

**SPEED POST**



F. No. 373/02/B/2020-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..12/06/24..

Order No. 116 /24-Cus dated 12-06-2024 of the Government of India passed by Smt. Shubhagata Kumar, 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. 119/2019 dated 02.07.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Muneer Abdulla Kunhi Mohammed, Kasargod

Respondent : The Commissioner of Customs, Mangaluru

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**ORDER**

Revision Application No. 373/02/B/2020-RA dated 03.01.2020 has been filed by Sh. Muneer Abdulla Kunhi Mohammed, Kasargod (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 119/2019 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 against the Order-in-Original No. 06/2018 ADC dated 29.01.2018, passed by the Additional Commissioner of Customs, Mangaluru International Airport, Mangaluru on grounds of limitation. Vide the aforementioned Order-in-Original, foreign currency notes comprised of 237 notes of Pound Sterling in denominations of 50 equivalent to Indian Rs. 10,31,543/- recovered from the Applicant were absolutely confiscated under Section 113 (d) & (e) of the Customs Act, 1962. Besides, penalties of Rs. 3,09,463/- and Rs. 1,50,000/- were imposed upon the Applicant under Sections 114 & 114AA, respectively of the Act, *ibid*.

2. Brief facts of the case are that the Applicant who was travelling to Dubai from Mangaluru on 13.02.2017 was intercepted by Customs officers as he was proceeding towards security check after completing his immigration formalities. Upon being asked about the purpose of his visit to Dubai and as to whether he had anything to declare to Customs, the Applicant replied that he had nothing to declare to Customs and that he was proceeding to Dubai as he was working there. Upon being specifically asked as to whether he was carrying any contraband goods or Indian/Foreign currency, he replied that he was in possession of Indian currency but had no foreign currency. On enquiry about the contents of the baggage, he informed that it contained only cloth items and it did not contain any contraband or valuable goods. Upon open examination of his hand baggage, it was found to contain a bundle of foreign currency notes found concealed between two layers of grey coloured foam type sheet material attached together using stapler pins and kept between both the sides. On detailed examination of the said bundle of foreign currency notes, it was found to contain currency notes of 237 Pound Sterling of denominations of 50 which was found to be equivalent to Rs. 10,31,543/- as per the prevalent exchange rate Notification No. 09/2017-Cus. (N.T) dated 02.02.2017.

In his statement dated 13.02.2017 recorded under Section 108 of the Customs Act, 1962, the Applicant, stated inter-alia that he did not possess any documents to show licit possession of the said foreign currency notes; 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 the said foreign currency was procured from one person namely Shabeer from Kasaragod for handing over to his associates in Dubai; that he was promised good remuneration by Shabeer; and that due to lure of money, he carried the said foreign currency notes by concealing in his

baggage without declaring to Customs while he attempted to pass through Customs channel at the Mangaluru International Airport. The matter was adjudicated vide aforesaid order dated 29.01.2018. Aggrieved, the Applicant filed appeal before the Commissioner (A) which has been rejected on ground so limitation.

3. The Revision Application has been filed by the Applicant mainly on the grounds that the foreign currency was not concealed as it was kept in the backpack; that foreign currency is not prohibited goods; that there was no attempt to take the seized goods out of country without declaration as the applicant was intercepted before he was issued boarding pass; and that his statement was obtained by force and coercion. It is further prayed that the foreign currency be allowed to be redeemed on payment of reasonable redemption fine on the amount which was in excess of the allowed limit and penalty imposed upon the applicant under Section 114 may kindly be dropped.

