

SPEED POST



F.No. 375/36/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...13/10/21

Order No. 213/21-Cus dated 13-10-2021 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. 91-CUS/APPL/LKO/2019 dated 19.02.2019 passed by the Commissioner (Appeals), Customs & CGST, Lucknow.

Applicant : Sh. Firoz Khan, Nagaur.

Respondent : The Commissioner of Customs (Preventive), Lucknow.

ORDER

A Revision Application No. 375/36/B/2019-RA dated 17.05.2019 has been filed by Sh. Firoz Khan, Nagaur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 91-CUS/APPL/LKO/2019 dated 19.02.2019, passed by the Commissioner (Appeals), Customs & CGST, Lucknow whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original No. 10/ADC/2018 dated 10.07.2018 passed by the Additional Commissioner of Customs, Lucknow.

2. Briefly stated, the Applicant herein arrived at CCSI Airport, Lucknow, on 07.06.2017, from Dubai. He was intercepted by the Customs Officers at the exit gate of the Airport. Upon his personal search and search of his baggage, 12 gold bars, wrapped with carbon paper and black tape concealed inside two emergency lights, were recovered. The authorized valuer valued the 12 gold bars, totally weighing 1399.68 grams, at Rs. 42,41,030/-. The Additional Commissioner of Customs, vide aforesaid Order-in-Original dated 10.07.2018, ordered absolute confiscation of the seized gold bars and imposed a penalty of Rs. 2,00,000/- each under Section 112 & Section 114AA, respectively, of the Customs Act, 1962. The appeal filed by the Applicant herein before the Commissioner (Appeals) was rejected on the grounds that – (i) the Applicant had not made the pre-deposit as required under Section 129E of the Customs Act, 1962 and (ii) the appeal was barred by limitation.

3. The revision application has been filed submitting that a Bank Draft dated 15.09.2018 was sent to the Additional Commissioner of Customs towards pre-deposit, which was returned. Thereafter, the required amount of Rs. 16,500/- was deposited vide Bank Challan. Further, Order-in-Original was received on 19.07.2018 and the appeal was sent by post on 15.09.2018 which was received in the office of Commissioner (Appeals) on 26.09.2018 and, thus, there has been a delay of 09 days in filing the appeal, which is condonable as per Section 128 of the Customs Act, 1962. Several averments have been made on the merits of the case as well.

4. Personal hearing was held, in virtual mode, on 12.10.2021. Ms. Harsimran S. Kaur, Advocate appeared for the Applicant and submitted that their Appeal was rejected on the grounds of (i) pre-deposit not being made & (ii) limitation. She submitted that pre-deposit was made vide TR6 Challan dated 24.04.2019 and a DD dated 15.09.2018 was submitted beforehand. Regarding limitation, upon being asked she fairly admitted that COD application is not on record. Sh. Ajay Kumar Mishra, Joint Commissioner supported the order of Commissioner (Appeals).

5.1 The Government has carefully examined the matter. The Commissioner (Appeals) has rejected the appeal on the following grounds:

- (i) The pre-deposit of 7.5% of the penalty amount was not made, as required under Section 129E of the Customs Act, 1962.
- (ii) The appeal was made beyond the limitation period of 60 days, as stipulated under Section 128(1) *ibid*.

5.2 It is the contention of the Applicant that a Demand Draft dated 15.09.2018 was sent to the Additional Commissioner towards pre-deposit, which was returned by the office of Additional Commissioner as it did not pertain to that office. Subsequently, the pre-deposit appears to have been made, vide TR-6 Challan dated 02.03.2019, which was received in the office of the Airport Customs, on 24.04.2019. The Government observes that the Commissioner (Appeals) had disposed of the appeal, vide Order dated 19.02.2019, i.e., much before the pre-deposit amount, is claimed to have been deposited by the Applicant.

5.3 As regards limitation, it is an admitted position that the Appeal was filed with a delay of 09 days. It is also admitted that the Condonation of Delay application which ought to have been made before the Commissioner (Appeals) seeking condonation of this delay, as per proviso to Section 128(1), was not made. It is trite to say that condonation of delay is not automatic but it is to be permitted by the Commissioner (Appeals) upon being satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the normal period of limitation of 60 days. No cause,

leave alone sufficient cause, having been pleaded before the Commissioner (Appeals), Commissioner (Appeals) could not have condoned the delay.

6. In view of the above, the Government does not find any infirmity in the impugned Order-in-Appeal and the revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

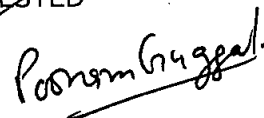
Sh. Firoz Khan,
R/o Nimad, Tehsil Deedwana,
Distt. Nagaur, Rajasthan – 341001.

Order No. 213 /21-Cus dated 13-10-2021

Copy to:

1. The Commissioner of Customs (Preventive), 5th Floor, Kendriya Bhawan, Sector – H, Aliganj, Lucknow – 226024.
2. The Commissioner (Appeals), Customs & CGST, 3/194, Vishal Khand, Gomti Nagar, Lucknow – 226010.
3. Ms. Harsimran S. Kaur, Advocate, B-1/71, Safdarjung Enclave, New Delhi 110029.
4. PA to AS(RA).
5. Guard File.

ATTESTED



(Poonam Guggal)
Supdt. (R.A)