

SPEED POST



**F. No. 375/33/B/21-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 30/6/22

Order No. 202/ 22-Cus dated 30-6-2022 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 129DD of the Customs Act, 1962 against the Order No. Commr/APPL/DEL/Cus/Misc/01/2018/Pt-1 dated 19.03.2021, passed by the Commissioner of Customs (Appeals), New Delhi.

APPLICANT : Sh. Manish Garg, New Delhi.

RESPONDENT: Commissioner of Customs, Airport & General, New Delhi

ORDER

A revision application No. 375/33/B/2021-R.A. dated 01.07.2021 has been filed by Shri Manish Garg, New Delhi, against the letter No. Commr/APPL/DEL/Cus/Misc/01/2018/Pt-I dated 19.03.2021 issued by the office of the Commissioner of Customs (Appeals), New Customs House, New Delhi. Vide the impugned letter dated 19.03.2021, the office of Commissioner of Customs (Appeals) has returned the appeal filed by the Applicant herein against the Order-in-Original No. 09/ADJ/2021 dated 03.02.2021, passed by the Commissioner of Customs, IGI Airport, New Delhi on the grounds that the appeal cannot be entertained as the Applicant herein had failed to make the mandatory pre-deposit of 7.5% of duty/penalty, as required in terms of Section 129E of the Customs Act, 1962.

2. Briefly stated, the Applicant herein, along with one Shri Mohd. Kashif, arrived at the IGI Airport, New Delhi, on 06.08.2019, from Dubai. They were intercepted by the Customs Officers near the exit gate of the Customs arrival hall after they had walked through the Green Channel. Upon personal search and search of baggage, twelve pieces of gold bars and four small pieces of gold bars, totally weighing 9417 grams and valued at Rs. 2,93,44,555/-, were recovered from the Applicant herein. After completion of investigations, a show cause notice dated 04.02.2020 was issued to the Applicant herein and three other persons. The show cause notice was disposed of by the Commissioner of Customs, IGI Airport, New Delhi vide the aforesaid Order-in-Original dated 03.02.2021, vide which duty demand of Rs. 3,37,62,195/- along with applicable interest was confirmed against the Applicant, under Section 28(4) read with Section 28AA of the Customs Act, 1962. Penalty of Rs. 1,75,00,000/- and of Rs. 2,00,00,000/- was also imposed on Applicant herein under Section 112 and Section 114 of the Customs Act, respectively. The appeal filed by the Applicant herein against the aforesaid Order-in-Original dated 03.02.2021 was returned as non-maintainable due to lack of requisite pre-deposit, vide impugned letter dated 19.03.2021.

3. The revision application has been filed, mainly, on the grounds that the Applicant is not in a position to deposit the requisite 7.5% of the penalty amount. Several contentions have been raised on the merits of the case as well.

4. Personal hearing was fixed in the matter on 27.05.2022, which was adjourned to 14.06.2022 at the request of the Applicant herein. In the hearing held, in virtual mode, on 14.06.2022, Ms. Sangita Bhayana, Advocate appeared for the Applicant and requested for adjournment due to personal difficulty. Last and final opportunity was, accordingly, granted on 29.06.2022. In the hearing held on 29.06.2022, in virtual mode, Ms. Sangita Bhayana, Advocate appeared for the Applicant and reiterated the contents of the RA. She also requested for three months' time to make the requisite pre-deposit. Upon being pointed out that in this case, the original proceedings and Order have been passed by the Commissioner of Customs and in such a situation could an appeal have been filed before Commissioner (Appeals), Ms. Bhayana fairly admitted that the appeal was filed wrongly and they should have approached CESTAT. No one appeared for the respondent department on any of the dates nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to say in the matter.

5. The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has refused to entertain the appeal as the pre-deposit of 7.5% of duty and penalty, as required under Section 129E of the Customs Act, 1962, has not been made by the Applicant. The mandatory nature of the pre-deposit is not disputed by the Applicant. However, three months' time has been requested to make the requisite pre-deposit. The Government observes that there is no provision in law to allow such a request in as much as the appellant before the Commissioner (Appeals) is required to make the pre-deposit before filing the appeal as the appeal cannot be entertained without such pre-deposit having been made. Therefore, there is no infirmity, on this count, in the impugned letter dated 19.03.2021. At the same time, it is to observed that the present proceedings have originated out of an order passed by the Commissioner of Customs in his original capacity. In terms of Section 128 of the Customs Act, an appeal can be filed before the Commissioner (Appeals) against any decision or order passed by an officer of customs lower in rank than a Principal Commissioner, of Customs or Commissioner of

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Customs. Further, as per the Section 129A *ibid*, any person aggrieved by a decision or order passed by a Commissioner of Customs, as an adjudicating authority can file an appeal to the Appellate Tribunal. Therefore, it is evident that, in the present case, the Applicant herein erred in filing the appeal before the Commissioner (Appeals), which error was compounded by the Office of the Commissioner (Appeals) by not pointing out the statutory position as above to the Applicant. In these facts and circumstances, it is evident that the appeal filed before the Commissioner (Appeals) was non-maintainable not merely because of requisite pre-deposit not having been made but, more importantly, due to lack of jurisdiction. Since the appeal was not maintainable before the Commissioner (Appeals) on the grounds of jurisdiction, consequently, instant revision application is also not maintainable.

6. The revision application is disposed of in above terms.


 (Sandeep Prakash)

Additional Secretary to the Government of India

Sh.Manish Garg,
 S/o Sh. Ram Awtar Garg,
 R/o H.No.412, Ground Floor, New Friends Colony,
 Model Town, Delhi-110009.

Order No. 202/22-Cus dated 30-6-2022

Copy to:-

1. The Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037
3. Ms. Sangita Bhayana, Advocate; Chamber No. 707, LCB-III, Delhi High Court, New Delhi-110003.
4. PS to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED
