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SPEED POST



F.No. 380/36/B/15-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... 9/7/18

Order No. 74/18-Cus dated 2-7-2018 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.Kol/Cus/A/P/AM/34/2015 dated 2.7.2015 passed by the Commissioner of Customs (Appeals), Kolkata

Applicant : Commissioner of Customs (Airport), AIU Cell, Kolkata

Respondent : Mr. Gurdeep Singh, Ludhiana, Punjab

ORDER

A Revision Application No.380/36/B/15-RA dated 4.9.15 is filed by Commissioner of Customs, AIU Cell, Kolkata Airport (hereinafter referred to as the applicant) against the Order-in-Appeal No.Kol/Cus/A/P/AM/ 034/2015 dated 2.7.2015, passed by the Commissioner of Customs (Appeals), Kolkata, whereby the department's appeal against the Order-in-Original was rejected.

2. The brief facts of the case are that a passenger namely Shri Gurdeep Singh (hereinafter referred to as the respondent) arrived at Kolkata Airport from Bangkok on 16.6.13. He was intercepted by AIU Officers and some of the goods like silver coins, cameras, laptops, T.V., and ladies top etc. were recovered from him. On adjudication of the case after issuing the show cause notice to the respondent, these goods were confiscated and penalty of Rs.1.00 lakh was imposed on him. However, he gave an option to the respondent to redeem the confiscated goods on payment of fine and custom duty. But his Order was not accepted by the Commissioner of Customs and an appeal was filed before the Commissioner (Appeals) with a request to set aside the OIO which is rejected by the Commissioner (Appeals) vide aforementioned Order-in-Appeal as time barred. Being aggrieved the revision application has been filed to condone the delay of 7 days in filing the appeal before the Commissioner (Appeals) and to set aside the OIA or remand the matter to the Commissioner of Customs (Appeals), Kolkata with a direction to examine the case on merit and pass the Order as per Law.

3. Personal hearings were offered on 23.4.18 and 23.5.18 in this case. However, no one appeared for the applicant and even no request for any other date of hearing is also made from which it is implicit that the applicant is not interested in availing the personal hearing in this case. But the respondent availed the hearing on 23.5.18 through Shri S.S.Arora, Advocate, who furnished written submissions dated 23.5.18 to oppose the Revenue's revision application on time limitation as well as merit of the case.

4. The Government has examined the matter and it is observed that there is no dispute that the Order-in-Original was passed on 28.3.14, it was reviewed on 3.7.14, the Review Order was communicated to the Adjudicating Authority on 4.7.14 and the appeal before the Commissioner of Customs (Appeals) was filed on 11.8.14. Whereas as per Section 129 D (3) and (4) the appeal before the Commissioner (Appeals) should have been filed within one month of the receipt of the Review Order which was received on 4.7.14. But in this case the appeal was filed acceptably after delay of 7 days and the same is rejected as time barred by the Commissioner (Appeals) on the ground that he does not have any power to condone any delay under Section 129 D of the Customs Act. The applicant has claimed that the Commissioner (Appeals) is empowered to condone the delay of 30 days under Section 128 of the Customs Act and thus the delay of 7 days is condonable. It is further pleaded that the Central Government has the power to condone the delay and the same may be exercised in favour of the applicant. Thus, condonation of 7 days delay is sought under Section 128 and not under Section 129 D of the Customs Act under which the OIO was reviewed and an appeal was filed before Commissioner (Appeals). But this argument is not found convincing as Section 128 is not applicable at all in this case as it empowers the Commissioner (Appeals) to condone the delay upto 30 days only where the appeal period is 60 days which is available for non-departmental appeals only. For departmental appeal different period of limitation is stipulated under Section 129 D for reviewing the Order and filing the appeal thereafter and there is no power with the Commissioner (Appeals) to condone any delay under this Section. Even in the revision application it is admitted that the appeal against the OIO was filed under Section 129 D only and not under Section 128 and thereby the limitation period of one month for filing an appeal from the date of receipt of the Review Order should have been strictly followed. But the appeal was undisputedly delayed by 7 days for which there is no power with the Commissioner (Appeals) or even with the Central Government to condone under any provision of the Customs Act. Even the applicant has not mentioned any such provision under which the Central Government

can condone such delay. Therefore, prima facie no error is found in the Order of the Commissioner (Appeals) and the revision application is found devoid of any merit.

5. Accordingly, the revision application is rejected.

(R.P. Sharma)
2-7-18

(R.P. Sharma)

Additional Secretary to the Government of India

Commissioner of Customs (Airport)
AIU Cell, NSCBI Airport
Kolkata-700052

Order No. 74/18-Cus dated 2-7-2018

Copy to:

1. Mr. Gurdeep Singh, H.No.502, St. No.34, Jaimal Road, Janta, Nagar, Ludhiana, Punjab-141003
2. Commissioner of Customs (Appeals), 15/1, Strand Road, Customs House, Kolkata-700001
3. Additional Commissioner of Customs, AIU Cell, NSCBI Airport, Kolkata-700052
4. Shri S.S.Arora, Advocate, B1/71, Safdarjung Enclave, New Delhi-110029
5. PA to AS(RA)
- ✓ 6. Guard File.
7. Spare Copy

ATTESTED

(Debjit Banerjee)
STO (Revision Application)