4. Personal hearing was fixed on 08.05.2024, which was rescheduled upon the request of the applicant's authorized representative vide email dated 07.05.2024. P.H was held on 05.06.2024 in which Sh. Sameer Kashmirji, Advocate appeared for the applicant and submitted that the case pertains to the seizure of foreign currency; that the applicant has a resident visa of UAE and works as a salesman. The impugned notes were around 237 in number, amounting to around 11,850 pound sterling, which was his own earnings in UAE. He was intercepted at the check-in counter itself, affording no opportunity to declare the foreign currency to Customs. The foreign currency was in his backpack and there was no concealment. The applicant was forced to deposit adjudication levies. He also submitted that Commissioner (Appeals) dismissed their appeal on grounds of non-maintainability. When pointed out regarding the delay in filing the revision application as well, Sh. Kashmirji submitted that the delay was within the condonable period and was due to the applicant not being aware of the timelines for filing the RA.

5. The Government has examined the matter. The appeal filed by the Applicant against the OIO was rejected by Commissioner (Appeals), on the grounds of limitation, without considering the merits of the case. The Commissioner (Appeals) has recorded that the appeal against the Order-in-Original dated 29.01.2018 was filed on 10.04.2019 i.e. after a delay of 1 year and it was falsely claimed by the applicant that the copy of impugned order was received by the applicant only on 25.01.2019, after the applicant's counsel filed an application for details of the order vide letter dated 11.01.2019. It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days. The Commissioner (Appeals) can condone a delay up to thirty days, on sufficient cause being shown. As correctly highlighted by the Commissioner (Appeals), the Hon'ble Supreme Court has, in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008

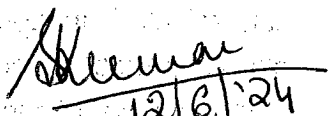
(221) ELT 163 (SC)} held that the Commissioner (Appeals) cannot condone the delay in filing of an appeal beyond the statutory provided condonable period. Therefore, the Government finds no infirmity in the impugned OIA.

6. Further, the Government observes that the revision application has been filed on 03.01.2020 whereas the date of receipt of OIA is 07.08.2019. Thus, there is a delay of 56 days in filing the revision application beyond the normal period of filing the application as prescribed under Section 129DD. It is noted that the applicant's appeal was rejected by the Commissioner (Appeals) also on grounds of non-maintainability due to late filing of the appeal. The Government also observes that there are three other revision applications filed by the same counsel wherein all identically worded applications for condonation of delay have been filed and the delay has been sought to be explained in following terms:

- "1. That the applicant was out of station for his job-related commitment and was not able to contact his counsel to file revision application.*
- 2. That the applicant was not in a position to follow up the appeal immediately as he was unable to come to his home town because of his job commitment and was not aware about the time limit. Hence the delay.*
- 3. That the said delay caused for filing this appeal is neither intentional nor deliberate, but only for the reason stated above. However, the said revision application has been filed well within the condonable period."*

The same language used in multiple applications, that too without substantiation and points to a casual and non-serious approach towards the prescribed timelines under Section 129DD of the Customs Act, 1962. Even if the applicant were out of station, the counsel could have been contacted over phone or email. It is moot that their appeal before Commissioner (Appeals) was also rejected on grounds of limitation. In this context the plea that the applicant was unaware of timelines is not tenable. It appears that the request for condonation of delay has been made in a mechanical and perfunctory manner, without any consideration for the factual position and therefore is untenable.

7. In the conspectus of these facts and circumstances, the Government is constrained to hold that the request for condonation of delay cannot be accepted. The revision application is accordingly rejected on grounds of limitation.

  
12/6/24  
(Shubhagata Kumar),

Additional Secretary to the Government of India

(शैलेंद्र कुमार मीना)  
(Shalendra Kumar Meena)  
अंशक अधिकारी / Section Officer  
वित्त विभाग (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

ATTESTED

*Shalendra*  
12/06/24

- 7. Notice board.
- 6. Spare Copy.
- 5. Guard file.
- 4. PPS to AS(RA)

Mangaluru-575001.

- 1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
- 2. The Commissioner of Customs, New Customs House, Panambur, Mangaluru-575010.
- 3. Sh. Sameer Kashimji, Advocate, 22, Sweet Home Apartments, Britto Lane, Fainir, Mangaluru-575001.

Copy to:

Order No. 116/24-Cus dated 19-06-2024

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