

SPEED POST



F. No. 373/207/B/2016-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...09/11/22

Order No. 342/22-Cus dated 09-11-2022 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. 453/2016 dated 29.06.2016, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant: Smt. Nazneen Bano Mehafooz Qureshi, Mumbai.

Respondent: Commissioner of Customs, Mangaluru.

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**ORDER**

A Revision Application No. 373/207/B/16-R.A. dated 04.10.2016 has been filed by Smt. Nazneen Bano Mehafooz Qureshi, Mumbai (hereinafter referred to as the Applicant), against Order-in-Appeal No. 453/2016 dated 29.06.2016, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the Appeal filed by the Applicant herein against the Order-in-Original No. 29/2015. ADC dated 04.11.2015, passed by the Additional Commissioner of Customs, Mangaluru, as time barred.

2. Briefly stated, the Applicant herein arrived at Mangaluru Airport, from Dubai, on 19.12.2014, and opted for Green Channel. She was intercepted by the Customs officers at the exit gate. During personal and baggage search of the Applicant, gold jewellery/ornaments of 18 carat purity, totally weighing 749.900 grams and valued at Rs. 16,49,780/-, which were wrapped in packets secreted in the waist portion underneath the jeans trousers worn by her, were recovered,. The Applicant in her statement dated 19.12.2014, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of gold from her and stated that the recovered gold did not belong to her. She further stated that the gold items were given to her by one person, namely, Sh. Mohammed Ibrahim who in return promised a sum of Rs. 20,000/- and tickets for to and fro journey. The original authority, vide the aforesaid Order-in-Original dated 04.11.2015, ordered for absolute confiscation of the subject gold items under Section 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. Penalty of Rs. 3,50,000/- and Rs. 2,00,000/- was also imposed on the Applicant, under Section 112(a) and Section 114AA, respectively, of the Act *ibid*. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals), on the grounds of limitation.

3. The Revision Application has been filed, mainly, on the grounds that the Applicant did not get a copy of Order-in-Original and the Appeal was filed by using

the copy of the order received by the Counsel of the Applicant. Several submissions have been made on the merits of the case as well.

4. Personal hearing in the matter was held, in virtual mode, on 09.11.2022. Sh. K. M. Suresh Chandran, Advocate appeared for the Applicant and reiterated the contents of the revision application. He submitted that penalty under Section 112 (a) and Section 114 AA has been imposed on the Applicant. In his submission, penalty under Section 114 AA could not have been imposed in addition to that under Section 112 (a). Upon being asked, Sh. Suresh Chandran stated that the copy of impugned OIA was received by him as the Advocate of Applicant, the Applicant himself had received a copy only through him. Hence, the Commissioner (Appeals) could not have rejected the appeal as time barred. Sh. Vasudeva Naik, Assistant Commissioner appeared for the department and supported the orders of lower authorities.

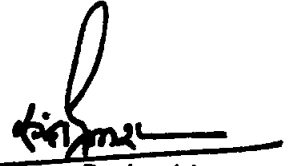
5.1 The Government has examined the matter carefully. The Commissioner (Appeals) has rejected the appeal as time barred, as the Applicant had not filed the appeal within the stipulated period. As per sub-section (1) of Section 128 of the Customs Act, 1962, an appeal before the Commissioner (Appeals) can be made within 60 days from the date of communication to the appellant of the order against which the appeal is being made. However, proviso to said sub-section (1) provides discretion to the Commissioner (Appeals) to allow an appeal to be presented within a further period of 30 days, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the normal period of 60 days. In the instant case appeal was filed after 163 days from the date of issue of the OIO dated 04.11.2015, i.e., after a delay of about 100 days from the stipulated time period in which appeal can be filed. The Commissioner (Appeals) has correctly held that the delay beyond the period of 30 days, as provided under sub-section (1) of Section 128, cannot be condoned by him.

5.2 Applicant has contended that the subject OIO was not received by him but by his Counsel and the appeal was filed on the basis of a copy received from the Counsel. This contention of the Applicant does not merit consideration in as much

as the Counsel who appeared before the Commissioner (Appeals) had received a copy in time. Since the Counsel represented the Applicant before the Commissioner (Appeals), the service /communication of the Order-in-Appeal on/to the Counsel is nothing but service /communication on/to the Applicant.

5.3 Therefore, the Government does not find any infirmity in the Order of Commissioner (Appeals).

6. The Revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Smt. Nazneen Bano Mehafooz Qureshi,  
Room No. 21, 3<sup>rd</sup> Floor, 166, Building,  
J.B. Shah Marg, Khadak,  
Mumbai-400009.

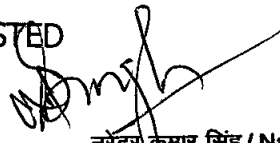
Order No. 342/22-Cus dated 09-11-2022

Copy to:

1. The Commissioner of Customs (Appeals), C.R. Building, P.B. No. 5400, Queens Road, Bengaluru-560001.
2. The Commissioner of Customs, New Customs House, Panambur, Mangaluru-57501.
3. Sh. K. M. Suresh Chandran (Adv.), 9/426, Court Road, Calicut-673001.
4. PA to AS(RA).
5. Guard File.
6. Notice Board.

7. Spare Copy.

ATTESTED



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