

SPEED POST



F.No. 373/206/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 22/12/22

Order No. 396/22-Cus dated 22-12-2022 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 129DD of the Customs Act, 1962 against the Order-in-Appeal 476/2016 dated 30.06.2016, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. T. Saifudheen, Kozhikode, Kerala.

Respondent : The Commissioner of Customs, Mangaluru.

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ORDER

A Revision Application No. 373/206/B/2016-RA dated 04.10.2016 has been filed by Sh. T. Saifudheen, Kozhikode District, Kerala (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 476/2016 dated 30.06.2016, 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. 33/2015-ADC dated 29.12.2015, passed by the Additional Commissioner of Customs, Mangaluru, as time barred.

2. Briefly stated, the Officers of Directorate of Revenue Intelligence, Mangaluru, seized 1233.30 gms. of gold, valued at Rs. 35,02,572/-, from the drainage hole of the toilet in the arrival side of the Mangaluru International Airport, in the night of 15.07.2014. Sh. Ganesh Bajpe a cleaning staff of the airport was apprehended while attempting to take out the offending gold from the toilet. Sh. Ganesh Bajpe deposed that he had been operating at the behest of one Sh. Noushad Hasan Beary for a remuneration. On further investigation, it was revealed that one Sh. T. Saifudheen, i.e., the Applicant herein was also involved. The original authority, after following the principles of natural justice, ordered absolute confiscation of the seized gold under Section 111 (d), (l) & (j) of the Customs Act, 1962. Penalties of Rs. 6,00,000/-, Rs. 5,00,000/- and Rs. 5,00,000/- were imposed on Sh. Ganesh, Sh. Noushad Hasan Beary and the Applicant herein, respectively, under Section 112 of the Customs Act, 1962. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals) as barred by limitation.

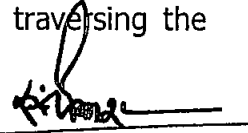
3. The revision application has been filed, mainly, on the grounds that the appeal was filed within the statutory period and Commissioner (Appeals) ought to have condoned the delay and heard the appeal on merits; that Sh. Noushad had implicated the Applicant herein in order to escape the consequences from the officers of DRI; that, though, summons were issued to the Applicant herein four times, he could not appear for valid reasons; that the Applicant herein is not guilty and penalty should not have been imposed on him.

4. Personal hearing was held, in virtual mode, on 22.12.2022. Sh. K.M. Suresh Chandran, Advocate appeared for the Applicant and reiterated the contents of the RA. Sh. Mithosh Raghavan, DC supported the orders of the lower authorities.

5. The Government has carefully examined the matter. It is undisputed that the Order-in-Original dated 29.12.2015 was communicated to the Applicant herein on 18.01.2016 whereas the appeal was filed before the Commissioner (Appeals) on 18.04.2016. Considering that there were 29 days in the month of February in 2016, it is correct of the

Commissioner (Appeals) to find that the appeal was filed on the 91st day from the date of communication of the Order-in-Original. As per sub-section (1) of Section 128 of the Customs Act, 1962, normal period of filing the appeal is 60 days. In terms of the proviso to said sub-section (1), the Commissioner (Appeals) can extend the time limit of 60 days by a further period of 30 days provided he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days. Thus, an appeal can be filed before Commissioner (Appeals) within a maximum period of 90 days, including the condonable period of 30 days. It is settled by the judgments of the Hon'ble Supreme Court in the case of Singh Enterprises vs. Commissioner {2008 (221) ELT 163 (SC)} and in the case of Amchong Tea Estate vs. Union of India {2010 (257) ELT 3 (SC)} that the Commissioner (Appeals) has no powers to condone the delay beyond the statutorily provided condonable period of 30 days. Therefore, the Government does not find any infirmity in the order of Commissioner (Appeals) rejecting the appeal as time barred as he could not have been condoned the delay of 31 days.

6. In view of the above, the revision application is rejected, without traversing the merits of the case.



(Sandeep Prakash)

Additional Secretary to the Government of India

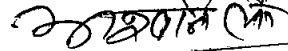
Sh. T. Saifudheen,
S/o Beeran Kunhi,
Thuvakummal House,
Valiyaparamba, Koduvally
Kozhikode District,
Kerala.

Order No. 396/22-Cus dated 22-12-2022

Copy to:

1. The Commissioner of Customs, New Custom House, Panambur, Mangaluru-575010.
2. The Commissioner of Customs (Appeals), C.R. Building, P.B. No. 5400, Queen's Road Bengaluru-560001.
3. Sh. K.M. Suresh Chandran, Advocate, 9/426, Court Road, Calicut-673001.
4. PA to AS(RA)
5. Guard file.
6. Spare Copy.
7. Notice board.

ATTESTED



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