

REGISTERED

SPEED POST



F. No. 372/26/B/2017-RA
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..13/11/18

Order No. 204/18-Cus dated 29-11-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India under Section 129DD of the Custom Act, 1962.

- Subject : Revision Application filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 133/SLG-CUS/2017 dated 20.6.2017, passed by the Commissioner of Customs (Appeals), Kolkata
- Applicant : Mr. Balesh Kumar Jain, Rohini, Delhi
- Respondent : Commissioner of Customs, Central Excise & Service Tax, Siliguri

ORDER

A Revision Application No. 372/26/B/2017-R.A. dated 28.08.2017 has been filed by Mr. Balesh Kumar Jain, a resident of Rohini, Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No. 133/SLG-CUS/2017 dated 20.6.2017, passed by the Commissioner of Customs (Appeals), Kolkata, whereby his appeal filed before him against the Order of the Additional Commissioner of Customs has been rejected on the ground that the appeal was filed after delay of 2 days and no application of condonation of delay was filed.

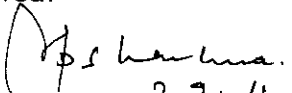
2. The revision application is filed mainly on the ground that they had forwarded their appeal to the Office of Commissioner (Appeals) on 12.1.16 by Speed Post bearing No.ED657972486IN and the same reached Commissioner (Appeals)'s Office on 18.1.16 within the time prescribed under Section 128 of the Customs Act. But the Office of the Commissioner (Appeals) redirected their appeal to another address 169, AJC Bose Road, Kolkata because of which their appeal did not reach in time. Moreover, the Commissioner (Appeals) did not provide them any personal hearing to know their case and the Order has been issued in violation of Principle of Natural Justice.

3. A personal hearing was held in this case on 29.11.2018 and it was availed by Shri S.S.Arora, Advocate, on behalf of the applicant who reiterated above narrated grounds of revision.

4. The Government has examined the matter and it is found evident from the copy of the Speed Post bearing No.ED657972486IN that the applicant had despatched its appeal on 12.1.16 and as per remark recorded thereon by a postal person it was refused by the Office of the Commissioner (Appeals-I) and by the Commissioner (Appeals-II) from which it is implied that the appeal of the applicant had reached the Commissioner (Appeals)'s Office on 18.1.16 itself which was well within the appeal period as specified under Section 128 of the Customs Act. Further, it is also noticed from the postal copy that the applicant had sent their appeal at 180, Rajdanga Main Road, Kolkata, as per direction given in the preamble of the Order in Original and the same was further redirected at the Office at 169, AJC Bose

Road, Kolkata where the Office of the Commissioner (Appeals) is actually situated as per address given in the OIA. Thus, the applicant had sent the appeal on 12.1.16 on the address given in the preamble of the OIO and no fault can be attributed to the applicant by saying that they had sent the appeal on the wrong address. Accordingly, the applicant had bonafide reason to believe that they had filed their appeal well in time and there was no reason for filing an application for condonation of delay. Even as per the Order of the Commissioner (Appeals) also the delay is of 2 days only in filing the revision application and the same should have been pointed out to the applicant before dismissal of their appeal for the reason of limitation so that the applicant could explain his case properly or file an application for condonation of delay. But it is manifest from OIA that no opportunity was provided to the applicant to hear their case and, therefore, the Order passed is clearly vitiated by gross violation of Principle of Natural Justice. Above all, in the light of above discussed facts from which it is evident that the applicant had sent their appeal well in time at the address suggested in the OIO, it cannot be accepted that the applicant filed his appeal after any delay. Instead the mistake of giving wrong address of the Commissioner (Appeals)'s Office given in the OIO should be blamed. Therefore, the Government is convinced that the OIA has been passed erroneously by concluding that the appeal was filed after a delay of 2 days. Accordingly, the Government set aside the above referred OIA and remand the case back to the Commissioner (Appeals) with a direction to decide the applicant's appeal on merit within 60 days from the receipt of this Order as it is already unreasonably delayed for the above discussed reasons.

5. Accordingly, the revision application filed by the applicant is allowed.


29.11.18

(R.P.Sharma)

Additional Secretary to the Government of India

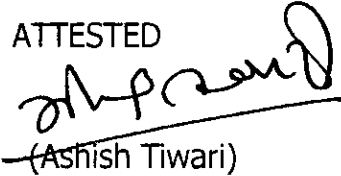
Mr. Balesh Kumar Jain
S/o Late Mr. Narender Kumar Jain
B-15, Plot No.5, Sector-9
Shakti Apartment, Rohini,
Delhi-110085

ORDER NO. 204/2018 - Cus dated 29-11-2018

Copy to:-

1. Commissioner of Customs, Central Excise & Service Tax, C.R. Building, Haren Mukherjee Road, Hakimpara, Siliguri-734001
2. Commissioner of CGST&CX (Appeals), Kolkata, 169, AJC Bose Road, Bamboo Villa, 4th Floor, Kolkata-700014.
3. The Additional Commissioner Central Excise & Service Tax, Siliguri Commissionerate, Siliguri-734001
4. Shri S.S.Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi-110029
5. P.A. to AS (RA)
6. Guard File
7. Spare copy

ATTESTED



(Ashish Tiwari)

Assistant Commissioner