

SPEED POST



**F. No. 372/40/B/2019—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.....06/12/21..

Order No. 274/21-CUS dated 06-12-2021 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. KOL/CUS (Airport)/17/2019 dated 03.07.2019 passed by Commissioner of Customs (Appeals), Kolkata.

Applicant: Sh. Chandra Shekhar Singh, Kolkata.

Respondent: Commissioner of Customs (Airport & Admn.), Kolkata.

ORDER

A Revision Application No. 372/40/B/2019—R.A. dated 20/09/2019 has been filed by Sh. Chandra Shekhar Singh, Kolkata (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS (Airport)/17/2019 dated 03.07.2019 passed by the Commissioner of Customs (Appeals), Kolkata wherein the Applicant's appeal against Order-in-Original No. ASA/25/2019 dated 27.02.2019 passed by Superintendent of Customs, NSCBI Airport, Kolkata, has been rejected as time-barred.

2. The brief facts of the case are that the Applicant arrived at Kolkata airport from Bangkok, on 27.02.2019, and reported for examination of his baggage containing miscellaneous ladies' garments and other items. The goods worth Rs. 7500/- were detained on the ground that they were in commercial quantity and were seized under Section 110(d) of the Customs Act, 1962. The Applicant requested for waiver of Show Cause Notice and the Order-in-Original dated 27.02.2019 was passed by the Superintendent of Customs vide which the goods were confiscated under Section 111(d) of the said act with an option to redeem the same on payment of a fine of Rs. 1500/- along with payment of Rs. 2888/- as customs duty. A penalty of Rs. 5,000/- was also imposed under Section 112 ibid. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, has rejected the same as time-barred.

3. Personal hearing in the matter was held, in virtual mode, on 06.12.2021. Sh. Punam Chand Jain, Authorized Representative,

appeared for Applicant and submitted that that delay in filing appeal before the Commissioner (Appeals) was only 03 days, which may be condoned. He also submitted that the goods were not in commercial quantity. Sh. Jitendra Kumar, Superintendent, appeared for the Respondent department and supported the orders of the lower authorities. He also submitted that the Applicant is a repeat offender who has been penalised 04 times in the past, before this case. Further, the goods were in commercial quantity.

4. The Government has carefully examined the matter. The Commissioner (Appeals) has rejected the appeal of the Applicant as time barred. 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 Applicant had not even filed any application for condonation of delay, bringing out the cause(s) for delay, before the Commissioner (Appeals). Relying upon the judgment of Hon'ble Madras high Court, in the case of Ramki Vs Addl. Commissioner of Customs, Chennai [PP2017(346) ELT 225 (Mad)], the Commissioner (Appeals) has correctly held that the condonation of delay is not automatic. As such, the Government does not find any infirmity in the impugned Order-in-Appeal.

5. The revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Chandra Shekhar Singh,
C/o Sh. Punam Chand Jain,
64, Burtolla Street,
Kolkata-700 007

ORDER NO. 274 / 21-Cus dated 06-12-2021

Copy to: -

1. The Commissioner of Customs, Airport & Admn., Kolkata.
2. The Commissioner of Customs (Appeals), Kolkata.
- ✓ 3. Guard File.
4. Spare Copy.
5. P.S. to AS (RA)

ATTESTED


(Ashish Tiwari)
Assistant Commissioner.