

SPEED POST



**F. No. 375/67/B/2020-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 08/04/22

Order No. 127 / 22-Cus dated 07-07-2022 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. CC(A)/Cus/D-I/Air/365/2019-20 dated 07.10.2019, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Sh. Gagan Gupta, New Delhi.

RESPONDENT: The Commissioner of Customs, IGI Airport, New Delhi.

ORDER

A Revision Application No. 375/67/B/2020-R.A. dated 05.11.2020 has been filed by Sh. Gagan Gupta, New Delhi (hereinafter referred to as the Applicant) against Order-in-Appeal No. CC(A)Cus/D-II/ICD/TKD/IMP/848/2017 dated 06.09.2017, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 39/2015 dated 24.06.2015, passed by the Additional Commissioner of Customs, ICD(Imports), Tughlakabad, New Delhi.

2. Briefly stated, the Applicant herein was intercepted by the Customs AIU Officers at IGI Airport, New Delhi, when he was departing for Dubai, on 21.10.2013. On his search, foreign currency of US \$50,500/- and INR 54,000/- was recovered. The convertible value of foreign currency was estimated to be Rs. 30,90,000/-. In his statement dated 21.10.2013, recorded under Section 108 of the Customs Act, 1962, the Applicant herein agreed that the aforesaid foreign currency was recovered from him after he had cleared the immigration check and stated that he was going to Dubai to visit and explore acrylic sheets market and hence was carrying the foreign currency for making payments; and that he had purchased the foreign currency from authorised foreign exchange dealers but was not carrying the bills. In his further statement dated 06.12.13, the Applicant herein stated that he was not able to produce the documents supporting the licit acquisition and possession of the foreign currency as he was still in the process of collecting the same. In his subsequent statement dated 22.12.2013, the Applicant submitted certain documents. The original authority, vide aforesaid Order-in-Original dated 24.06.2015, ordered for confiscation of US \$50,500/- and INR 54,000/- under Sections 113(d), (e), (h), (i) of the Customs Act, 1962. A penalty of Rs.5,00,000/- was also imposed on the Applicant under Section 114 of the Act *ibid*. The Commissioner (Appeals), has vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein.

3. The Revision Application has been filed with an application for condonation of delay. The Revision Application has been filed, mainly, on the grounds that the Applicant submitted the documents supporting the acquisition and possession of the foreign currency; that Applicant is a trader and a frequent flyer; that the foreign and Indian currency was not concealed; that the original authority failed to get the documentary proof submitted by him verified; that the currency recovered from him was not prohibited goods; and that, therefore, the option to redeem the currency should have been granted. The condonation of delay has been requested on the ground that the impugned Order-in-Appeal dated 06.09.2017 was received by the Applicant only on 13.10.2020, vide department's letter dated 13.10.2020.

4. The personal hearing, in virtual mode, was held on 06.04.2022. Sh. Prem Ranjan Kumar, Advocate appeared for the Applicant and reiterated the contents of RA. He requested that the currency may be released on payment of fine and penalty. None appeared for the department nor any request for adjournment has been received.

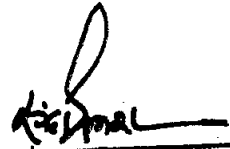
5.1 The Government has carefully examined the matter. The preliminary issue to be decided is whether condonation of delay is merited in the facts of case. It is the contention of the Applicant that the Order dated 06.09.2017 was received by him only on 13.11.2020. It is also claimed that he constantly pursued the matter with his lawyer but when he visited the office of his then lawyer he came to know that the lawyer had expired around 2 to 3 years back. Thereafter, vide his letter dated 08.10.2020 he requested for a copy from the Office of the Commissioner (Appeals), which was handed over to him vide letter dated 13.10.2020. The Government, upon careful perusal of the documents on record, is not persuaded to accept the contentions of the Applicant, raised in the condonation of delay application, for the following reasons.

- (i) It is observed from the letter dated 13.10.2020, of the Office of Commissioner (Appeals), that the impugned Order-in-Appeal dated 06.09.2017, was dispatched to the Applicant on 16.09.2017 by speed post. A copy of the speed post receipt has also been furnished to the Applicant. Thus, the department has discharged the initial onus of proving that the Order-in-Appeal was dispatched.
- (ii) The Applicant was represented by his lawyer before Commissioner (Appeals), who also attended the personal hearing. Therefore, Applicant was throughout aware of the proceedings.
- (iii) It is the contention of the Applicant that after the personal hearing, before the Commissioner (Appeals), he constantly pursued the matter with the office of his lawyer but a satisfactory reply was not received. Hence, he visited the office and found that the lawyer had died 2 to 3 years back. This contention is ex-facie self-contradictory- if the lawyer had died 2 to 3 years back, the Applicant could not have been pursuing the matter regularly with him. This also shows that the Applicant has not come with clean hands before the Government and his contentions appear to be incorrect/false.

- (iv) It is seen from the documents placed on record that the Applicant had been receiving back some amounts from his suppliers abroad, in cash. This is, prima-facie, in contravention of the laws relating to foreign exchange. Therefore, the Applicant herein even otherwise, and on his own admission, appears to have been acting non-bonafide.

5.2 In the above background it would appear to the Government that the Order dated 06.09.2017, which was dispatched on 16.09.2017, was received by the Applicant and the Applicant for the reasons best known to him did not challenge the same in time. As brought out hereinabove, the explanations put forth in the COD application are not reliable. Therefore, the delay, being beyond the condonable limit of 3 months in terms of Section 129DD of the Customs Act, 1962, cannot be condoned.

6. In view of the above, the Revision Application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

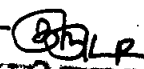
To,
Sh. Gagan Gupta,
S/o Mr. Surender Kumar Gupta,
3-A Street No.1, Arjun Nagar Krishna Nagar,
New Delhi-110051

Order No. 127 /22-Cus dated 07-04-2022

Copy to:-

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi.
3. Sh. Prem Ranjan Kumar, Advocate, LGF-6/33-33A, Vikram Vihar, Lajpat Nagar, New Delhi-110024
4. P.S TO A.S (RA)
5. Guard File
6. Spare Copy

ATTESTED


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