

SPEED POST



F. No. 373/143/B/2018-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..16/12/22

Order No. 386/22-Cus dated 16-12-2022 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. 54/2018 dated 23.01.2018 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Mohammed Aouf, Bhatkal.

Respondent : The Commissioner of Customs, Mangaluru.

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ORDER

A Revision Application No. 373/143/B/2018-RA dated 01.05.2018 has been filed by Sh. Mohammed Aouf, Bhatkal (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 54/2018 dated 23.01.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the above-mentioned Order-in-Appeal, rejected the appeal filed by the Applicant herein against Order-in-Original No. 16/2017 ADC dated 18.07.2017, passed by Additional Commissioner of Customs, Mangaluru, on the ground that the Applicant did not make the mandatory pre-deposit of 7.5%, as per Section 129E of the Customs Act, 1962.

2. Brief facts of the case are that officers of Directorate of Revenue Intelligence intercepted the Applicant who was about to proceed to security check after completing his immigration formalities for his travel to Dubai from Mangaluru International Airport on 14.01.2016. The Applicant was carrying one black coloured backpack as a hand baggage and on enquiry as to whether he had foreign currency either in his personal possession or in his baggage he replied in negative. The search of his person and his hand baggage yielded no result. Thereafter, upon examination of his checked-in baggage assorted foreign currency notes (British Pounds, US Dollars, Euro, Australian Dollars, Saudi Riyal, Kuwaiti Dinar, UAE Dirhams, Oman Riyal, Qatar Riyal) equivalent to Rs. 81,67,110/- were recovered. The foreign currency so recovered was seized under Section 110 of the Customs Act, 1962. After following the principles of natural justice, the original authority, vide the aforesaid OIO dated 18.07.2017, ordered for absolute confiscation of the seized foreign currency under Section 113(d), (e) & (h) of the Customs Act, 1962. Penalties of Rs. 24,50,133/- and Rs. 12,25,067/- were imposed on the Applicant herein, under Section 112 and Section 114AA of the Act, *ibid*, respectively. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals) on the ground as above.
3. The instant revision application has been filed, mainly, on the ground that the appeal was admitted and number was given to that appeal and it should not

have been rejected on the ground of non-payment of pre-deposit/not enclosing the challan for payment of pre-deposit; that the pre-deposit had indeed been made; and the Order-in-Appeal may be set aside with directions to decide the appeal afresh on merits.

4. Personal hearing in the matter was held on 09.12.2022. Sh. Prakash Shingrani, Advocate appeared for the Applicant and submitted that the Commissioner (Appeals) had erroneously rejected the appeal on the grounds that pre-deposit, required in terms of Section 129E, had not been made, though the pre-deposit was already made. Upon being pointed out that the details of pre-deposit, Challan No. including copy thereof are not forthcoming in the RA, Sh. Shingrani requested for one weeks time to produce a copy of the Challan whereafter matter may be decided on merits. As requested, time was granted up to 16.12.2022 to produce a copy of challan evidencing payment of pre-deposit. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has examined the matter carefully. The Commissioner (Appeals) has rejected the appeal on the ground that the Applicant did not make mandatory pre-deposit of 7.5% as per Section 129E of the Customs Act, 1962. It is not disputed that being a mandatory condition, the pre-deposit ought to have been made. The Applicant has claimed that the pre-deposit had indeed been made. Upon being pointed out that no proof of pre-deposit being made is forthcoming, the Ld. Advocate for the Applicant had, during the personal hearing, undertaken to furnish details along with proof of payment. The Applicant through his Advocate has, now, sent an email dated 15.12.2022 attaching copy of Demand Draft No. 000514 dated 11.11.2017, in the name of Commissioner of Customs, Bangalore, for Rs. 2,75,640/- ostensibly towards the payment of pre-deposit. It has been stated that the aforesaid DD was submitted in the office of the Commissioner of Customs, Bangalore. But, it is admitted that the Challan/acknowledgement is not available. Therefore, it is clear that the claim of making pre-deposit is unsubstantiated. Further, the case relates to

(सहाय्य निदेश)
(Lakshmi Raghavan)
असिस्टंट कमिश्नर ऑफ
ट्रिब्यूनल ऑफ अपील
ऑफ इन्कम टॅक्स
ऑफ इन्डिया

the jurisdiction of Commissioner of Customs, Mangaluru. Therefore, DD towards pre-deposit could not have been made in the name of Commissioner of Customs, Bengaluru. In these facts and circumstances, it is clear that the requisite pre-deposit has not been made and the claim to the contrary are incorrect. As such, there is no infirmity in the order passed by the Commissioner (Appeals).

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)
Additional Secretary to the Government of India

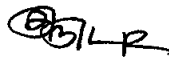
Sh. Mohammed Aouf
S/o Mohammed Gouse Muallim
32 Marota house, Kazi Street
Bhatkal, North Kanara District-581320

Order No. 386/2022-Cus dated 16-12-2022

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Commissioner of Customs, New Custom House, Panambur, Mangaluru-575010.
3. Sh. Prakash K. Shingrani, Advocate, High Court, 12/334 Vivek, New MIG Colony, Bandra(E), Mumbai-400051.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



16.12.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi