

SPEED POST



**F. No. 373/125/B/2019-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 28/02/23...

Order No. 72 / 23-Cus dated 28-02-2023 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 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus.I. No. 81/2019 dated 26.03.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

APPLICANT : Sh. Khader Basha, Vaniyambadi

RESPONDENT : Pr. Commissioner of Customs, Chennai-I

ORDER

A Revision Application No. 373/125/B/2019-R.A. dated 15.04.2019 has been filed by Sh. Khader Basha, Vaniyambadi (hereinafter referred to as the Applicant) against Order-in-Appeal C.Cus.I. No. 81/2019 dated 26.03.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 61/2017-18-AIRPORT dated 21.05.2017, passed by the Additional Commissioner of Customs (Adjudication-Air), Chennai, on the grounds of limitation.

2. Briefly stated, the Applicant herein was intercepted while bound for Dubai, after he had cleared immigration and Customs and was proceeding to the Security Hold Area in the Departure Terminal of Anna International Airport, Chennai. On being questioned by the AIU officers whether he was carrying any foreign/Indian currency with him, the Applicant declared that he was carrying some Indian currency on his person and was not carrying any foreign currency either in his baggage or on his person. On examination of one of his checked-in baggage, a blue colour back bag was found and on examination of the said blue colour back bag, assorted foreign currency notes valued at Rs. 1,97,94,470.75/- was recovered. Thereafter, he was questioned as to whether he was in possession of any valid document for the legal export of the aforesaid foreign currency recovered from him, for which he replied in negative. He further stated that the recovered currency notes did not belong to him and that he was smuggling the same to Dubai as per the instructions of his maternal uncle Sh. Masood of Triplicane, Chennai to hand over the said currencies to another maternal uncle and brother of Sh. Masood, Sh. Shujayet Ali Khan, in Dubai. In his statement dated 08.05.2016 given before the Customs officer after the seizure of foreign currency, the Applicant, inter-alia, stated that he was working as a Senior Market Executive in M/s. Great Bullion, a Bangalore headquartered company having branch at Vaniyambadi; that he earned a monthly salary of Rs. 15,000/-; that he was assured by his maternal uncle Sh. Masood that Customs would not detect the currency notes concealed in the said checked in baggage; that he volunteered to take up the risk of smuggling the foreign currencies; and that he concealed the six currency bundles in the said blue colour back bag. The original authority, vide the aforesaid Order-in-Original dated 21.05.2017, ordered for absolute confiscation of the said assorted foreign currencies under Section 113(d), (e) & (h) of the Customs Act, 1962. Besides, penalty of Rs. 20,00,000/- was also imposed on the Applicant, under Section 114 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 contention of the appellate authority that the order was served on the Applicant on 05.06.2017 was totally wrong as the acknowledgement card shows that the order was received by one Zubaida and not the Applicant; that he filed an appeal before the Joint

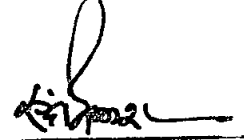
Commissioner of Customs (Air), Chennai being the appellate authority, who directed the department to furnish the order copy to the Applicant and accordingly, the impugned order dated 31.05.2017 was sent vide letter dated 06.09.2018 by speed post and the same was acknowledged by the Applicant on 10.09.2018 and after the receipt of the order, the Applicant approached the counsel and filed appeal on 12.09.2018; and that the Commissioner (Appeals), Chennai without perusing the acknowledgement card contended that the order was delivered to the Applicant and hence the impugned order is liable to set aside.

4. Personal hearing in the matter was fixed on 18.01.2023, 06.02.2023 and 27.02.2023. No one appeared for the Applicant and the Respondent nor any request for adjournment has been received. However, an email letter dated 27.02.2023 has been received from the advocate of the Applicant, Ms. Kamalamalar Palanikumar wherein she has requested to pass an order with available records as she could not attend the personal hearing. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

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 Order-in-Original dated 21.05.2017 was dispatched by the department through Registered Post Acknowledgement due, on 01.06.2017 and the receipt of order was duly acknowledged on 05.06.2017 and the proof of dispatch and receipt is also available in records. Further, it is also mentioned by Commissioner (Appeals) that the date of filing of appeal was on 28.09.2018 i.e. one year and four months after the date of order. It is contended by the Applicant that the registered post was not received by him but by one Zubaida. However, this contention does not inspire much confidence as the postal authorities are presumed to have delivered the registered post to the addressee and not to an unauthorised person. 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 28.09.2018 when the order of the original authority had been received by the Applicant herein on 05.06.2017 itself. 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.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Khader Basha
S/o Sh. Anwar Basha
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Order No. 72/23-Cus dated 28-02-2023

Copy to:-

1. The Pr. Commissioner of Customs, Chennai-I, Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.
2. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
3. Ms. P. Kamalamalar, Advocate, No. 10, Sunk ram Street, Second Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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