

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

SINGLE MEMBER BENCH

**Customs Appeal No. 30468 of 2023**

(Arising out of **Order-in-Appeal** No.HYD-CUS-HYC-APP-189-22-23(APP1) dated 03.03.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

**Shri Gampala Sankara Rao**

..

**APPELLANT**

Flat No.402,  
Pavani Estates, Rajbhavan Road,  
Khairatabad, Hyderabad,  
Telangana - 500004.

*VERSUS*

**Pr. Commissioner of Customs  
Hyderabad-Customs**

..

**RESPONDENT**

GST Bhavan,  
L.B. Stadium Road,  
Basheerbagh, Hyderabad  
Telangana - 500004.

**APPEARANCE:**

Shri R. Narasimha Murthy, Advocate for the Appellant.  
Shri M. Anukathir Surya, AR for the Respondent.

**CORAM: HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30475/2025**

Date of Hearing:23.10.2025

Date of Decision:14.11.2025

Appellant Shri Gampala Sankara Rao has filed this appeal against the Order-in-Appeal No.HYD-CUS-HYC-APP-189-22-23(APP1) dated 03.03.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Commissionerate, Hyderabad.

2. The appellant is a holder of USA Passport bound to London by Flight on 30.09.2000 and was intercepted by CISF Officers while conducting the security check on the plea that he was carrying foreign currency i.e. 36,405 USD in his hand baggage. After inventorying the foreign currency, the appellant was handed over to Customs Authorities. The Customs Authorities have seized the foreign currency.

3. The appellant, in his statement informed that he was in JNTU, Hyderabad as a Professor till 2000 and after retirement, went to USA and is working in the USA on a salary of USD 300 per week for the past five years; that he visited India 4 times during the death of his family members. He owns a flat and lives there whenever he comes to India, he brought foreign currency for his expenses and kept the remaining amount in the locker at Federal bank. He recovered the left over foreign currency in the current trip and carrying the same to attend the medical emergency in the family. He is of 80 years and sought lenient view with regard to release the currency since he is not aware about the regulations of RBI.

4. The Show Cause Notice has been issued to the appellant proposing confiscation of recovered foreign currency along with proposal of imposition of penalty. The appellant made detailed reply. The Adjudicating Authority ordered absolute confiscation of foreign currency and imposed penalties. Aggrieved by the said order, the appellant preferred an appeal before the First Appellate Authority, who rejected the appeal and upheld the order passed by the Adjudicating Authority. Aggrieved by the said order, the present appeal is preferred before the Tribunal.

5. Learned Counsel for the appellant submits that the currency was observed by the CISF Authorities during the security check and same was located in his hand baggage. There is no any concealment of currency.

6. The appellant had produced the details of withdrawal from his bank at USA during the Adjudicating proceeding but discarded by the Adjudicating Authority and stated that there is no legal basis to hold the foreign currency.

7. Learned Counsel for the appellant submits that appellant can hold or transfer the foreign currency, which was brought by him to India. In this

regard, Learned Counsel for the appellant cited provision of Section 6(4) and (5) of the Foreign Exchange Management Act 1999 that is as follows:

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

8. Learned Counsel for the appellant also submits that the currency is not a notified item under Section 123 of the Customs Act and thus, the onus is on the Revenue to establish that the said foreign currency has not been obtained from authorized source, particularly when the appellant has been canvassing his case that it is not foreign currency earned outside India from day one of the seizure.

9. Learned Counsel for the appellant also submits that there is no jurisdiction to investigate the case of foreign currency by an officer inferior to Deputy Commissioner and thus, the said jurisdiction did not exist with the Superintendent of Customs, AIU in the instant case. In this regard, Learned Counsel for the appellant invites my attention to the provision of Section 16(3) of the FEMA, 1999 which is reproduced below:

(3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

iii. In this connection, reference is invited to SO 1156(E) dated 26-12-2000 issued under Section 38 of the FEMA, which is reproduced hereunder for ready reference:

“S.O. 1156(E), dated 26-12-2000. – In exercise of the powers conferred under sub-section (1) of section 38 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby authorize officers of the Customs and Central Excise, not below the rank of Deputy Commissioner and officers of the Directorate General of Revenue Intelligence not below the rank of Deputy Director, to exercise the powers conferred under the Act for the contravention referred to in clause (g) of sub-section (3) of section 6 and clause (a) of sub-section (1) of section 7 of the said Act in accordance with the provisions of section 38(1) of the said Act.”

10. CESTAT, Chennai in the case of Commissioner of Customs, Trichy Vs L. Raj Kumar [2012 (12) TMI 1459 -CESTAT – Chennai], after following the above legal provision, the proceedings were set aside in that matter.

11. Learned Counsel for the appellant submits that provision of Section 113(d), (e) and (h) are not applicable in this matter, since the foreign currency is acquired legally and that is neither concealed nor obtained from unauthorised source.

