

**SPEED POST**



**F. No. 373/30/B/2016-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....07/10/22

Order No. 310/22-Cus dated 07-10-2022 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 Order-in-Appeal No. COC - CUSTM-000-APP-184/2015-16 dated 25.09.2015 passed by the Commissioner of Customs (Appeals), Cochin.

**Applicant** : Sh. Kallattayil Hydru Shaju, Thrissur, Kerala.

**Respondent** : Commissioner of Customs, Cochin.

**ORDER**

A Revision Application No. 373/30/B/2016-RA dated 17.02.2016 has been filed by Shri Kallattayil Hydru Shaju, Thrissur, Kerala (hereinafter referred to as 'the Applicant') against the Order-in-Appeal No. COC-CUSTOM-000-APP-184/2015-16 dated 25.09.2015, passed by the Commissioner of Customs (Appeals), Cochin. Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 47/2014 dated 16.10.2014, passed by the Joint Commissioner of Customs, Cochin International Airport.

2. Briefly stated, the Applicant herein arrived at Cochin International Airport from Kuala Lumpur on 24.02.2014. On the basis of specific intelligence, the officers of Air Intelligence Unit intercepted the Applicant when he was approaching exit gate of the Customs Arrival Hall and he was asked whether he was carrying any dutiable goods, to which he replied in negative. There was no declaration made in the Customs, portion of the Disembarkation card by the Applicant herein. Upon personal and baggage search of the Applicant, two gold bars of 999.9 purity, weighing 999.750 grams each, having total weight of 1999.500 grams and collectively valued at Rs. 52,99,064/-, were found concealed inside a waffle maker carried by the Applicant herein in his check-in baggage. The Applicant in his statement, recorded under Section 108 of the Customs Act, 1962, inter-alia, stated that he was intercepted by the Customs officers while he was going to pass through the Customs Exit Gate; that upon being asked by the officers whether he had concealed anything in the baggage, he had replied in negative; that thereafter upon x-ray and search of the waffle maker, two gold bars were recovered which were concealed therein; that he had gone to Kuala Lumpur at the instance of one of his friends; that when he was returning from Malaysia, another person named Mr. Karim had given him waffle maker where the gold bars were concealed; that he was advised to contact Karim once he arrived in Cochin; and that he was unaware of the concealment. The original authority, vide aforesaid Order dated 16.10.2014, ordered for absolute confiscation of the gold bars under Section 111(d), (i), (j), (l) and (m) of the Customs Act, 1962. A penalty of Rs. 5 lakhs was also imposed on the Applicant herein under Section 112 (a) of the Act *ibid*. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), vide the impugned in Order-in-Appeal.

3. The Revision Application has been filed, mainly, on the grounds that absolute confiscation is too harsh and unwarranted under Section 125 of the Customs Act; that the penalty imposed is excessive; and that the goods ought to have been ordered for re-export.

4. The personal hearing in the matter was fixed on 13.11.2018, 18.08.2021, 25.08.2021, 27.10.2021, 11.11.2021, 08.12.2021 and 06.10.2022. No one appeared from either side, nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. At the outset it is observed that the impugned Order-in-Appeal was received by the Applicant on 01.10.2015 whereas the instant revision application has been filed on 17.02.2016. As per sub-section (2) of section 129DD of the Customs Act, 1962, the revision application has to 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 aforesaid period of 3 months. The condonation of delay application has been filed alongwith the revision application wherein it is stated that the Applicant's passport was not returned by the officers of Customs and Excise and, hence, he was working in a hotel in the interior of Karnataka State. As such, he could not come to his native place and meet the lawyer for taking necessary steps to file the revision application, which led to the delay. The Government observes that the condonation of delay application gives no details of the hotel/place where the Applicant was working nor has it been explained as to why the non-availability of passport necessitated the Applicant to work at a hotel in the interior of Karnataka state. As such, the condonation of delay application is unsubstantiated. Therefore, the instant revision application is liable to be rejected as time barred.

6. It is further observed that the revision application has been filed without the payment of application fee of Rs. 1,000/-. Sub-section (3) of section 129 DD reads as under :

*"(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -*

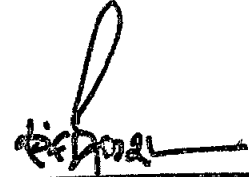
*(a) Two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;*

(b) *One thousand rupees, where ethe amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees:*

**Provided** that no such fee shall be payable in the case of an application referred to in sub-section(1A)."

Therefore, in terms of the said sub-section (3), the Applicant was required to pay a fee of Rs. 1,000/- since the penalty imposed on him is Rs. 5 lakhs. Further, the use of word "shall" in the said sub-section (3) makes it apparent that the payment of application fee is mandatory. In the present case, the Applicant has failed to pay the application fee, despite being advised to so, vide letters dated 11.05.2016, 30.10.2018, 04.08.2021, 13.10.2021, 22.11.2021 and 20.09.2022. Therefore, the revision application cannot be entertained for this reason as well.

7. Revision Application is rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

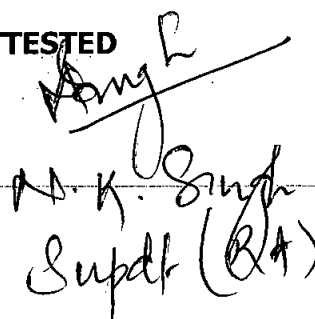
Shri Kallatayil Hydru Shaju,  
Kallattayil House Vaduthala,  
Kizhoor, P.O. Anjoor,  
Thrissur-680323.

Order No. 310/22-Cus dated 07-10-2022

Copy to:

1. The Commissioner of Customs, Customs House, Willingdon Island, Cochin – 682009, Kerala.
2. The Commissioner of Customs (Appeals), Custom House, Willingdon Island, Cochin-682009.
3. Sh. K.M. Suresh Chandran, Advocate, 9/426, Court Road, Calicut – 673 001.
4. PA to AS(RA).
5. Guard File.
6.  Spare Copy.

ATTESTED



N. K. Singh  
Supdt (RA)