

SPEED POST



**F. No. 372/26/18—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..15/12/2020..

Order No. 14/2020-CUS dated 14-12-2020 of the Government of India, passed by Shri Sandeep Prakash, Principal Commissioner & 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 (AIRPORT)/AA/580/2018 dated 08/03/2018 passed by Commissioner(Appeals), Kolkata.

Applicant: Sh. Kumar Nirbed, Kolkata.

Respondent: Commissioner of Customs, Kolkata.

ORDER

A Revision Application No. 372/26/B/18—R.A. dated 08/03/2018 is filed by Sh. Kumar Nirbed, Kolkata (hereinafter referred to as applicant) against Order-in – Appeal no. KOL/CUS(AIRPORT)/AA/580/2018 dated 08/03/2018 passed by Commissioner of Customs (Appeals), Kolkata wherein the Order-in-Original passed by Joint Commissioner of Customs, Kolkata absolutely confiscating the foreign currency of Euro 9200/-, equivalent to Rs. 6,65,160/- under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962 and imposing a penalty of Rs. 6,65,160/- under Section 114 of Customs Act, 1962 on the applicant has been upheld.

2. 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; that out of the aforesaid foreign currency, Euros 2680 were acquired legally from an authorized dealer and balance amount of Euros 6520 was imported by him from abroad when he visited Bangkok. Also, the penalty is heavy and merits reduction.

3. Personal hearing was granted on 11.12.2020 which was attended in virtual mode by Sh. Barinder Singh, Consultant who reiterated the submissions already made by him in the revision application and later sent on 10.12.2020. No one appeared for the respondent department.

4. The Government has examined the matter. It is observed that the applicant was carrying the foreign currency in his purse without declaring the same to the customs authorities at the airport and no documentary evidence was shown at that time for its licit possession and legal export. In his statement recorded under Section 108 of Customs Act, 1962, the applicant admitted to the fact that he was knowingly carrying and taking out of India the said foreign currency which is illegal. Thus, the applicant undeniably attempted to illegally export the foreign currency which is prohibited goods in terms of Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 which reads as follows:-

“5. Prohibition on export and import of foreign currency-

Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve bank, export or send out of India, or import or bring into India, any foreign currency.”


The original authority has discussed this aspect in detail in the order-in-original dated 29/11/2017 in light of Hon’ble Supreme Court’s judgement in the case of Om Prakash Bhatia [2003(6)SC(161)].

5. As regards the redemption of the foreign currency, in terms of Section 125 of the Customs Act, 1962, it is the discretion of the adjudicating authority whether to allow the redemption of the confiscated ‘prohibited goods’ or not. The original authority has decided to absolutely confiscate the foreign currency on the findings

that the applicant is the carrier and has committed the offence knowingly for financial gains. In the facts and circumstances of the case, this decision appears to be well founded.

6. It is observed that a penalty of Rs. 6,65,160/-, an amount equal to that of the offending foreign currency, has been imposed on the applicant. Considering that the foreign currency has been absolutely confiscated and as no aggravating factors have been brought out, the government reduces the penalty on the applicant to Rs. 1,75,000/-.

7. The impugned order of the Commissioner (Appeals) is upheld, with the above modification, and the revision application is disposed of, accordingly.


(Sandeep Prakash)

Additional Secretary to the Government of India

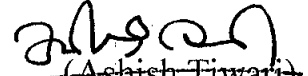
Sh. Kumar Nirbed,
S/o Sh. Jain Kumar Garg,
H. No. B-19/547,
Moran Wali Gali, Patiala-147001.

G.O.I. Order No. 14/20-Cus dated 14-12-2020

Copy to:-

1. Commissioner of Customs (Airport and Administration), Kolkata.
2. Commissioner of Customs (Appeals), Kolkata.
3. Shri Barinder Singh, Consultant, 14, Hare Street, 1st Floor, Room No. 9, Kolkata-700001.
4. PA to AS (Revision Application)
5. Guard File

ATTESTED


(Ashish Tiwari)

Assistant Commissioner (R.A.)