

REGISTERED
SPEED POST



F.No. 380/93/B/14-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

13/9/12

Order No. ... 06/17-Cus dated 12-9-2017 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : ~~Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order in Appeal No.CG(A)Cus/527/2014 dated 19.6.2014 passed by the Commissioner of Customs (Appeals), New Delhi~~

Applicant : Deputy Commissioner of Customs, IGI Airport, New Delhi

Respondent : Mr. Naved, Meerut

ORDER

Revision Application No. 380/93/B/14-RA (RA for short) dated 23.9.14 is filed by Deputy Commissioner of Customs, IGI, T.3, New Delhi, against the Order-in-Appeal No.CC(A)Cus/527/2014 dated 19.6.2014, passed by the Commissioner of Customs, (Appeals) New Delhi. The case against Mr. Naved, son of Shri Mohd. Nasir, resident of 17, Navgaza Shah Peer Gate, Near Tajowali Masjid, Meerut (U.P.) is that undeclared sum of 99500 Saudi Riyal was recovered from him while he was leaving for Dubai from Delhi Airport. The case was adjudicated by the Additional Commissioner of Customs, Delhi, confiscating the above stated foreign currency and imposing penalty of Rs.3.00 lakhs on Mr.Naved. However, on an appeal to the Commissioner of Customs (Appeals), Mr. Naved was allowed to redeem the confiscated foreign currency on payment of Rs.175000/- and the penalty was reduced from Rs.3.00 lakhs to Rs.225000/-.

2. The above referred Commissioner (Appeals)'s order is sought to be revised mainly on the grounds that for prohibited goods the discretion is vested with the adjudicating authority for allowing the redemption of the confiscated goods and in this case the Additional Commissioner had ordered for absolute confiscation. Further absolute confiscation of foreign currency is supported by various decisions also. On the other hand the respondent has contested the RA mainly on the grounds that the foreign currency is not a prohibited item and there have been number of earlier decisions wherein the foreign currencies have been allowed to be redeemed on payment of redemption fine as provided under Section 125 of the Customs Act 1962. Some of such decisions are:

- JS (RA)'s Order No.282/07 dated 26.6.2007 in the case of Mr. Jyoti Kumar Dubey
- JS (RA)'s Order No.593/07 dated 31.10.2006 in the case of Mr. Kamal Deep Malik

3. As regards the decisions relied upon by the applicant in the RA, the respondent has distinguished these decisions from their case for the reason that in

the relied upon decisions the foreign currency was being taken out of India by a privileged person like a pilot of the aircraft or in the clandestine manner for someone else for monetary consideration. Whereas in their case the currency was being carried by Mr. Naved in a bag for himself and not for any monetary consideration.

4. Thus the main issue to be decided in this case is whether Commissioner (Appeals) has committed any error by allowing the passenger Mr. Naved to redeem the confiscated currency on payment of redemption fine and penalty?

5. Before the main issue on merit is taken up, it is apt to point out here that the RA filed by Deputy Commissioner suffers from several infirmities such as mentioned below:

(a) The RA has been filed without making any reference that it is being filed with the direction and authorization of the Commissioner of Customs as is stipulated in Section 129DD(1A). The text of the para 5 of RA rather give an impression as if Deputy Commissioner of Customs has already decided that the OIA is not legal and proper and appeal is filed by him on his own.

(b) The verification of the RA is also not done by the Deputy Commissioner who has filed RA.

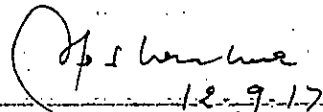
(c) In para 6 of the RA a prayer is made posing a question whether in view of the facts, circumstances, evidence of record and on grounds of the appeal of the case, the OIA passed by Commissioner (Appeals) is legal and proper. Whereas the Government of India is only a revisionary authority and not an authority for answering such question. Surprisingly no reason and prayer for seeking revision in the Commissioner (Appeals)'s Order has been set out in the prayer portion.

6. In the light of above discussed infirmities, the Government is of the considered view that the RA filed by the Deputy Commissioner is not a proper RA and the same is liable to be rejected on this reason alone.

7. As regards the main issue whether the confiscated foreign currency has been wrongly allowed to be redeemed, there is no dispute in this case and it has been accepted by the Commissioner (Appeals) also that the passenger had not declared the foreign currency to the custom authorities while departing from India for Dubai and for this reason alone the foreign currency have been seized and confiscated from Mr. Naved. The confiscation of the foreign currency is not set aside by the Commissioner (Appeals) and it is not disputed by Mr. Naved also. As regards redemption of such confiscated goods, Section 125 clothes the adjudging officer with the discretion to absolutely confiscate the prohibited goods or allow redemption thereof on payment of fine fixed by him. Exercising this discretionary power only while the Additional Commissioner had ordered for absolute confiscation of the foreign currency, the Commissioner (Appeals) has allowed the passenger to redeem the confiscated foreign currency on payment of redemption fine. Undoubtedly Commissioner (Appeals) is also an adjudging officer in this case and is an appellate authority for the order of the Additional Commissioner. Not a word has been stated in the RA that the Commissioner (Appeals) did not have such discretion for allowing redemption of goods or he has imposed lesser redemption fine. In the cases relied upon by the applicant, the foreign currencies have certainly been confiscated absolutely, but at the same time there are the number of cases as cited by the respondent where redemption of confiscated foreign currencies have also been allowed. Since each case has a different set of facts and circumstances, it cannot be applied mathematically to other case. But the fact of the matter is that the Commissioner (Appeals) has discretion to allow redemption of goods under Section 125 of the Customs Act.

8. Since in this case Commissioner (Appeals) has already allowed redemption of goods on payment of redemption fine and no case has been made out in the RA that the Arabian currency was sourced from any illegal channel and was being carried by Mr. Naved for any illegal activities like drug trafficking, terrorism, illegal arm trade or money laundering etc., Government does not deem it proper to interfere with the discretion already exercised by the First Appellate Authority.

9. In view of the above discussion, the Government does not find any merit in the RA filed by Deputy Commissioner of Customs, International Airport, New Delhi and hence it is rejected.


12-9-17

(R.P.Sharma)

Additional Secretary to the Government of India

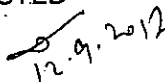
Deputy Commissioner
O/o the Additional Commissioner of Customs
IGI A, T-3
New Delhi

Order No. 06/17-Cus dated 12-9-2017

Copy to:

1. Mr. Naved, R/o 17, Navgaza Shah Peer-Gate, Near Tazowali-Masjid, Meerut (UP)
2. The Commissioner of Custom, New (Import & General), New Customs House, IGI Airport Complex, New Delhi-110037
3. Commissioner of Customs (Appeals), New Custom House, New Delhi
4. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-37
5. Shri S.S.Arora, S.S.Arora & Associates, B-1/71 Safdarjung Enclave, New Delhi 110029
6. PS to AS(RA)
7. Guard File.
8. Spare Copy

ATTESTED


12-9-2017

(Debjit Banerjee)

STO (REVISION APPLICATION)