

**SPEED POST**



F. No. 373/511/B/2019-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...9/2/23..

Order No. 38 /23-Cus dated 08.02.2023 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. 120/2019 dated 02.07.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Abdul Basheer Mahamood, Kasaragod

Respondent : Commissioner of Customs, Mangaluru

\* \* \*

**ORDER**

A Revision Application No. 373/511/B/2019-RA dated 25.11.2019 has been filed by Sh. Abdul Basheer Mahamood, Kasaragod (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. 120/2019 dated 02.07.2019, 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. 27/2018 ADC dated 30.07.2018, passed by the Additional Commissioner of Customs (Airport), Mangaluru, as time barred.

2. Briefly stated, the Applicant herein was intercepted at Mangaluru International Airport, on 30.08.2017, by the Customs officers when he was proceeding towards security check, after completing immigration formalities, while departing for Dubai. After examination of his checked-in baggage, assorted foreign currency to the tune of Rs. 11,36,520/- was recovered, which was not declared. In his statement recorded on 30.08.2017, under Section 108 of the Customs Act, 1962, the Applicant, inter-alia, stated that he was going to Dubai as he worked there and that he had nothing to declare; that he did not possess any documents to show licit possession of the aforesaid assorted foreign currency; that he had no valid documents to show the purchase of currency from any authorized exchange dealers and accordingly, he did not declare the same to Customs at the time of departure to Dubai; that he carried the said foreign currency notes by concealing them in the backpack inside the checked in baggage and he attempted to pass through Customs channel at the airport; and that he was fully aware that smuggling foreign currency out of India is illegal and violation of various rules and regulations; that he had knowingly committed an offence by doing so and claimed ownership of foreign currency and took the whole responsibility of the legal consequences. The Original Authority, vide the Order-in-Original dated 30.07.2018, ordered confiscation and appropriation of the foreign currency into the Government account and imposed penalties of Rs. 3,40,956/- & Rs. 1,70,478/- on the Applicant herein under Section 114 & 114AA of the Customs Act, 1962. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), as time barred.

3. The Revision Application has been filed, mainly, on the grounds that the Order-in-Original passed by the original authority is not a speaking order; that the appellate authority failed to appreciate the facts and circumstances which led to the delay in filing of the appeal; that no SCN was received by the Applicant/Counsel within six months of seizure; that the counsel received the SCN on 22.12.2018; that the counsel has filed the said appeal within the condonable period of one month after receiving the OIO & SCN; that the Applicant was carrying the said amount for his necessary expenses; and that the foreign currency was hard earned money of Applicant which was brought by him on his previous visits.

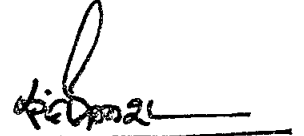
4. Personal hearing in the matter was held on 08.02.2023. Shri Sameer Kashimji, Advocate appeared physically and filed Written Submissions, which were taken on record. He reiterated the contents of RA and Written Submissions. Sh. Vasudeva Naik, AC supported the orders of authorities below.

5. The Revision Application has been filed with a delay of one month. Delay, which is attributed to change of address of the Counsel and other commitments, is condoned.

6. The Government has carefully examined the matter. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein, as time barred under the provisions of Section 128 of the Customs Act, 1962. It is claimed by the Counsel of Applicant that he received OIO on 22.10.2018 and SCN on 22.12.2018 and limitation period should be counted from the date of receipt of SCN, i.e., from 22.12.2018. The Government observes that, in terms of sub-section (1) of Section 128 of the Customs Act, 1962, an appeal may be preferred before the Commissioner (Appeals) within a period of 60 days from the date of communication of the order appealed against. Further, as per proviso to said sub-section (1), 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. Therefore, in terms of Section 128, an appeal can be filed before the Commissioner (Appeals) within a total period of 90 days, including the condonable period of 30 days. As brought out by the Commissioner (Appeals), the appeal was filed before him on 18.03.2019

when the order of the original authority had been sent to the Counsel of Applicant herein on 22.10.2018 itself. In terms of Section 153(3) of the Customs Act, 1962, when any order is sent by speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by post in transit unless contrary is proved. In this case, it is not even denied that a copy of OIO was indeed received by speed post sent on 22.10.2018. Thus, it is evident that the appeal was filed much beyond the condonable period of 30 days. It is settled by the judgments of Hon'ble Supreme Court in the cases of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} and Amchong Tea Estate vs Union of India {2010 (257) ELT 3 (SC)} that the Commissioner (Appeals) does not have powers to condone the delay beyond the statutorily prescribed condonable period. Therefore, the Government does not find any infirmity in the Order-in-Appeal impugned herein.

7. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Abdul Basheer Mahamood  
S/o Mahammad Abdul Kader  
Pathikunnu House, PO Thalangara,  
Kasaragod, Kerala-671122

Order No. 38 /23-Cus dated 08.02.2023

Copy to:

1. The Commissioner of Customs, New Customs House, Panambur, Mangaluru-575010.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. Shri Sameer Kashimji, Advocate, 22, Sweet Home Apartments, Britto Lane, Falnir, Mangaluru-575001.
4. PPS to AS(RA).
5. Guard File.
6. Spare copy
7. Notice Board.

ATTESTED

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