

SPEED POST



**F. No. 373/101/B/2018-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. 28/11/22

Order No. 368/22-Cus dated 27-11-2022 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 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 1001/2017 dated 12.12.2017, passed by the Commissioner of Customs (Appeals), Bengaluru.

APPLICANT : Shri Muhammed Shamseer Pallathungal Abdulshafi, Kasargod.

RESPONDENT : The Commissioner of Customs, Mangaluru.

ORDER

A Revision Application No. 373/101/B/2018-R.A. dated 08.03.2018 has been filed by Shri Muhammed Shamseer Pallathungal Abdulshafi, Kasargod (hereinafter referred to as the Applicant) against Order-in-Appeal No. 1001/2017 dated 12.12.2017, 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. 01/2016 ADC/A51 dated 20.01.2016, passed by the Additional Commissioner of Customs, Mangaluru, on the grounds of limitation.

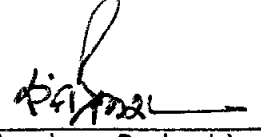
2. Briefly stated, the Applicant herein arrived at Mangaluru International Airport, from Dubai, on 04.02.2015, and attempted to pass through the Green Channel after handing over his Customs Declaration Form. He was intercepted by the Customs officers and on verification of the Customs Declaration Form it was noticed that he had not declared about the possession of any dutiable goods. However, upon baggage search of the Applicant, thin gold foil strips, of 24 carat purity, weighing 570 grams and valued at Rs. 15,90,300/-, were recovered, which were covered with black polythene sheets concealed on the top portion of the two checked-in baggage. The Applicant in his voluntary statements dated 04.02.2015 and 16.02.2015, tendered under Section 108 of the Customs Act, 1962, inter-alia, stated that he got acquainted with one person, namely, Sh. Mohammed Ali, from Kasargod in Dubai who offered him return ticket to Mangaluru if he carried gold to Mangaluru by concealing in two suitcases and by not paying customs duty for which he agreed; that he did not declare the value of goods carried by him in the Customs Declaration Form with intention to avoid payment of customs duty; and that he used to visit many times to India and hence he was familiar with Customs formalities and regulations. The original authority, vide the aforesaid Order-in-Original dated 20.01.2016, ordered for absolute confiscation of the subject gold foil strips under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalties of Rs. 2,50,000/- and Rs. 1,50,000/- were also imposed on the Applicant, under Sections 112(a) and 114AA 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 Order-in-Original is wrong, contrary to law and facts of the case; that the statement of the Applicant was not voluntary; that he was bringing gold purchased by himself; that gold ought to have been released on imposition of redemption fine; that gold ought to have been ordered for re-export; and that the penalty imposed on him is highly excessive.

4. Personal hearing in the matter was fixed on 28.11.2022. No one appeared for the Applicant nor any request for adjournment has been received. For the reasons brought out hereinafter, the matter is being taken up for disposal based on records, without offering any further opportunity of hearing.

5. The Government has examined the matter carefully. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), on the grounds of limitation, without considering the merits of the case. The Commissioner (Appeals) has recorded that the appeal against the Order-in-Original dated 20.01.2016 has been filed on 27.10.2017 i.e. after a delay of 565 days for the reasons that the Applicant could not earlier arrange money for pre-deposit under Section 129E of the Customs Act, 1962. It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days. The Commissioner (Appeals) can condone a delay up to thirty days, on sufficient cause being shown. ~~As correctly highlighted by the Commissioner (Appeals), the Hon'ble Supreme Court has, in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} held that the Commissioner (Appeals) cannot condone the delay in filing of an appeal beyond the statutory provided condonable period. Therefore, the Government finds no infirmity in the impugned OIA. Infact, the Government observes that the subject revision application is conspicuously silent and urges nothing whatsoever in respect of the grounds of limitation on which the appeal has been rejected. Thus, the present revision application appears to be just a perfunctory exercise to prolong the dispute.~~ As correctly highlighted by the Commissioner (Appeals), the Hon'ble Supreme Court has, in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} held that the Commissioner (Appeals) cannot condone the delay in filing of an appeal beyond the statutory provided condonable period. Therefore, the Government finds no infirmity in the impugned OIA. Infact, the Government observes that the subject revision application is conspicuously silent and urges nothing whatsoever in respect of the grounds of limitation on which the appeal has been rejected. Thus, the present revision application appears to be just a perfunctory exercise to prolong the dispute.

6. The revision application is rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

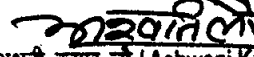
Shri. Muhammed Shamseer Pallathungal Abdulshafi,
S/o Sh. Abdul Shafi Kunhimahinkutty
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Kerala-671541

Order No. 368/22-Cus dated 28-11-2022

Copy to:-

1. The Commissioner of Customs, New Custom House, Panambur, Mangalore-575010.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. Shri K.M. Suresh Chandran, Adovcate, 9/426, Court Road, Calicut-673001.
4. P.S to A.S (RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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