

SPEED POST



F.No. 372/02/B/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 28/5/21...

Order No. 103/21-Cus dated 28-5-2021 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(Airport)/AA/2074/2018 dated 19.12.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Umesh Kumar Gupta, Kolkata.

Respondent : Commissioner of Customs, Airport & Administration, Kolkata.

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**ORDER**

A Revision Application No. 372/02/B/2019-RA dated 12.02.2019 has been filed by Sh. Umesh Kumar Gupta, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Airport)/AA/2074/2018 dated 19.12.2018 passed by the Commissioner of Customs (Appeals), Kolkata, vide which the appeal filed by the Applicant herein, against the Order-in-Original No. 105/2017 JC dated 31.10.2017 passed by the Joint Commissioner of Customs, NSCBI Airport, Kolkata has been rejected, as barred by limitation.

2. Brief facts of the case are that the Applicant was intercepted by the Customs Officers at NSCBI Airport, Kolkata while he was proceeding to board a flight for Bangkok on 16.04.2015 after completion of immigration formalities. Upon his search, foreign currency amounting to US Dollars 20,000/-, having convertible value of Rs. 12,39,000/-, was recovered, which was seized. The Applicant in his statement dated 10.05.2015, recorded under Section 108 of the Customs Act, 1962, revealed that the Foreign Currency belonged to one of his fellow villagers for whom he was carrying it to Bangkok. The Joint Commissioner of Customs vide aforesaid Order-in-Original dated 31.10.2017 ordered absolute confiscation of the seized Foreign Currency of USD 20,000/-, and imposed a penalty of Rs. 12,39,000/- on the Applicant, under Section 114 of the Customs Act. The Applicant herein filed the appeal before Commissioner (Appeals) on 13.11.2018 i.e. after the lapse of more than one year. Therefore, Commissioner (Appeals) rejected the appeal as barred by limitation.

3. The revision application has been filed on the grounds that the copy of Order-in-Original dated 31.10.2017 was received by the Applicant only vide letter dated 11.10.2018 of the Assistant Commissioner, Airport, Kolkata, upon his request. Therefore, the appeal was filed within the limitation period. Several other averments, on merits of case, have also been made.

4. Personal hearing in the matter was fixed, in virtual mode, on 05.04.2021, 22.04.2021, 06.05.2021 & 28.05.2021. Sh. Nirmal Sarkar, Superintendent appeared for the department in the hearing held on 06.05.2021 and supported the orders of the lower authorities. Sh. Sarkar highlighted that the Applicant did not appear before the original authority despite sufficient opportunities being granted. However, his reply to SCN has been duly considered. A written submission was filed by email on 19.04.2021 on behalf of the Applicant where several averments on merits of the case have been made. However, Applicant failed to appear for the personal hearing. As sufficient opportunities have been granted, the matter is being taken up for disposal based on records.

5. The Government has examined the matter. As per Section 128 of the Customs Act, 1960, an appeal can be filed before the Commissioner (Appeals) within 60 days from the date of communication of the order. Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of 30 days. Therefore, an appeal can be filed before the Commissioner (Appeals) within the maximum period of 90 days from the date of communication, including condonable period of 30 days. Further, as per Section 153 of the Customs Act, any order may be served by registered post or speed post or courier etc. As per sub-section (3) of Section 153 *"When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."* In the present case, the Commissioner (Appeals) has recorded that the subject Order-in-Original dated 31.10.2017 was issued on 02.11.2017. The Assistant Commissioner of Customs, vide letter dated 14.09.2018 addressed to the Applicant (Annexure-H to the RA), has also specifically stated that the Order-in-Original was issued by Speed Post on 02.11.2017 to the Applicant as well as to the Advocate of the Applicant. This position remains uncontroverted. Therefore, taking a maximum period of communication by post of 7 to 10 days, the order is deemed to have been received by the Applicant herein, latest by mid-November 2017. The onus

to prove that the order was not so received, lies on the Applicant, in terms of the sub-section (3) of Section 153, which onus the Applicant has failed to discharge as the position stated by the respondent department remains uncontroverted. Therefore, the 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

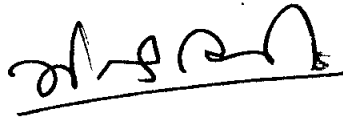
Sh. Umesh Kumar Gupta,  
10, BT Road, Namaste Gali,  
Rukmani Cinema Hall, Titagarh,  
Kolkata- 700 119.

Order No. 103/21-Cus dated 28-5-2021

Copy to:

1. The Commissioner of Customs (Airport & Admn.), NSCBI Airport, Kolkata- 700 052.
2. The Commissioner of Customs (Appeals), Kolkata.
3. Sh. Barinder Singh & S.C. Ratho, Customs Consultants, 14, Hare Street, Room No. 9, 1<sup>st</sup> Floor, Kolkata- 700 001.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



आशीष तिवारी / ASHISH TIWARI  
सहायक आयुक्त / Assistant Commissioner  
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क  
CGST, Central Excise & Customs  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
भारत सरकार / Government of India  
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