 2002 and Reserve Bank of India (RBI) guidelines governing export of foreign currency, the same was confiscated under the provisions of Section 113(d) of the Customs Act, 1962. The said foreign currency alongwith packing material used to conceal the currency, was seized under the provisions of Section 110 of the Customs Act, 1962 under a Panchanama on 05.10.2016 in presence of independent witnesses. Further, on 23.12.2016, proceedings under Section 110(1B) of the Customs Act, 1962 for pre-trial disposal of the seized Euros was conducted in the Court of Sub-Divisional Magistrate, Vasant Vihar, New Delhi, who after verifying the seizure panchanama, ordered pre-trial disposal of the said 3,90,500 Euros vide order dated 23.12.2016. Accordingly, the seized 3,90,500 Euros were deposited in Punjab National Bank, New Customs House, New Delhi branch vide TR-6 Challan No. 9706 dated 22.02.2017. Indian Currency of Rs. 2,72,80,330/- was received as sale proceeds of the 3,90,500 Euros.

3.1 In his statement dated 05/06.10.2016, recorded under section 108 of the Customs Act, 1962, Applicant-1 i.e. Sh. Shamsher Singh stated inter-alia that Applicant-4 had given him the foreign currency recovered from his possession, which were rolled in the shape of a round pipe wrapped with tape and pieces of rubber balls; that Applicant-4 promised to pay him Rs. 1,00,000/- apart from travel expenses to Dubai and back; that Applicant-4 drove both Applicant-1 & 2 from Panipat to Delhi; that he met Applicant-3 through Applicant-4 who informed that he would be travelling with them.

3.2 In his statement dated 05/06.10.2016, recorded under section 108 of the Customs Act, 1962, Applicant-2 i.e. Sh. Gurpreet Singh stated inter-alia that Applicant-4 had given him the foreign currency recovered from his possession, which were rolled in the shape of round pipe wrapped with tape and pieces of rubber balls; that Applicant-4 promised to pay

him Rs. 35,000/-; that Applicant-4 drove both Applicant-1 & 2 from Panipat to Delhi; that he met Applicant-3 through Applicant-4 who informed that he would be travelling with them; that Applicant-4 informed him that Applicant-3 would also be carrying foreign currency for Applicant-4.

3.3 In his statement dated 05/06.10.2016, recorded under section 108 of the Customs Act, 1962, Applicant-3 i.e. Sh. Jograj stated inter-alia that Applicant-4 had given him the foreign currency recovered from his possession; that Applicant-4 promised to pay him Rs. 40,000/- per trip; that Applicant-4 and he were in contact with each other telephonically; that he was aware that Applicant-1 & 2 would be travelling with him and were also carrying foreign currency for Applicant-4. From the call records between Applicant -3 & 4, it was observed that Applicant-4 was involved in smuggling of impugned foreign currency out of India. Mr. Mayank Makhija, Ticketing agent also confirmed that Applicant-4 used to book tickets from him for various persons to various destinations.

3.4 Thus, Applicants-1, 2 & 3 all stated that the impugned foreign currency belonged to Applicant-4 and was handed over to them by him. It is on record that Applicant-4 tried to evade appearing before DRI officers and filed various applications in Court, but no relief was granted and he finally appeared on 10.11.2016. Applicant-4 in his statement dated 10.11.2016 recorded under Section 108 of the Customs Act, 1962 inter-alia stated that in 2014 he was a regular offender and was earlier involved in smuggling of gold and foreign currency for earning easy money; and he accepted that he organized the trip for the carriers in the instant case i.e. for the Applicants-1, 2 & 3 and handed them the impugned foreign currency.

3.5 It is also on record that Applicants-1, 2 & 3 admitted their involvement in the smuggling of foreign currency, that they violated the provisions of Foreign Exchange Management Act (FEMA), 2002 and had committed offences punishable under Section 132, Section 135 and Section 135A of the Customs Act, 1962, therefore they were all

arrested under the provisions of the Customs Act, 1962 on 06.10.2016 and remanded to judicial custody by the Hon'ble CMM.

4. The appellate authority has held that Applicant-4 was the mastermind in the instant case, involved in smuggling of foreign currency out of India alongwith Sh. Vishal Mehta (named in the O-I-O) and in connivance with Applicants-1,2 & 3 who were carriers. They all were habitual offenders and exported foreign currency and imported gold illegally with the intent to evade payment of Customs duty and earn profit, for which they rendered themselves liable for penal action under the provisions of Customs Act, 1962. After due process of law, the matter was adjudicated by the original authority vide order dated 31.07.2018. Aggrieved, the applicants filed appeals, which have been rejected by the Commissioner (Appeals), as above. Aggrieved by O-I-A, the Applicants-1, 2, 3 & 4 have filed the said revision applications.

5. The Revision Applications have been filed by the Applicants mainly on the grounds that no witness was allowed to be cross examined; that the alleged offences were non-cognizable in nature and the same could not have been investigated/inquired into without the direction/permission of the court, thereby rendering all the proceedings illegal and void; that seizure of currency under the Customs Act, 1962 is not permissible; and that the currency was being carried by the applicants in their pockets which was duly declared.

6. Personal hearing was fixed on 18.09.2024 which was postponed on the request of advocate of the applicants vide his email dated 17.09.2024. The hearing was held on 09.10.2024. Sh. Parmanand, Superintendent and Sh. Rajaram Meena Superintendent, Customs appeared for the respondent department and submitted that in all the four cases, the same matter is involved and thus the common submission for all the RAs is that these are cases of illegal export of currency concealed in turbans and rectum by Shamsher Singh, Gurpreet Singh, and Jograj, and that Shakti Mehta was the mastermind. They submitted that the OIA is proper and correct and should be upheld. The RAs merit

F. No. 375/38/B/2023-RA
F. No. 375/39/B/2023-RA
F. No. 375/40/B/2023-RA
F. No. 375/43/B/2023-RA

rejection as the applicants were clearly involved in smuggling currency out of India. Notices for personal hearing, all dated 18.11.2024 were sent to the above applicants informing them that a final opportunity for personal hearing was being given on 06.12.2024 at 11.30 a.m, but no one appeared for the Applicants. The Respondents reiterated their submissions made earlier, that this is a case of body concealment and outright smuggling and does not merit consideration. Four opportunities have been provided to the applicants which they have not availed. The respondents prayed that the O-I-A is proper and should be upheld.

7. The revision applications have been filed with a delay of 55 days. The applicants have informed vide their condonation of delay application that they could not file the revision within the statutory period of 3 months since the file got misplaced from the chamber of their counsel and could not be traced in time. The delay is condoned.

8. The Government has examined the matter. It is undisputed that the foreign currency was recovered from the Applicants, ingeniously concealed inside their turbans and rectum and that the Applicants had not made any declaration in respect of the currency carried by them even after being questioned by the Customs officers. Thus, not only did the Applicants not make a correct declaration regarding the currency being carried by them as required under Section 77 of the Customs Act, 1962, and could not produce any documents or evidence showing lawful acquisition of the currency, the act of smuggling is established beyond doubt. Moreover, the applicants in their own statements under section 108 of the Customs Act, 1962 have accepted their role in the smuggling of foreign currency which by their own admission did not belong to them, as well as the fact that they did this lured by money, despite being aware of it being against the law. The entire proceedings have been covered under a Panchanama which has been signed by two independent witnesses. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, is an admission and binding since Customs Officers are

not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. As such the culpability of the Applicants is established. Hence, the contention that the currency was being carried by the applicants in their pockets and was duly declared is not tenable.

9.1 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. Furthermore, as per first proviso to Regulation 6 of Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 *"bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations"*. In the present case, the applicants gave statements elaborating in detail as to how they became involved in carrying foreign currency from India along with names and dates etc. Thus, it is clear that the conditions in respect of possession and export of foreign currency (seized from the Applicant) were not fulfilled.

9.2 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 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."*

9.3 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.

10. It is contended that no witness was allowed to be cross examined. It is an accepted legal provision that cross examination is not a matter of right in a quasi-judicial proceeding and the adjudicating authority is vested with the discretion to decide whether the facts and circumstances of the case warrant cross examination demanded by the accused. The Government observes that the applicants by their own admission under section 108 of the Customs Act were part of a syndicate and they acted in a premeditated manner in smuggling of foreign currency for monetary gain. It is also on record that they have not acquired this currency as payment, gift or honorarium as well as the fact that they chose not to declare the same to Customs with full knowledge of the violation & its consequences. The undisputed ingenious concealment, the applicants' own voluntary statements admitting their involvement for monetary consideration all establish that these goods were not bonafide baggage and therefore liable for confiscation. Hence, this contention is also not acceptable.

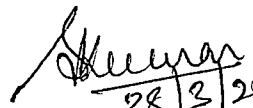
11. The Government observes that the option to release seized goods on redemption fine, in respect of "prohibited goods", is discretionary, as held by the Hon'ble Supreme

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 has not been made out. Therefore, the Commissioner (Appeals) has correctly refused to interfere in the matter. Hence, the contentions that that alleged offences were non-cognizable in nature and the same could not have been investigated/inquired into without the direction/permission of the court, thereby rendering all the proceedings illegal and void and seizure of currency under the Customs Act, 1962 is not permissible are not correct.

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

13. In view of the facts and circumstances of the case, the quantum of penalty imposed is just and fair.

14. The revision applications are, accordingly rejected.


28/2/2025
(Shubhagata Kumar)

Additional Secretary to the Government of India

1. (i) Sh. Shamsher Singh
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F. No. 375/38/B/2023-RA
F. No. 375/39/B/2023-RA
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F. No. 375/43/B/2023-RA

(ii) Sh. Shamsheer Singh
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2. Sh. Gurpreet Singh
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3. Sh. Jograj
S/o Sh. Shalu Ram
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4. Sh. Shakti Mehta
S/o Sh. Ram Lal Mehta
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Haryana-132103

Order No. 30-33/25-Cus dated 28-03-2025

Copy to:

1. The Commissioner of Customs, T-3, Indira Gandhi International Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. Dr. Ashutosh, Ms. Fatima & Ms. Monal, Advocates, Seeddhant Associates, Chamber No. 143, Patiala House Courts, New Delhi-110001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

Shailendra Kumar Meena
ATTESTED
(Shailendra Kumar Meena)
अनुभाग अधिकारी (Section Officer)
जि.स. मंत्रालय (ज.स. विभाग)
Ministry of Revenue (Deptt. of Rev.)
आर.स. विभाग, नई दिल्ली
दृ. 13-11-2024