

REGISTERED
SPEED POST



F.No. 375/28/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-110066

Date of Issue. 18/7/22

Order No. 23/22-Cus dated 18-07-2022 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 129 DD of the Customs Act 1962 against the letter No. Commr/App/Del/Cus/12/20-21 dated 09.04.2021, passed by the Commissioner of Customs (Appeals), Near IGI Airport, New Delhi Delhi-110037

Applicants : Sh. Shahzad Alias Munna, Delhi.

Respondent : The Commissioner of Customs (Airport & General), New Delhi.

ORDER

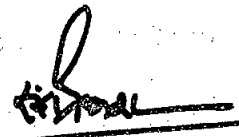
A Revision Application No. 375/28/B/21-RA dated 23.06.2021 has been filed by Sh. Shahzad Alias Munna, Delhi (hereinafter referred to as the Applicant) against the letter No. Commr/appl/Del/Cus/12/20-21 dated 09.04.2021, issued by the office of Commissioner of Customs (Appeals), Near IGI Airport, New Delhi 110037. Vide the above mentioned letter, the appeal filed by the Applicant was returned on the ground that the mandatory pre-deposit of 7.5% in terms of Section 129 E of the Customs Act, 1962 had not been deposited against the Order in Original No. 09/Adj//20212 dated 03.02.2021, passed by the Commissioner of Customs, IGI Airport, New Delhi. Vide the aforesaid OIO, penalties of Rs. 1,75,00,00/- and Rs. 1,00,00,000/- were, inter-alia, imposed on the Applicant herein under Section 114A and Section 114, respectively,

2.1 The revision application is filed, mainly, on the grounds that mandatory deposit of 7.5% was not made due to the poor financial condition of the Applicant. Several submissions have been made on the merits of the case as well.

2. Applicant, vide letter dated 15.07.2022, has requested for the withdrawal of the instant revision application on the ground that the present case was adjudicated by the Commissioner of Customs and, hence, the appeal against the said order lies with the CESTAT.

3. 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. Therefore, there is no infirmity, on this count, in the impugned letter dated 09.04.2021. 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 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.

4. In view of the above, the Revision Application is not maintainable and is allowed to be withdrawn.



(Sandeep Prakash)

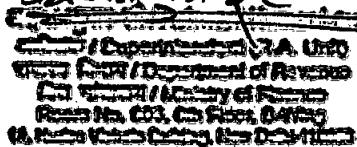
Additional Secretary to the Government of India

Sh. Shahbaz Alias Munna,
1695/1996, 3rd floor,
Kucha Dakhni Pataudi House,
Daryaganj,
New Delhi 110002

Order No. 231/22-Cus dated 18-07-2022

Copy to:

1. The Commissioner of Customs, Airport & General, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-110037.
3. Mr. Rahul Raheja, Advocate, B-167, L.G.F., Lajpat Nagar 1, New Delhi 110024. 110003
4. PA to AS(RA).
5. Guard File.
6. Spare Copy

Attested
2020/07/15

Director General of Customs and Excise
Ministry of Revenue
Government of India
New Delhi