

SPEED POST



**F. No. 372/18/B/2021-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. 24/03/22

Order No. 98 / 22-Cus dated 24-03-2022 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. KOL/CUS(Airport)/AKR/952/2020 dated 28.12.2020, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Shri Varun Kant, New Delhi.

RESPONDENT: Commissioner of Customs (Airport & Admn.), Kolkata.

ORDER

A Revision Application No. 372/18/B/2021-R.A. dated 23.06.2021 has been filed by Shri Varun Kant, New Delhi (hereinafter referred to as the Applicant) against Order-in-Appeal No. KOL/CUS (Airport)/AKR/952/2020 dated 28.12.2020, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original No. 23/2016 JC dated 31.05.2016, passed by the Joint Commissioner of Customs, AIU, Kolkata, as time barred.

2. Briefly stated, the Applicant arrived at the NSCBI Airport Kolkata, on 26.02.2014, from Bangkok. He was intercepted by the Custom Officers near the exit gate and asked whether he was carrying any dutiable goods to which he replied in negative. Thereafter, upon search of his baggage and his personal search, 2 gold bars, collectively weighing 190.84 grams and totally valued at Rs. 5,63,584/-, were recovered, concealed inside a specially made pocket in the handbag of the Applicant. In his statement dated 26.02.2014, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that he had bought the seized gold in Bangkok for his sister's marriage and concealed the same in his trolley bag to evade Customs Duty. The Joint Commissioner Customs, vide the aforesaid Order-in-Original dated 31.05.2016, ordered for absolute confiscation of the seized gold, under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. A penalty of Rs. 60,000/- was also imposed on the Applicant 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 by Speed Post on 05.09.2016 but the same was returned as refused; that thereafter the Applicant wrote to the Chief Commissioner of Customs on 23.09.2016 and also resent the appeal to Commissioner (Appeals)

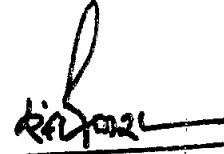
Office; that no reply was received from the department; that the Advocate for the Applicant personally visited the Office of Commissioner (Appeals) and submitted a letter, on 24.09.2019, requesting the Commissioner (Appeals) for granting personal hearing in the case; and that thereafter personal hearing was granted. Therefore, it was incorrect for the Commissioner (Appeals) to reject the appeal as time barred. Several submissions have been made on merits of the case as well.

4. Personal hearing, in virtual mode, was held on 23.03.2022. Smt. Prabhjyoti Kaur, Advocate appeared for the Applicant. She submitted that the Order-in-Original was received by them on 20.06.2016 and appeal was forwarded to Commissioner (Appeals) by Speed Post dated 05.09.2016, which was, however, refused. Therefore, the question of filing the appeal beyond the condonable period, in terms of Section 128, does not arise. As such, the matter may be remanded to Commissioner (Appeals) for decision on merits. Sh. D.K. Ramuka, Superintendent appeared for the Respondent department and supported the order of Commissioner (Appeals).

5. The Government has carefully examined the matter. It is the contention of the Applicant that the Order-in-Original dated 31.05.2016 was received by him on 20.06.2016 and appeal was forwarded to the Office of Commissioner (Appeals) by Speed Post dated 05.09.2016, which was, however, refused. Besides other documents, a copy of the envelope ostensibly containing the appeal papers, which has an endorsement dated 07.09.2016 indicating that the "All receiver (including Appeal Unit 2nd & 3rd Floor) refused". A Speed Post tracking sheet indicating that the item was booked at Kalkaji Post Office, New Delhi on 05.09.2016; that delivery attempt was refused on 07.09.2016; and that the same was returned back to the despatcher on 10.09.2016 has also been placed on record. Thus, the Government finds that sufficient material has been furnished to indicate that the appeal was sent by Speed Post on 05.09.2016 but was refused to be received on 07.09.2016. It has also been contended that the Order-in-Original was received on 20.06.2016. Subject to verification of these

factual contentions, it would appear that the appeal was sought to be filed on 07.09.2016, which is beyond the period of 60 days, i.e., the normal period of limitation under Section 128 of the Customs Act, 1962, but within the condonable period of 30 days thereafter. Accordingly, it would be in the interest of justice if the matter is remanded to the Commissioner (Appeals) for causing necessary verification and thereafter if considered appropriate, as per law, condone the delay and take up the appeal for disposal de-novo on merits. Needless to say that de-novo consideration shall be done following the principles of natural justice.

6. The Revision Application is, accordingly, allowed by way of remand to the Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

To,
Sh. Varun Kant, C/o Sh. D.S Chadha,
G-16, 2nd Floor, Lajpat Nagar-I,
New Delhi-110024.

Order No. 38 /22-Cus dated 24-03-2022

Copy to:-

1. The Commissioner of Customs (Airport & Admn.), NSCBI Airport, Kolkata-700052.
2. The Commissioner of Customs (Appeals), 15/1, 3rd Floor, Strand Road, Customs House, Kolkata-700001.
3. P.S to A.S (RA)
4. ✓ Guard File
5. Spare Copy

ATTESTED



(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