

SPEED POST



F. No. 373/91/B/2020-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..12/09/24

Order No. 192/24-Cus dated 12-09-2024 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. VIZ-CUSTM-000-APP-066-16-17 dated 27.09.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam.

Applicants : Sh. Mohammed Yaseen Kundunguda, Bhatkal

Respondent : Commissioner of Customs, Visakhapatnam

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ORDER

A Revision Application No. 373/91/B/2020-RA dated 02.03.2020 has been filed by Sh. Mohammed Yaseen Kundunguda, Bhatkal (hereinafter referred to as the Applicant), against the Order-in-Appeal No. VIZ-CUSTOM-000-APP-066-16-17 dated 27.09.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam. The Commissioner (Appeals) has upheld the Order-in-Original No. 04/2014 dated 25.08.2014 passed by the Joint Commissioner of Customs. Vide the aforementioned Order-in-Original two gold bars of 24 carat purity, totally weighing 233.200 grams and collectively valued at Rs. 7,06,899/-, recovered from the Applicant had been absolutely confiscated under Section 111(d), (i) & (l) of the Act, *ibid* and a gold chain of 22 carats, weighing 12 grams was ordered for release. Besides, a penalty of Rs. 7,00,000/- was also imposed upon the Applicant under Section 112(a)&(b) of the Act, *ibid*.

2. Brief facts of the case are that the Applicant was intercepted by Customs officers at the exit gate of Visakhapatnam International Airport upon his arrival on 22.04.2014. Upon examination of his Customs Declaration Form it was noticed that he had declared gold jewellery which was worn by him and he produced the same on being asked. Thereafter he was asked whether he got any other gold item or dutiable item on his person or in baggage, he replied in the negative. When he was asked about his purpose of coming to Visakhapatnam, he could not give a satisfactory answer which raised suspicion. Thereafter his baggage was examined and nothing incriminating was found. It was noticed that he was wearing high heels ladies chappal and when the chappals were scanned presence of metal items were noticed in both the chappals. Thereafter both the chappals were examined and upon removal of heels of both the chappals a gold bar was recovered from each chappal. The Government approved gold assayer examined and certified the gold bars to be of 24 carats purity, weighing 116.6 grams each, totally weighing 233.2 grams and collectively valued at Rs. 7,06,899/-.

In his statement dated 22.04.2014, recorded under Section 108 of the Customs Act, 1962, the applicant stated *inter-alia* that he went to Dubai on 08.04.2014 via Mumbai

International Airport and brought the gold on behalf of one Mohammed Jamir who gave him free air ticket and promised to give him Rs. 25,000/- for this job; and that he was not eligible to bring gold into India and hence, he concealed the gold bars in his footwear. The matter was adjudicated vide the aforesaid order dated 25.08.2014. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed mainly on the grounds that the applicant kept the gold in his shoes for safety and security reasons; that he did not give his statement under free will and the same was retracted; and that he had declared the gold jewellery.

4. Personal hearing in the matter was held on 10.06.2024. Sh. Ashok Kumar, Advocate appeared for the applicant and submitted that he did not have the requisite papers as he is recently appointed. He sought a personal hearing in the second week of July. No one appeared for the Respondent. In the hearing held on 08.07.2024, Sh. Ashok Kumar & Sh. Shiv Kumar, Advocates sought adjournment as they had to seek instructions and clarifications from the applicant. Personal hearing was again held on 09.08.2024. Sh. Ashok Kumar, Advocate appeared for the applicant and requested for condonation of delay. It was seen that the OIA was passed on 27.09.2016 and despatched on the same day as evidenced by the stamp on the OIA. As per the communication from the office of Commissioner, Visakhapatnam, the same was delivered on 03.10.2016 as per the statement of the postman concerned. It was further seen that the applicant approached CESTAT on 23.04.2019, after a delay of around 2 years and 6 months. The correct forum in the case was RA's office which was approached on 02.03.2020 after CESTAT dismissed the appeal as non-maintainable. There is no provision in the law or rules to condone this delay.

5. Section 153 of the Customs Act, 1962, which provides for mode for service of notice, orders, etc., as it stood at the relevant time, read as under:

"153. Service of order, decision, etc. – Any order or decision passed or any summons or notice issued under this Act, shall be served, -

(a) By tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) If the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."

Further, Section 27 of the General Clauses Act, 1897 provides as under:

"27. Meaning of service by post. – Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Thus, on a combined reading of the two provisions extracted above, it is apparent that the service of the Order is deemed to have been effected at the time at which it would be delivered in the ordinary course of post, unless the contrary is proved. The Government finds that the Hon'ble Orissa High Court has, in the case of Jay Balaji Jyoti Steels Ltd. Vs. CESTAT, Kolkata {2015 (37) STR 673 (Ori.)}, held that 'speed post' also has to be treated as "registered post", in view of Section 28 of the Indian Post Office Act, 1898 read with Rule 66B of Indian Post Office Rules, 1933. It is further recorded that as per the All India Delivery (Transit) Norms for speed post, the speed post article should be delivered within 4-6 days from the date of booking. In view of the above it can be safely assumed that the impugned Order-in-Appeal was delivered to the applicant in a month's time from the date of despatch i.e. 27.09.2016 unless the applicant had proven to the contrary. The applicant has mentioned in his application for condonation of delay that the date of receipt of Order-in-Appeal is 24.01.2019, however no proof has been submitted by him substantiating his claim. As such, the Government is not persuaded by the Applicant's submission.

6. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., a revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, in terms of the proviso to sub-section (2) the Government may

allow an application to be presented within a further period of 3 months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. In the instant case, the Government is constrained to hold that the inordinate delay in filing the instant revision application i.e. 932 days cannot be condoned as it is far beyond the condonable period.

7. The revision application is rejected as barred by limitation.

Shubhagata Kumar
12/9/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Mohammed Yaseen Kundunguda
26/21, Yaseen manjil, II Cross
Usman Nagar, Bhatkal
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Order No. 192/24-Cus dated 12-09-2024

Copy to:

1. The Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.
2. The Commissioner of Customs, Central Excise & Service Tax, 4th Floor, Custom House, Port Area, Visakhapatnam-530035.
3. Sh. Ashok Kumar, Advocate, Chamber No. 174-175, Western Wing, Tis Hazari Court, Delhi-110054.
4. PPS to AS(RA).
5. Guard File.
6. ✓ Spare Copy.
7. ✓ Notice Board.

Shailendra Kumar Meena
12/9/24
ATTESTED (शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार, Govt. of India
नई दिल्ली, New Delhi