12. Learned AR for the Department reiterates the findings of Commissioner given in the Order-in-Appeal and also relied on the following decisions:

- i. Sucha Singh Vs Assistant Collector of Customs, Amritsar [2010 (262) ELT 225 (P&H)]
- ii. Suresh Gangaram Hole Vs Commissioner of Customs, Airport, Mumbai [2015 (327) ELT 555 (Tri-Mumbai)]
- iii. Commissioner of Customs, Vs Shri Savier Poonolly [2014 (310) ELT 231 (Mad)]
- iv. Abubaker Haji Qasim Vs Commissioner of Customs (Airport), Mumbai [2015 (316) ELT 97 (Tri-Mumbai)]
- v. S. Faisal Khan Vs Commissioner of Customs (Airport), Chennai [2010 (259) ELT 541 (Mad)]
- vi. Faiyaz Shamim Vs Commissioner of Customs, Chennai [2006 (202) ELT 609 (Tri-Del)]
- vii. Joseph Sebastian Prekash Vs Commissionier of Central Excise, Customs & Service Tax [2015 (3) TMI 513 – CESTAT, Bangalore]
- viii. MKS Mohammed Rafi Vs Commissioner of Customs (Airport & ACC0, Chennai [2014 (10) TMI 755 – CESTAT, Chennai]
- ix. Harish Muljimal Gandhi Vs Commissioner of Customs, ACC, Mumbai [2013 (294) ELT 470 (Tri-Mumbai)]

13. Heard Shri R. Narasimha Murthy, Advocate and Shri M. Anukathir Surya, Learned AR for the Department with their submissions and perused the records.

14. Learned Counsel for the appellant argued that there is no jurisdiction to investigate the matter by an Officer inferior to Deputy Commissioner. In

the instant case, it is clear from the SCN that the AIU Officer have verified the quantity of foreign currency and the Officer of AIU, RGIA on reasonable belief found that the above mentioned currency was attempted to smuggle. Statement of the appellant also recorded by Superintendent of Customs (Air Intelligence Unit of RGIA, Hyderabad on 30.09.2020), therefore, enquiry was made by the Officer of AIU. Learned Counsel for the appellant relied on Notification S.O. 1156(E) dated 26.12.2000 as issued under Section 38, it is mentioned in Para 9, supra. As per notification, Customs and Central Excise Officers not below the rank of Deputy Commissioner are competent to investigate such cases, although, SCN was issued by the Assistant Commissioner, who had jurisdiction to investigate as per this notification.

15. Learned AR for the Department stated that an Officer who is empowered to do a job cannot do every action in an investigation himself and he has to necessarily take the help of his subordinates. The argument of the Revenue that an Officer empowered to investigate and take assistance of subordinates in doing the job and hence there is no infirmity in the proceeding is not a correct argument. An Officer empowered to investigate a matter can definitely take assistance of subordinate officers, but substantive power of seizure and recording of statement cannot be delegated in the guise of taking help. Therefore, I find that enquiry was not done by competent Officer. Therefore, all proceedings are vitiated, since not followed the rules as required by law.

16. Learned Counsel for the appellant also stated that appellant had worked in JNT University, Hyderabad as a Professor till 2000 and after retirement went to USA and is working in the USA on a salary of USD 300 per week for the past 5 years. During COVID period, he had come to India to look after his family as per requirement brought foreign currency and kept

the same in locker of Federal Bank. In this support, he produced the details from the Bank at USA during the proceeding, but Adjudicating Authority discarded the plea taken by the appellant. The above Bank statement indicates that appellant files his status.

17. Seized currency is not a notified item under Section 123 of the Customs Act and thus the onus is on the Revenue to establish that the said foreign currency has not been obtained from the authorize sources, particularly, when appellant has canvassing his case that it is his own foreign currency. Appellant was a professor till 2000 in JNT University, Hyderabad and thereafter went to USA and working in USA on the salary of USD 300 per week for the past 5 years. Therefore, he have authorized source of income for seized foreign currency. There is no any evidence that the seized currency was in the nature of smuggled.

18. Learned AR for the Department relied on Sucha Singh Vs Asst Collector of Customs, Amritsar, supra, but it is distinguishable, since no any confessional statement of the appellant. He has also relied on CESTAT, Mumbai decision in the case of Suresh Gangaram Hole Vs Commissioner of Customs, Airport, Mumbai, supra, in which it was held that the whole story of illicit procurement of the foreign currency is far from concocted story to mislead the investigation. This decision also distinguishable since there is no any concocted story. He further relied on Abubaker Haji Qasim Vs Commissioner of Customs (Airport), Mumbai. In this case, the appellant was not a resident of India. He also relied on CESTAT, Bangalore decision in the case of Joseph Sebastian Prekash Vs Commissioner of Central Excise, Customs & Service Tax, supra, Madras High Court decision in the case of S. Faisal Khan Vs Jt. Commissioner of Customs (Airport), Chennai and stated that it is a settled legal position that statement recorded under Section 108

of the Act is admissible. Hence, in the instant case, statement was recorded by a person who is not empowered to record the statement and investigate the case, inspite of no any confessional statement given by the appellant. Therefore, this decision is distinguishable in this case.

19. Learned Counsel for the appellant relied on CESTAT, Kolkata Bench decision in the case of Mr. Pankaj Mittal Vs The Commissioner of Customs (Airport and Administration), Kolkata [2022 (8) TMI 556 – CESTAT, Kolkata], in which it was held that the issue involves an individual who was travelling abroad for his personal work. No business dealings are alleged or indicated. It is not the case of the Department that the appellant was aware of the provisions of the rules and regulation. In the facts and circumstances of the case, it is found that absolute confiscation is not warranted. Any punishment needs to be commensurate with the offence.

20. Thus, AIU Officer has no jurisdiction to investigate the case of foreign currency. There is no any sufficient ground to prove that the seized currency was related to smuggle, whereas, the appellant revert the burden of proof under Section 123 of the Customs Act that he have sufficient means for the currency at the time of seizure. In view of the above, the appeal is liable to be allowed. Therefore, appeal is allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on 14.11.2025 )

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**