

F.No. 372/16/B/2022-RA

SPEED POST



F.No. 372/16/B/2022-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 29/9/22

Order No. 302/22-Cus dated 29-09-2022 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/ CUS /Airport /AKR /853 / 2022 dated 22.12.202, passed by the Commissioner of Customs (Appeals),Kolkata.

Applicant : Sh. Anil Kumar, Hyderabad.

Respondent : Commissioner of Customs, NSCBI Airport, Kolkata.

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ORDER

A Revision Application No.372/16/B/2022-RA dated 13.07.2022 has been filed by Sh. Anil Kumar, Kolkata (hereinafter referred to as the Applicant), against the Order-in-Appeal No.KOL/CUS/Airport/AKR/853/2021 dated 22.12.2021, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the order of the Deputy Commissioner of Customs, AIU Cell, NSCBI Airport, Kolkata, bearing no. 133/2021/DC dated 03.03.2021, ordering release of foreign currency of USD 6000/- and absolute confiscation of remaining foreign currency notes USD 4000/-, under Section 113(d) of the Customs Act, 1962. Besides, penalty of Rs.71,950/-was also imposed on the Applicant, under Section 114 of the Act, *ibid*.

2. Brief facts of the case are that the Applicant was scheduled to depart for Kunming from Kolkata, on 23.09.2018. The Applicant was intercepted by the officers of Customs Air Intelligence Unit after he had completed the immigration formalities. The Applicant was asked specifically whether he was carrying any contraband or Indian/Foreign currency beyond the permissible limit, upon which he produced one piece of purple colour pouch and stated that he was carrying few thousands of USD. The said pouch was examined and searched which resulted in recovery of 100 currency notes of denomination USD 100 i.e. USD 10,000/-, convertible to INR 7,19,500/- On being asked, the Applicant could not produce any licit document in support of legal acquisition/possession of the recovered foreign currency and, hence, the same was seized under Section 110 of the Customs Act, 1962. The Applicant in his statement dated 23.09.2018, recorded under Section 108 of the Customs Act, 1962, stated that he was a retired person and had taken the seized currency from his friends and relatives who had travelled abroad earlier; and that he was not aware of the laws and committed the mistake unknowingly. During the course of personal hearing before the original authority, the Applicant submitted the exchange cash memo for USD 6000/- issued by the authorised money exchanger M/s Jain Forex Pvt. Ltd. Hyderabad. Original authority, *vide* the above mentioned OIO, ordered for the release of USD 6000 but absolutely confiscated the remaining

currency i.e. USD 4000/-. Besides, penalty of Rs. 71,950/- was also imposed on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that absolute confiscation is unjustified; that redemption of currency has to be allowed; that there is no scope to allege any malafide on the part of the Applicant for imposing penalty under Section 114 of the Customs Act, 1962; that the Order-in-Appeal may be set aside with consequential relief to the Applicant. An application for condonation of delay has also been filed.

4. Personal hearing was fixed on 07.09.2022, 16.09.2022, and 28.09.2022. In the personal hearing held, in virtual mode, on 28.09.2022, Sh. R. Narasimha Murthy, Consultant appeared for the Applicant and reiterated the contents of condonation of delay as well as the revision application. No. one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, proviso to said sub-section (2) provides discretion to the Government to allow an application to be presented within a further period of 3 months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. Keeping in view the directions of the Hon'ble Supreme court, vide order dated 10.01.2022 in Suo Motto Writ Petition (c) No. 3 of 2020, the period of limitation in the present case has to be counted w.e.f. 01.03.2022. Consequently, the normal period of limitation expired on 31.05.2022. Government observes that the impugned OIA was received by the Applicant on 28.12.2021 and a revision application is said to have been filed on

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21.03.2022 before the revisionary authority at Mumbai. The revision application so filed was returned by the Mumbai Unit on 04.04.2022 as the cases pertaining to Kolkata (West Bengal) fall under the territorial jurisdiction of the revisionary authority at New Delhi. The application for condonation of delay is conspicuously silent about the reasons for delay in filing the application thereafter, i.e, between 04.04.2022 to 13.07.2022. No cause, leave alone sufficient cause, having been shown for condonation of delay beyond 31.05.2022, the instant revision application is liable to be rejected on this ground alone. The revision application remains time barred even if period between 21.03.2022 till 04.04.2022 (i.e. period spent in pursuing remedy in wrong forum) is excluded.

6. In view of the above, the revision application is rejected as barred by limitation.


(Sandeep Prakash)

Additional Secretary to the Government of India


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Order No. 302/22-Cus dated 29-09-2022

Copy to:

1. The Commissioner of Customs, NSCBI Airport, Kolkata-700052.
2. The Commissioner of Customs (Appeals), 3rdFloor, Custom House, 15/1, Strand Road, Kolkata-700001.
3. Sh. R. Narasimha Murthy, M/s One Tax Solutions, 407, Imperial Towers, Ameerpet, Hyderabad-500016
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED


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