

REGISTERED
SPEED POST



F.No. 375/14/B/17-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...4/1/18...

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Order No. 261/18-Cus dated 22/12/2018 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.CC(A)Cus/Air/21/2017 dated 8.2.2017 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mohd. Sharfuddin, Wazirabad Village, New Delhi

Respondent : Commissioner of Customs, New Delhi

ORDER

A Revision Application No. 375/14/B/17-RA dated 11.05.17 has been filed by Mohd. Sharfuddin, S/o Mohd. Zahiruddin, a resident of Wazirabad Village, New Delhi (hereinafter referred to as the applicant) against the Order-in-Appeal No.CC(A)Cus/Air/21/2017 dated 8.2.2017, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the applicant's appeal has been rejected on the ground of time limitation.

2. The revision application has been filed mainly on the grounds that the Commissioner (Appeals) has failed to appreciate that the applicant has been falsely implicated; that the appeal is not time barred as the OIO was received on 23.3.17 only and thus the above Order in Appeal is erroneously passed.

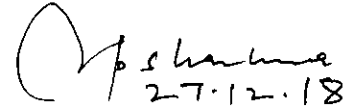
3. A personal hearing was held in this case on 07.12.18 which was attended by Ms Sangita Bhayana, Advocate, on behalf of the applicant who reiterated the above mentioned grounds of revision already pleaded in their revision application.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) has rejected the appeal of the applicant filed against the Order of the Additional Commissioner dated 27.7.15, dispatched on 29.7.15, on the sole ground that the appeal before him was filed on 28.1.16 after 183 days. Whereas the appeal should have been filed within 60 days of the receipt of the Order of the Additional Commissioner which expired on 27.9.15 and as per 1st Proviso to Section 128 of the Customs Act, 1962 he was empowered to condone the delay upto 30 days only. But because the delay in this case is much more than 30 days he was unable to condone the delay and accordingly the appeal filed by the applicant is time barred. The above conclusion of the Commissioner (Appeals) is based on the report dated 30.11.16 from the Office of the Additional Commissioner of Customs as per which the OIO passed on 27.7.15 was sent to the applicant on 29.7.15 by speed post No.ED440675112IN. He has further observed that even if it is assumed that the impugned Order was received by the applicant after 10 days of dispatch then also there is a huge delay in filing the appeal which is beyond his

competence. On the other hand, the applicant has claimed that Order in Original dispatched by the Office of the Additional Commissioner by aforesaid speed post was not received by them and its copy was given to the Counsel of the applicant only on 22.12.15 when she had visited the Office of the Commissioner (Appeals) for which she had earlier requested vide her letter dated 5.12.15 and soon thereafter he filed appeal on 28.1.16 which is within 60 days as specified under Section 128 of the Customs Act. But the Government does not find any substance in this claim of the applicant as the applicant has not offered any explanation with regard to non-receipt of the Order dispatched by speed post on 29.7.15 which is a guaranteed method of delivery of the dak. Since the speed post did not return to the Office of the Commissioner (Appeals) with any adverse report of the postal department such as wrong address or refusal by the addressee etc., it is fair to presume that the aforesaid speed post was delivered to the applicant well in time whose residential address is in Delhi itself. Therefore, the observation of the Commissioner (Appeals) that even if it is assumed that the impugned Order was received by the applicant after 10 days of dispatch of the Order then also there is delay in filing the appeal is logical and maintainable particularly when no evidence is produced by the applicant to contradict the fact regarding non-receipt of the Order under the afore-mentioned speed post number. In fact, after the Order was dispatched by speed post the onus to prove that Order was not received lies on the applicant. But no such evidence has been provided and he has merely contended that the OIO was received subsequently on 22.12.15 only. The applicant has also not produced any evidence such as any letter or acknowledgement from the Office of the Additional Commissioner showing that the Order was received on 22.12.15 and rather it is claimed that it was received by the Counsel personally during her visit to the Airport on 22.12.15 which cannot be verified by the Government by any method at this juncture. Thus the claim of the applicant that Order in Original dated 27.7.15 was received after long gap on 22.12.15 is not supported by any evidence and, therefore, this claim cannot be accepted for counting the limitation period. Instead, the conclusion of the Commissioner (Appeals) is concretely based on the postal department's speed post and report from the Office of the Additional Commissioner

of Customs and the Government cannot ignore the same in absence of any other contrary credible evidence adduced by the applicant. Hence, the Government does not find any error in the conclusion drawn by the Commissioner (Appeals) that the applicant filed the appeal before him after delay of 183 days which could not be condoned by him in any circumstance as Commissioner (Appeals) is empowered to condone the delay upto 30 days only under Section 128 of the Customs Act.

5. Accordingly, the revision application is rejected on the above discussed grounds itself and without examining other aspects of the case.


27.12.18

(R.P.Sharma)

Additional Secretary to the Government of India

Mohd. Sharfuddin,
S/o Mohd. Zahiruddin,
R/o A-16, Gali No.9,
Wazirabad Village,
New Delhi

Order No. 261/18-Cus dated 26/12/2018

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), Near IGI Airport Terminal-3, New Custom House, New Delhi
3. Additional Commissioner of Customs, IGI Airport Terminal-3, New Delhi
4. Ms Sangita Bhayana, Advocate, Chamber No.707, LCB-III, Delhi High Court, New Delhi-110001
5. PS to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(Ashish Tiwari)

Assistant Commissioner (RA)