

REGISTERED  
SPEED POST



F.No. 372/35/B/2017-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... 13/12/18

Order No. 234/18-Cus dated 10-12-2018 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. 30/Pat/Cus/Appeal/2017 dated 19.09.2017, passed by the Commissioner of Customs (Appeals), Patna

Applicant : Mr. Rajesh G. Wadwa, Khar (W), Mumbai

Respondent : Commissioner of Customs (Preventive), Patna

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**ORDER**

A Revision Application No.372/35/B/2017-RA dated 08.12.2017 is filed by Mr. Rajesh G. Wadwa, a resident of BK No.1935, Room No.2, O.T.Section Ulhashnagar-5, Distt. Thane, Maharashtra (hereinafter referred to as the applicant) against the Order-in-Appeal No.30/Pat/Cus/Appeal/2017 dated 19.09.2017, passed by the Commissioner of Customs (Appeals), Patna, whereby the applicant's appeal filed against the Order-in-Original has been rejected for not pre-depositing the amount @7.5% of the penalty of Rs.735199/- as per Section 129E of the Customs Act, 1962.

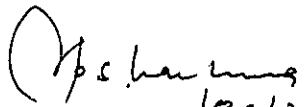
2. The revision application has been filed by the applicant mainly on the grounds that the OIA is erroneous, as the Commissioner (Appeals) has not followed the Principle of Natural Justice and penalty is wrongly imposed under Section 114 A & 114AA of the Customs Act.

3. Personal hearing was held in this case on 05.10.2018. In response, the Department, vide letter dated 28.9.18, has replied that enough opportunities of personal hearing were provided to the applicant but the applicant did not avail the personal hearings and the applicant did not deposit the statutory pre-deposit of 7.5% at the time of filing of appeal before Commissioner (Appeals). However, no one appeared for the applicant and even no request for any other date of hearing for any genuine reason was also received from which it is implied that the applicant is not interested in availing the hearing in this case. Accordingly, the revision application is taken up for a decision on the basis of available records.

4. The Government has examined the matter and it is found from the Order-in-Appeal that the applicant's appeal before the first appellate authority is rejected solely on the ground that the applicant did not pre-deposit the amount @7.5% of the penalty amount as stipulated in Section 129E as a pre-condition for the Commissioner (Appeals) to entertain any appeal. Non-payment of the said amount is not disputed by the applicant also in the revision application and it is not elaborated as to how their appeal could be entertained by the Commissioner (Appeals) when Section 129E itself categorically provides that Commissioner (Appeals) shall not

entertain any appeal unless the appellant had pre deposited the amount at the rate of 7.5% of the duty or the penalty. Since the condition of pre-depositing the amount was not complied with, the rejection of his appeal by the Commissioner (Appeals) on this ground cannot be faulted by the Government. The Government has further noticed that the revision application dated 08.12.17 was not accompanied by a fee of Rs.1000/- which was required to be paid in this case as per Section 129DD(3) of the Customs Act. As per this Section a fee of Rs.1000/- is mandatorily to be accompanied along with the revision application where the amount of duty and interest demanded, fine or penalty levied by an Officer of Custom in the case to which the application relates is more than Rs.1.00 lakh. Since in this case the demand of Custom duty is Rs.685199/- and the penalty is Rs.735199/-, a fee of Rs.1000/- was required to be paid before revision application was filed. But no fee was paid prior to filing of the application and consequently the revision application filed by the applicant in breach of the above statutory condition cannot be considered to have been filed properly and no authority has been empowered to condone non compliance of this condition.

5. Accordingly, no interference in the Order-in-Appeal is warranted and the Revision Application is rejected as non-maintainable.

  
10.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

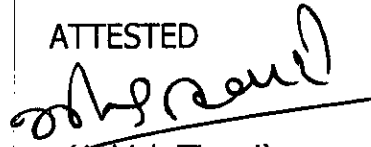
Mr. Rajesh G. Wadhwa,  
C/o O.M.Rohira, Advocate  
148/301 Uphaar, 10<sup>th</sup> Road, Khar(W)  
Mumbai-400052

Order No. 237 /18-Cus dated 10-12-2018

Copy to:

1. Commissioner of Customs (Preventive), 5<sup>th</sup> Floor, Central Revenue Building, Bir Chand Patel Path, Patna-800001
2. Commissioner of Customs (Appeals), Central GST & Cx, Patna 2<sup>nd</sup> Floor, C.R.Building Annexe, Bir Chand Patel Path, Patna
3. Joint Commissioner of Customs (P) Hqrs., Central GST & Cx, Patna 5<sup>th</sup> Floor, C.R.Building, Bir Chand Patel Path, Patna
4. PA to AS(RA)
5. Guard File.

ATTESTED



(Ashish Tiwari)  
Assistant Commissioner