SPEED POST

F. No. 375/10/B/2020-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 24/03/22

Order No. 100/22-Cus dated 24-03-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129DD of the Customs Act 1962 against the Order-in-Appeal No. CCA(A)Cus/D-I/Air/ 374/2019-20 dated 11.10.2019 passed by the Commissioner of Customs (Appeals), NCH, New Delhi

Applicant : Shri. Sajid Ahmed Shaikh, Thane.

Respondent : Commissioner of Customs, IGI Airport, New Delhi.

ORDER

A Revision Application No. 375/10/B/2020-RA dated 23.01.2020 has been filed by Shri Sajid Ahmed Shaikh, Thane (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CCA(A)Cus/D-I/Air/374/2019-20 dated 11.10.2019 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 99/AS/JC/2019 dated 29.03.2019, passed by the Joint Commissioner (Customs), IGI Airport, New Delhi, on the grounds of pre-deposit not having been made for the appeal to be entertained.

2. Briefly stated, the Applicant herein was to depart from IGI Airport, New Delhi for Dubai, on 02.05.2018. Upon his personal search and search of his baggage, foreign currency of USD 50,000/-, equivalent to Rs. 32,50,000/-, was recovered concealed inside a bottle of fruit jam and handle rod of the baggage. The recovered foreign currency was seized, on 02.05.2018, under Section 110 of the Customs Act, 1962. A statement dated 02.05.2018 was recorded, under Section 108 of the Customs Act, 1962, wherein Applicant agreed with the search proceedings and stated that the currency was handed over to him by one Shri Munna sent by Shri Nawab; and that he was to get a monetary consideration of Rs. 8000/- alongwith air tickets etc. for successfully carrying it to Dubai. The Applicant also could not provide any documentary evidence in support of the licit possession and export of the foreign currency. The Joint Commissioner of Customs, vide the aforesaid Order dated 29.03.2019, ordered for absolute confiscation of the foreign currency, under Section 113 of the Customs Act, 1962 read with FEMA, 1999. A penalty of Rs. 6,50,000/- was also imposed upon the Applicant herein under Section 114 *ibid.* The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals) on the ground that pre-deposit of 7.5% of the duty/penalty has not been made, as required in terms of Section 129 E of the Customs Act, 1962.

3. The Revision Application has been filed, mainly, on the ground that while Commissioner (Appeals) cannot entertain an appeal unless pre-deposit is made, he cannot insist on payment of pre-deposit as a condition precedent for filing an appeal; that Commissioner (Appeals) gave them no opportunity to rectify the defect; and that, therefore, the order of Commissioner (Appeals) may be set aside. Several submissions have been made on the merit of the case as well.

4. Personal hearing in the matter was fixed on 28.01.2022, 18.02.2022 and 23.03.2022. Shri N.J. Hira, Advocate for the Applicant, vide letter dated 22.03.2022, received on email, waived the personal hearing and made several submissions on merits.

5.1 The Government has carefully examined the matter. The relevant extracts of Section 129 E of the Customs Act, 1962 are reproduced as under :

> *"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 percent 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 in rank than the Principal Commissioner of Customs or Commissioner of Customs; " (emphasis applied).*

5.2 Thus, on a plain reading of section 129 E, it is apparent that pre-deposit is a condition mandatory for an appeal to be entertained by the Commissioner (Appeals). In the present case, the appeal was filed before the Commissioner (Appeal) on 16.08.2015 and was rejected as non-maintainable by the Commissioner (Appeals) on 11.10.2019. Thus, Applicant had a time period of about four years and two months to comply with the mandatory requirement under Section 129 E, even after filing of

his appeal. Not only that, even at this stage, it is not the contention of the Applicant that pre-deposit has since been made. Therefore, in case the contention of the Applicant that "while the Commissioner (Appeals) cannot entertain an appeal unless the pre-deposit is made, he cannot insist upon payment of the pre-deposit as a condition precedent for filing an appeal" was to be accepted, it would lead to a position where an appellant can file an appeal without making a pre-deposit and then keep it alive in perpetuity. Needless to say that such an interpretation would render the provisions of Section 129 E nugatory. In these facts and circumstances, Government does not find any infirmity in the impugned Order-in-Appeal.

6. The revision application is rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

Shri. Sajid Ahmed Shaikh,
R/o Poonam Sagar Complex,
Opp. Sec.-9, BKDJ, No. E-14/004,
Shanti Nagar, Mira Road (E)
District Thane – 401107.

Order No. 100/22-Cus dated 24-03-2022

Copy to:

1. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037;
2. The Commissioner of Customs, IGI Airport, New Delhi;
3. Sh. A.M. Sachwani, Advocate, Nulwala Building, Ground Floor 41, Mint Road, Opp. G.P.O., Fort, Mumbai – 400 001.
4. PS to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi