

REGISTERED

SPEED POST



F. No. 372/32/B/17-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 24/11/19

ORDER NO. 13/19-Cus dated 23-10-2019 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. MALLIKA ARYA, 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/1470/2017 dated 23.10.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : **Shri Sangam Kumar Gupta**

RESPONDENT : Commissioner of Customs, Kolkata

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## ORDER

A Revision Application No. F. No. F. No. 372/32/B/17-R.A. dated 30.11.2017 has been filed by Mr. Sangam Kumar Gupta (hereinafter referred to as the applicant) against the Order-in-Appeal No. KOL/CUS(A/P)AA/1470/2017 dated 23.10.2017, passed by the Commissioner of Customs (Appeals), Kolkata., whereby the applicant's appeal has been rejected as time bar without going into the merits of the case.

2. The revision application has been filed mainly on the ground that the Commissioner (Appeals) has erred in rejecting the appeal as time bar as there is no lapse on the part of the applicant as he had filed the appeal within the stipulated time of 60 days.

3. A personal hearing was granted on 11.09.2019 which was attended by Sh. Barinder Singh, Consultant, on behalf of the applicant. He contended that they received the order on 03.06.2017 and filed an appeal on 1.8.2017 i.e. within 60 days and the rejection of the applicant's appeal on account of time bar is incorrect. However, nobody appeared for the respondent and no request for any personal hearing has been received from them. The matter is taken up on the basis of facts on record.

4. The brief facts leading to this case are that the applicant was intercepted at NSCBI Airport, Kolkata by the Customs officers while trying to take US Dollars 10,000/- out of the country. He failed to produce any licit document in support of his acquisition, possession/or legal exportation of the currency recovered from him. Therefore the impugned currency was confiscated absolutely under Section 113(d), 113(e) and 113(h) of the Customs Act, 1962 and a penalty of Rs. 65,000/- was imposed under Section 114

of the Customs Act, 1962 by the original adjudicating authority. Being aggrieved, the applicant filed an appeal with the Commissioner (Appeals), who, without going into the merits of the case, rejected the appeals as time bar.

5. The government has examined the case. The applicant had filed the appeal with Commissioner (Appeals) on 01.08.2017 but the Commissioner (Appeals) has calculated the time period for filing the appeal from the date of issuance of the order by the adjudicating authority i.e. 26.05.2017 and viewed the appeal to be barred by time. The consultant of the party at the time of personal hearing before the government submitted that the actual date of receipt of the impugned Order-in-Original was 03.06.2017. He also submitted the proof of the delivery of the Order-in-original from the Postal authorities which clearly shows that the date of delivery of the Order-in-original to the applicant was 03.06.2017.

6. Section 128 of Customs Act, 1962 stipulates as under:

*" Section 128-(1) Any person aggrieved by any decision or order passed under this act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within 60 days] from the date of communication to him of such decision or order:*

*[ Provided that the Commissioner (Appeals) may, if he is satisfied tha the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days , allow it to be presented within a further period of thirty days]*

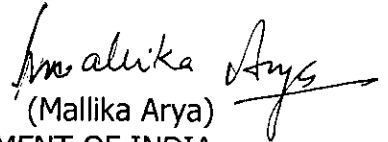
*[(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*

*Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]*

*(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."*

7. The Government observes that since the said Order-in-Original was delivered to the applicant on 03.06.2017, the last date of filing the appeal before the Commissioner (Appeals) would be 02.08.2017. The applicant has filed the same on 01.08.2017 which has not been disputed by Commissioner (Appeals).

8. In view of the above, the Government accepts the submission of the applicant. The revision application is allowed by way of remand to the Commissioner (A) to decide the case on merits.

  
(Mallika Arya)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

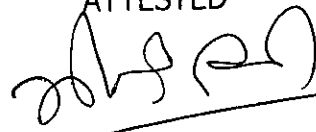
Mr. Sangam Kumar Gupta,  
S/o Shri Brij Behari,  
14/411, Kasidih, Sakchi, Jamshedput,  
East Singhbhum, Jharkhand-831001.

ORDER NO. 13/19—Cus dated 23-9-2019

Copy to:-

1. Commissioner of Customs (Airport & Admin), NSCBI Airport, Kolkata-770 052.
2. The Commissioner of Customs (Appeals), 3<sup>rd</sup> 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