

SPEED POST



F.No. 372/24/B/2019-RA  
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.. 28/9/21

Order No. 197/21-Cus dated 28-9-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(Airport)/AA/99/2019 dated 07.02.2019 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Vijay Pitamber Sundrani, Ulhasnagar, Thane.

Respondent : The Commissioner of Customs (Airport & Admn.), Kolkata.

**ORDER**

A Revision Application No. 372/24/B/2019-RA dated 16.05.2019 has been filed by Sh. Vijay Pitamber Sundrani, Ulhasnagar, Thane (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Airport)/AA/99/2019 dated 07.02.2019 passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original No. 142/2018 ADC dated 31.05.2018 passed by the Additional Commissioner of Customs, AIU, Kolkata.

2. Briefly stated, the Applicant herein was apprehended by the officers of Customs, AIU while he was boarding the flight to Bangkok, on 23.01.2017, from the NISCBI Airport, Kolkata. On search of his two pieces of checked-in-baggage total foreign currency, amounting to USD 1,20,000 having convertible value of Rs. 80,88,000/-, was recovered, which was concealed inside the specially made compartments. The original authority ordered absolute confiscation of seized foreign currency and imposed a penalty of Rs. 80,88,000/-, under Section 114 of the Customs Act, 1962, on the Applicant. The Commissioner (Appeals), vide the impugned Order-in-Appeal, observed that the Applicant herein had not made a pre-deposit, as required in terms of Section 129E *ibid*. It was further observed that the Applicant had received the aforesaid Order-in-Original on 11.06.2018 whereas the appeal was filed before the Commissioner (Appeals) on 20.11.2018. Thus, the appeal was filed after expiry of 162 days. As such, the appeal was rejected as time barred as well as on the ground of non-compliance with the provisions of Section 129E *ibid*.

3. The revision application has been filed, mainly, on the grounds that the Order-in-Original was issued in violation of principles of natural justice; that foreign currency is not 'prohibited goods'; that penalty of Rs. 80,88,000/- imposed on the Applicant is very harsh; that the Commissioner (Appeals) had passed the final order without considering the request for condonation of delay; and that the Applicant

claims ownership of the foreign currency. Accordingly, the Applicant prayed that the foreign currency may be allowed to be redeemed and further proceedings may be dropped.

4. Personal hearing was fixed on 27.08.2021, 16.09.2021 & 27.09.2021. A request dated 25.08.2021 was received from the Advocate of the Applicant for adjournment after 15.09.2021. However, in the hearing fixed on 16.09.2021 as well as in the hearing held on 27.09.2021, no one appeared for the Applicant nor any request for adjournment has been received. In the personal hearing held on 27.09.2021, in virtual mode, Sh. Jitendra Kumar, Superintendent appeared for the Respondent department and supported the Orders of the lower authority. As sufficient opportunities have been granted to the Applicant, the matter is taken up for disposal based on records.

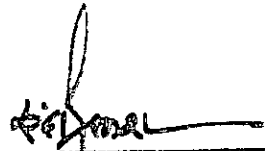
5.1 The Government has carefully examined the matter. The Commissioner (Appeals) has rejected the appeal on the grounds that (i) the Applicant failed to make the pre-deposit, as required under Section 129E *ibid* and (ii) on the grounds of limitation.

5.2 In the present case, the Penalty of Rs. 80,88,000/- was imposed on the Applicant and, accordingly, in terms of Section 129E, the Applicant was required to pre-deposit seven and a half per cent of the penalty imposed for his appeal to be entertained by the Commissioner (Appeals). There is nothing on the record that the pre-deposit has been made even at this stage. In fact, the revision application is conspicuously silent on this issue. It is correctly held by the Commissioner (Appeals) that pre-deposit under Section 129E is mandatory. Therefore, the appeal could not have been entertained in absence of such pre-deposit being made.

5.3 As regards limitation, the Government observes that, as per Section 128 *ibid*, an appeal can be filed before the Commissioner (Appeals) within 60 days from the date of communication of the Order against which such appeal is filed. On sufficient

cause being shown, the Commissioner (Appeals) can condone the delay of a further period of 30 days. Therefore, as per Section 128, the appeal is to be filed before Commissioner (Appeal) within a total period of 90 days, including the condonable period of 30 days. In the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur (2007-TIOL-231-SC-CX), the Hon'ble Supreme Court has, in a case relating to powers of Commissioner (Appeals) to condone the delay under Section 35 of the Central Excise Act, 1944, held that Commissioner (Appeals) has no powers to allow the appeal to be presented beyond the condonable period of 30 days. The provisions of Section 128 of the Customs Act, 1962 are in pari-materia with the provisions of Section 35 of the Central Excise Act, 1944. Therefore, there is no infirmity in the Order of Commissioner (Appeals) as regards limitation as well.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Vijay Pitamber Sundrani,  
Flat No. 204, Milan Tower,  
2<sup>nd</sup> Floor, Khemani, Ulhasnagar,  
Thane – 421002, Maharashtra.

Order No. 197/21-Cus dated 28-9-2021

Copy to:

1. The Commissioner of Customs (Airport & Admn.), N.S.C.B.I. Airport, Kolkata - 700052
2. The Commissioner of Customs (Appeals), 3<sup>rd</sup> Floor, Custom House, 15/1, Strand Road, Kolkata – 700001.
3. Sh. Prakash K. Shingrani, Advocate, 123, Himalaya House, 79, Palton Road, Next to Haj House, C.S.T., Mumbai – 400 001.
4. PA to AS(RA).
5. Guard File.

↳ spare copy.

ATTESTED

29/9/21

(AMIRA SINGH)

Supdt.