

SPEED POST



F.No. 375/73/B/2018-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..20/7/21

Order No. 131 /21-Cus dated 20-7-2021 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.CC(A)Cus/D-I/Air/150/2018 dated 27.04.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Asker Ali Chengala Mallam, Kasargod, Kerala

Respondent : Commissioner of Customs (Airport & General), New Delhi

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ORDER

A Revision Application No. 375/73/B/2018-RA dated 17.08.2018 has been filed by Mr. Asker Ali Chengala Mallam, Kerala, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/150/2018 dated 27.04.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal as time barred observing that the appeal was filed beyond the stipulated period of sixty days as per Section 128 of the Customs Act, 1962.

2. The brief facts of the case are that the applicant arrived on 23.11.2014 at the IGI Airport, New Delhi, from Dubai. Upon search of his person and of his baggage, 36 gold bars totally weighing 4199.04 grams, were recovered from his possession. The value of seized gold bars was appraised at Rs.99,36,104/-, by the Jewellery Appraiser at IGI airport. Adjudicating authority, vide Order-in-Original No. 62-Adj/2016 dated 12.07.2016, absolutely confiscated the impugned gold bars. Besides, a penalty of Rs. 20,00,000/- was also imposed on the Applicant. Aggrieved, Applicant filed an appeal before the Commissioner (Appeals), which was rejected as time barred.

3. The revision application has been filed canvassing that the Applicant did not file the condonation of delay application before the Commissioner (Appeals) due to

the negligence of the advocate; that because of apparent mistake committed by the advocate, the Applicant should not suffer.

4. Personal hearing was fixed on 28.04.2021, 12.05.2021, 18.06.2021 and 19.07.2021. Sh. Gaurav Prakash, Advocate appeared for the Applicant, in the hearing held on 19.07.2021, in virtual mode, and pleaded that due to an untoward incident the main counsel Sh. Rahul Raheja is unable to be present. Hence, adjournment may be granted. Upon being pointed out that this is the fourth opportunity and no evidence substantiating the claim for absence had been produced, Sh. Gaurav Prakash made the submissions. He reiterated the contents of the revision application and submitted that in the proceedings before the Commissioner (Appeals) the Applicant's counsel forgot to file condonation of delay application leading to rejection of appeal. He submitted that the applicant should not suffer for the mistake of the lawyer. Sh. Deepak, Inspector supported the order of the lower authorities

5. Government has examined the matter. Government observes that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days or further extended period of thirty days, i.e., maximum period (including condonable period) within which the appeal can be filed is 90 days. Government further observes that the appeal of the Applicant was rejected by the Commissioner (Appeals) for the reason that no application for condonation of delay was filed. It is incumbent upon the Applicant to

file COD application in case there is delay in filing the appeal disclosing the cause for delay so that the matter could be appropriately considered by the Commissioner (Appeals). The contention of the Applicant that the COD application was not filed due to mistake of the lawyer is unsubstantiated. There is no evidence placed on record that the lawyer was, in fact, instructed to do so. Though it is claimed in the RA that there was a genuine ground for delay, the so called genuine ground has not been disclosed. Thus, it is apparent that the present contention of the Applicant is nothing but an afterthought. As such, the Government does not find any infirmity in the order of Commissioner (Appeals).

6. The revision application is rejected.



(Sandeep Prakash)

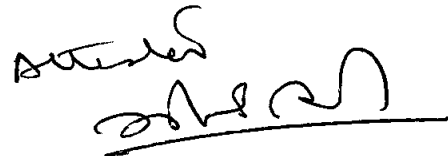
Additional Secretary to the Government of India

Mr. Asker Ali Chengala Mallam,
KMC 23114, Thyalangadi Kasargod
PO Kasargod, kerala 671121

Order No. 131/21-Cus dated 26-7-2021

Copy to:

1. The Commissioner of Customs, Airport & General, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.



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
नई दिल्ली / New Delhi