

SPEED POST



F. No. 373/352/B/2019-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...19/01/23

Order No. 20/23-Cus dated 19-01-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. CAL-EXCUS-000-APP-242-2019 dated 28.05.2019, passed by the Commissioner of Customs (Appeals), Kochi.

Applicants : Sh. Shameer U.V, Kozhikode

Respondent : Commissioner of Customs (P), Cochin

* * *

ORDER

A Revision Application No. 373/352/B/2019-RA dated 28.08.2019 has been filed by Sh. Shameer U.V, Kozhikode (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. CAL-EXCUS-000-APP-242-2019 dated 28.05.2019, passed by the Commissioner of Customs (Appeals), Kochi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 85/2015-16 dated 29.03.2016, passed by the Joint Commissioner of Customs (Airport), Calicut, as time barred.

2. Briefly stated, a passenger, namely, Sh. K.N Nisamudheen was intercepted at Calicut airport, on 06.07.2014, by the Customs officers when he was proceeding towards the immigration counters. After examination of his checked-in baggage assorted foreign currency to the tune of Rs. 57,94,278/- was recovered, which was not declared. In his statement recorded on 06.07.2014, under Section 108 of the Customs Act, 1962, he, inter-alia, stated that about 10 days back, he had met his friend Sh. Shameer (the Applicant herein) and told him that he was ready to take foreign currency to the Gulf; that he knew that Sh. Shameer used to smuggle out foreign currency to the Gulf through carriers; that Sh. Shameer agreed and he gave a copy of his passport to him; that, on 03.07.2014, Sh. Shameer called him on his mobile and told him that the ticket had been arranged for the coming Sunday, i.e., on 06.07.2014 and Sh. Nisamudheen was to come prepared to go to Dubai with foreign currency; that Sh. Shameer later contacted him and as instructed by him on 05.07.2014 he reached in front of the Archana Jewellery at Koduvally, from where the said Sh. Shameer gave him the tickets, copy of visa and the packet containing the foreign currency; that he did not have any documents authorising him to carry or export the currency with him. The Original Authority, vide the Order-in-Original dated 29.03.2016, ordered absolute confiscation of the foreign currency and imposed a penalty of Rs. 5,80,000/- each on the Applicant herein and on Sh. Nisamudheen, under Section 114. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that the Order-in-Original passed by the original authority is wrong, contrary to law and facts of the case;

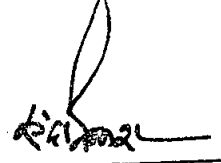
that the original authority ought to have considered the circumstances under which the Applicant was forced to send the foreign currencies with Sh. Nisamudheen; that the original authority ought to have appreciated the contentions of the Applicant that his statement was not voluntary and he was forced to take down what was dictated to him by the officers; that the original authority ought to have ordered release of the foreign currencies under seizure or equivalent Indian currency; and that the penalty imposed is highly excessive.

4. Personal hearing in the matter was held on 18.01.2023, in virtual mode. Shri K.M Suresh Chandran, Advocate appeared for the Applicant and reiterated the contents of the RA. Ms. R. Latha, AC submitted that reply dated 20.08.2020 has been filed and supported the Order of Commissioner (Appeals).

5. The Government has carefully examined the matter. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein on the grounds of limitation. It is not denied by the Applicant herein that the appeal was indeed filed with a delay as recorded by the Commissioner (Appeals). The Government observes that, in terms of sub-section (1) of Section 128 of the Customs Act, 1962, an appeal may be preferred before the Commissioner (Appeals) within a period of 60 days from the date of communication of the order appealed against. Further, as per proviso to said sub-section (1), 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. Therefore, in terms of Section 128, an appeal can be filed before the Commissioner (Appeals) within a total period of 90 days, including the condonable period of 30 days. As brought out by the Commissioner (Appeals), the appeal was filed before him on 20.03.2017 when the order of the original authority had been received by the Applicant herein on 13.07.2016 itself. Thus, it is evident that the appeal was filed much beyond the condonable period of 30 days. It is settled by the judgments of Hon'ble Supreme Court in the cases of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} and Amchong Tea Estate vs Union of India {2010 (257) ELT 3 (SC)} that the Commissioner (Appeals) does not have powers

to condone the delay beyond the statutorily prescribed condonable period. Therefore, the Government does not find any infirmity in the Order-in-Appeal impugned herein.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Shameer U V
S/o Mohammed
Unichiram Veettil House, Chundapuram
Manipuram (P.O), Koduvally Via, Kozhikode-673572

Order No. 20/23-Cus dated 19-01-2023

Copy to:

1. The Commissioner of Customs (P), 5th Floor, Catholic Centre, Broadway, Cochin-682031.
2. The Commissioner (Appeals), C.R Building, I.S Press Road, Kochi-682018.
3. Shri K.M Suresh Chandran, Advocate, 9/426, Court Road, Calicut, Kerala-673001.
4. PS to AS(RA).
5. Guard File.
- ✓ 6. Spare copy
7. Notice Board.

ATTESTED



पूनम गुग्गल / Poonam Guggal
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066