

REGISTERED

SPEED POST



F. No. 372/15/B/2017-R.A.
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...13/12/18

ORDER NO²³/118 Cus dated 10-12-2018 OF THE GOVERNMENT OF INDIA, PASSED BY
SHRI R. P. SHARMA, 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.
KOL/CUS(A/P)AA/292/2017 dated 06/04/2017,
passed by the Commissioner of Customs (Appeals),
Kolkata.

APPLICANT : Mohd. Rehman, Delhi

RESPONDENT : Commissioner of Customs, Kolkata

ORDER

A Revision Application No. 372/15/B/2017-R.A. dated 23/06/2017 has been filed by Mohd. Rehman (hereinafter referred to as the applicant) against the Order No. KOL/CUS(A/P)AA/292/2017 dated 06/04/2017, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the order of the Joint Commissioner of Customs, Kolkata, confiscating absolutely the foreign currency equivalent to Rs. 47,26,350/- and imposing an equal penalty of Rs. 47,26,350/- on the applicant has been upheld.

2. A personal hearing was earlier offered on 13/09/2018 which was adjourned to 03/10/2018 on the request of the counsel for the applicant for the reason that she was unwell. But on 03/10/2018 also nobody appeared for the applicant as well as respondent from which it is implied that they are not interested in availing any hearing in the matter.

3. The government has examined the matter and found that the revision application has been filed mainly on the ground that the Commissioner (Appeals) has erred by not allowing the redemption of the absolutely confiscated foreign currency which is not prohibited goods and a heavy penalty has been imposed on the applicant. The applicant has not denied that he had attempted to illegally export the foreign currencies after having procured the same from illicit resources in flagrant violation of laws on this subject and he has only stated that he committed this mistake out of ignorance only. The Commissioner (Appeals) has clearly held in his order that foreign currency is prohibited goods in terms of Section 2(33) of the Customs Act, 1962 and provisions of FEMA. He has also relied upon various judgements in support. The government also finds that the foreign currencies can be obtained from authorized dealers only as per the provisions of FEMA and RBI Master Circular No. 10/2013-14 dated 01/07/2013. Thus procurement and export of foreign currencies obtained from any unauthorized source is undoubtedly prohibited and is not permitted by the applicable laws. But in this case no evidence regarding sourcing of huge amount of foreign currency from any authorized dealer or any other legal source has been revealed. Therefore, the order of the Commissioner (Appeals) holding that foreign currencies is prohibited goods and upholding the order of the

Joint Commissioner to the extent of absolute confiscation of foreign currencies cannot be faulted as under Section 125 of the Customs Act, 1962, the adjudicating officer has been vested with the discretion to give or not to give an option to the concerned passenger to redeem such confiscated prohibited goods. As regards the penalty upheld by the Commissioner (Appeals), Section 114 of the Customs Act, 1962 provides for imposition of penalty equivalent to 3 times of the value of the prohibited goods. Whereas in this case the penalty equivalent to the value of the prohibited goods has only been imposed. Therefore, the penalty imposed on the applicant is in consonance with the aforesaid Section and no convincing reason has been given by the applicant for further reduction in the penalty amount. Considering the above discussed facts and the nature of offence committed by the applicant, the government does not find any fault in the order-in-appeal.

4. Accordingly, the revision application filed by the applicant is rejected.

(R. P. SHARMA) 16-12-18

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Mohd. Rehman,
S/o Mr. Imtiazuddin, R/o 3164, Phatak Teliyan,
Turkman Gate, Delhi-110 006.

ORDER NO. /2018-Cus dated 16-12-2018

Copy to:-

1. Commissioner of Customs (Airport & Admin), NSCBI Airport, Kolkata-770 052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
3. P.S. to A.S.
4. Guard File
5. Spare copy

ATTESTED

(Ashish Tiwari)
Assistant Commissioner