

SPEED POST



**F. No. 372/08/B/2019—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... 25/8/21

Order No. (57)/21-CUS dated 24-8-2021 of the Government of India, passed by Shri Sandeep Prakash, 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 (Airport)/17/2019 dated 21/01/2019 passed by Commissioner of Customs (Appeals), Kolkata.

Applicant: Sh. Brajesh Kumar Gupta, Howrah.

Respondent: Commissioner of Customs (Airport & Admn.), Kolkata.

ORDER

A Revision Application No. 372/08/B/2019—R.A. dated 22/02/2019 has been filed by Sh. Brajesh Kumar Gupta, Howrah (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS (Airport & Admn.)/17/2019 dated 21/01/2019 passed by the Commissioner of Customs (Appeals), Kolkata, wherein the Applicant's appeal against Order-in-Original No. 49/2014 ADC dated 13/10/2014 passed by Additional Commissioner of Customs, AIU, NSCBI Airport, Kolkata, has been rejected as time-barred.

2. The brief facts of the case are that a person named Awadesh Maurya was intercepted by the Customs officers after he arrived from Bangkok on 26.08.2013 and a gold bar was recovered from him. He named the Applicant as his co-traveller and on his search, one gold bar weighing 152.2 gms, concealed in his mobile phone was recovered. Further search of his person resulted in the recovery of 04 gold pieces (02 pieces weighing 152.2 gms each 02 pieces weighing 76.1 gms each) from his underwear. Readymade garments worth Rs. 21,290/- were also recovered during the search of the Applicant. Gold bars, collectively weighing 608.8 gms, valued at Rs. 18,61,100/- were confiscated absolutely by the original authority under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962, vide the Order-in-Original dated 13.10.2014. The readymade garments were also confiscated under Section 111(d) of the Customs Act and allowed to be redeemed under Section 125 of the Customs Act on payment of fine of Rs 5,000/- and applicable duty. Penalty of Rs. 3,50,000/- was imposed on the Applicant, under Sections 112 (a) and 112 (b) of the Customs Act, 1962. Aggrieved, the

Applicant preferred an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, has rejected the appeal.

3. Personal hearing in the matter was granted on 22.07.2021, 13.08.2021 and 23.08.2021. No one appeared for Applicant and no request for adjournment has also been received. Since sufficient opportunities have been given, the matter is taken up for disposal on the basis of facts available on records. Sh. Jitendra Kumar, Superintendent, appeared for the Respondent department and supported the order of the Commissioner (Appeals). He highlighted that as per the case file notings, the Order-in-Original was issued on 14.10.2014.

4.1 The Government has examined the matter. The Commissioner (Appeals) has rejected the appeal of the Applicant as time barred. The appeal to Commissioner (Appeals) was filed by the applicant on 18.04.2018, i.e., after a lapse of 3 years and 5 months.

4.2 As per Section 128 of the Customs Act, 1962, an appeal has to be filed before Commissioner (Appeals) within 60 days from the date of communication of the impugned order. In terms of the Proviso to Section 128, the 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. In the present case, the Order-in-Original is claimed to have been received by the applicant on 26.12.2017 whereas the appeal was filed before the Commissioner (Appeals) on 16.03.2018. Thus, the appeal was filed before Commissioner (Appeals) much after the normal period of limitation of 60 days. Further, the applicant has

cited non-receipt of the Order-in-Original as the reason of not filing the appeal in time. However, as per the official records, the said order of the original authority was sent to him on the date of issue and was not received back from the postal department as not delivered. As such, the contention of the Applicant that the order was received by him only on 26.12.2017 does not appear to be acceptable. In any case, as brought out hereinabove, even if this contention was to be accepted, the appeal was still filed beyond the normal period of limitation. In these facts and circumstances, there are no grounds to interfere with the impugned Order-in-Appeal.

5. The revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Brajesh Kumar Gupta,
64, Kali Kundu Lane,
PO/PS Howrah,
Howrah-700 081.

ORDER NO. 157 / 21-Cus dated 24-8-2021

Copy to: -

1. The Commissioner of Customs, Airport & Admn., Kolkata.
2. The Commissioner of Customs (Appeals), Kolkata.

~~3. Guard File.~~

4. Spare Copy.

S. P.S. to A.S. (R.A.)

ATTESTED


(Ashish Tiwari)

Assistant Commissioner.