

SPEED POST



F. No. 372/03/B/2018-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.. 22/11/19...

ORDER NO. ^{51/19-Cus} Cus dated 21-11-2019 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. KOL/CUS(A/P)/AA/1380/2017 dated 18.10.2017, passed by the Commissioner (Appeals), Kolkata.

APPLICANT : Mr. Chandra Shekhar Singh, Kolkata.

RESPONDENT : Commissioner of Customs, Kolkata.

ORDER

A Revision Application No. 372/03/B/2018-R.A.dated 02.01.2018 has been filed by Mr. Chandra Shekhar Singh, Kolkata (hereinafter referred to as the applicant) against order-in-appeal No. KOL/CUS(A/P)/AA/1380/2017 dated 18.10.2017, passed by the Commissioner (Appeals), Kolkata. The Commissioner(Appeals) has rejected the applicant's appeal for non-compliance with the statutory requirement of pre-deposit amount.

2. A personal hearing was granted on 15.11.2019. Shri Punam Chand Jain, Consultant, appeared for the applicant and contended that he has deposited the required amount of pre-deposit which had not been paid at the time of the order of Commissioner (Appeals). No one appeared for the respondent and no request for adjournment has been received from them. Therefore, the matter is being taken up on the basis of available facts on record.

3. It is evident that the applicant had brought miscellaneous goods valued at Rs. 85,290/- from Bangkok which were subsequently confiscated by the Customs and an order for release of the said confiscated goods was given to the applicant on payment of redemption fine of Rs. 22,000/- and penalty of Rs.10.000/-. Free allowance was also disallowed to the applicant.

4. The grounds of revision application is that the goods brought by him were under the provisions of Baggage Rules, 1998 and he was entitled to get free allowance, which has been denied by the department especially on item No. 4, i.e. three dozens of Johnson Baby Creams, of the seizure list. The applicant also prayed that vis-a-vis value of the impugned goods, redemption fine and penalty are high and should be reduced.

5. Government has examined the matter and it is observed that the Commissioner (Appeals) rejected the applicant's appeal for non-compliance with the statutory requirement of pre-deposit without going into the merits of the case.

6. Section 129(E) (i) of Customs Act, 1962 prescribes pre-deposit of 7.5% for the cases similar to the present one. It reads as follows:-

"Section 129(E) Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. —

The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—

(i) under sub-section(1) of Section 128,, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Customs lower inn rank than the Principal Commissioner of Customs or Commissioner of Customs;

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."

7. The applicant has submitted two Challans dated 15.12.2017 and 01.06.2017 evidencing deposit of an amount of Rs. 4000/-.

8. Since the applicant has now made deposit of Rs. 4,000/-, it is observed that this fulfils the condition of pre-deposit under Section 129E of Customs Act, 1962. The Government, therefore, sets aside the impugned order dated 18.10.2017 and remands the matter to the Commissioner (Appeals) for a fresh consideration on merits after giving an opportunity of hearing to the applicant.

9. The revision application is allowed by way of remand.

Mallika Arya
(MALLIKA ARYA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

1. Mr. Chandra Shekhar Singh, 146, C Road Bamangachi, Salkia, Howrah-711106.

2. The Commissioner of Customs, N.S.C.B. International Airport, Kolkata-700052

ORDER NO. 51/19-Cus dated 24/11/2019

Copy to:-

1. The Commissioner (Appeals), Customs, Kolkata
2. P.S. to A.S.
3. Guard File.

ATTESTED

Nirmala Devi
21/11/19

(Nirmala Devi)

S.O.