

SPEED POST



F. No. 375/ 21/ B/ 2017- R.A.
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..... 8/11/19..

42/19-as
ORDER NO/ Cus dated 6-11-2019 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. CC (A) Cus/ D-I/ Air/ 161/ 2017 dated 20.04.2017, passed by the Commissioner of Customs (Appeals), NCH, Near IGI Airport, Delhi.

APPLICANT : Mr.Navdeep Singh Arora.

RESPONDENT : Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037.

ORDER

A Revision Application No. F. No. 375/21/B/2017-R.A. dated 07.07.2017 has been filed by Mr. Navdeep Singh Arora (hereinafter referred to as the applicant) against order-in-appeal No. CC. (A) Cus/ D-I/ Air/ 161/ 2017 dated 20.04.2017, passed by the Commissioner of Customs (Appeals), NCH, Near IGI Airport, Delhi. Commissioner (Appeals) rejected the appeal of M/s Navdeep Singh Arora against the Order-in-Original no. 10/ 2015 dated 24.02.2015 passed by the Joint Commissioner of Customs (General), New Customs House, Delhi (who has absolutely confiscated the seized gold kada and imposed penalty of Rs. 2 lacs on the applicant and disallowed free allowance) by not condoning the delay in filing appeal beyond normal period of 60 days.

2. The brief facts of the case are that the applicant appealed against Order-in-Original no. 10/ 2015 dated 24.02.2015 passed by the Joint Commissioner of Customs (General), New Customs House, Delhi before the Commissioner (Appeals) which was rejected as time-bar.

3. The revision application has been filed by the applicant against the order of the Commissioner (Appeals).

4. Personal hearing was fixed on 30.11.2018. Neither the applicant nor the respondent appeared on 30.11.2018. Accordingly another date of hearing was fixed on 18.09.2019 in this case. Sh. S.S. Arora, Advocate appeared on behalf of the applicant and reiterated the grounds of appeal as mentioned in the Revision Application. He submitted that the applicant did not receive the O-I-O no. 10/ 2015 dated 24.02.2015. Upon receipt of recovery notice dated 15.06.2015 they requested the customs authorities to provide the impugned Order-in-Original which was given and received by them on 18.04.2016. Accordingly they filed an appeal before the Commissioner (Appeals) on 26.04.2016, which was rejected as time-bar. No one appeared on behalf of the respondent on this date also. Thereafter a letter dated 18.09.2019 followed by another letter dated 18.10.2019 was sent to the respondent asking them to clarify the mode of delivery of the impugned order, i.e., whether it was sent through ordinary/ registered/ speed post. The respondent has only furnished the despatch no.5630 and date, i.e., 24.02.2015 of the order vide their letter dated 30.09.2019 to this office. However no mention regarding the mode of delivery of the impugned order has been made.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, Government finds that the Commissioner (Appeals) has rejected the appeal of the applicant under Section 35 (1) of the Central Excise Act, 1944 as he had no power to condone the delay in filing the appeal beyond 30 days after expiry of normal period of 60 days.

Section 35(1) of the Central Excise Act, 1944 states as follows:-

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer lower in rank than a Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals) within sixty days from the date of the communication to him of such decision or order: Provided that the Commissioner (Appeals) may, if he is satisfied that 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.

Since the respondent has not adduced evidence that order was sent by Registered/ Speed Post, it is presumed that the contention of the applicant that they did not receive the order-in-original despatched vide despatch no. 5630 dated 24.02.2015 is correct and hence accepted. Therefore Government holds that the appeal has been filed in time since the applicant received the impugned Order-in-Original on request to the customs authorities on 18.04.2016 and the appeal was filed on 26.04.2016 before the Commissioner (Appeal).

6. Treating the appeal as having been filed in time, the Revision Application is allowed by way of remand to the Commissioner (Appeals) for final disposal of the case on merits.

Mallika Arya
(Mallika Arya)

Additional Secretary to the Government of India

1. Mr. Navdeep Singh Arora, R/o WZ-171, Street No. 16, G Block, Hari Nagar, Delhi-110058.

2. The Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037

^{42/18-11}
ORDER NO. CUS DATED 6-1-2019

Copy to:-

1. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037
2. P.S. to A.S.
3. ~~Guard File.~~
4. Spare Copy.

ATTESTED

Shree
(NIRMALA DEVI)

S.O.

(ISHWER CHANDER)
Suptl.