

SPEED POST



**F. No. 375/120/B/2018—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..03.09/21.

Order No. 168/21-CUS dated 03-09-2021 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. CC(A)Cus/D-I/Air/238/2018 dated 24.08.2018 passed by Commissioner of Customs (Appeals), New Delhi.

Applicant: Sh. Mazhar Mirza, Delhi.

Respondent: Commissioner of Customs, IGIA, New Delhi.

ORDER

A Revision Application No. 375/120/B/2018—R.A. dated 20/11/2018 has been filed by Sh. Mazhar Mirza, Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/238/2018 dated 24.08.2018 passed by Commissioner of Customs (Appeals), New Delhi, wherein the Applicant's appeal against Order-in-Original No. 157/2016 dated 16/11/2016 passed by Additional Commissioner of Customs, IGI Airport, New Delhi, has been rejected as time-barred.

2. The brief facts of the case are that the Applicant arrived at IGI Airport, from Dubai on 29.02.2016. After he crossed green channel, he was asked by the customs officers if he was carrying any dutiable goods to which he replied in negative. On scanning his checked-in baggage, some dark images were noticed which, on examination turned out to be assorted white coated gold items, collectively weighing 409 gms and valued at Rs. 11,36,482/-. The gold items were confiscated absolutely by the original authority under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962, vide the Order-in-Original dated 16.11.2016. Penalty of Rs. 2,25,000/- was imposed on the Applicant, under Sections 112 (a) and 112 (b) and 114AA of the Customs Act, 1962. Aggrieved, the Applicant preferred an appeal before the Commissioner (Appeals), which has been rejected as time-barred.

3. The Revision Application has been filed, mainly, on the ground that Section 5 of the Limitation Act empowers the appellate authority to entertain the appeal even beyond 90 days.

4. Personal hearing in the matter was held on 03.09.2021, in virtual mode. Sh. Syed Rehan, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He submitted that the delay ought to have been condoned and Commissioner (Appeals) should have decided the case on merits. Sh. Azim Ansari, Superintendent, appeared for the Respondent and supported the order of the Commissioner (Appeals).

5.1 The Government has examined the matter. The Commissioner (Appeals) has rejected the appeal of the Applicant as time barred. The Order-in-Original was received by the Applicant on 24.11.2016 and the appeal to Commissioner (Appeals) was filed on 24.03.2017, i.e., after a lapse of 4 months.

5.2 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 was received by the applicant on 24.11.2016 whereas the appeal was filed before the Commissioner (Appeals) on 24.03.2017. Thus, the appeal was filed before Commissioner (Appeals) much after the normal period of limitation of 60 days and the condonable period of 30 days after the normal period of 60 days. Hon'ble Supreme Court, has, in the case of M/s Singh Enterprises Vs. Commissioner of Central Excise [2008(221)ELT163(SC)], in respect of identical provisions under the Central Excise Act, 1944, i.e. Section 35, held that the appellate authority has no power to allow the appeal to be

presented beyond the statutorily prescribed condonable period of 30 days. While holding so, the Apex Court also held that "*there is complete exclusion of Section 5 of the Limitation Act*" in such matters. Therefore, the Government does not find any infirmity in the order of Commissioner (Appeals).

6. In view of the above, the revision application is rejected.


—(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Mazhar Mirza,
S/o Sh. Iqbal Mirza,
R/O House No-13, Park End,
Vikas Marg, Delhi-110 92.

ORDER NO. 168 / 21-Cus dated 3-9-2021

Copy to: -

1. The Commissioner of Customs, IGIA, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Sh. Syed Rehan Advocate, 93, Lawyers Chamber, Supreme Court of India, Tilak Marg, New Delhi-110001.
4. P.S. to A.S. (Revision Application)
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED

—(Ashish Tiwari)

Assistant Commissioner.