

SPEED POST



F. No. 373/307/B/2022-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: 27/09/24

Order No. 205/24-Cus dated 27-09-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. 327/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Theruvath Muneer, Kasaragod

Respondent : The Commissioner of Customs, Mangaluru

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ORDER

A Revision Application No. 373/307/B/2022-RA dated 21.06.2022 has been filed by Sh. Theruvath Muneer, Kasaragod (hereinafter referred to as the Applicant), against the Order in Appeal No. 327/2016 dated 31.03.2016, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has upheld the Order-in-Original of the Deputy Commissioner of Customs, Mangaluru International Airport bearing No. 17/2014 (AP) dated 05.08.2014, ordering absolute confiscation of seized foreign currency of 20000 Qatar Riyals and 740 UAE Dirhams equivalent to Indian Rs. 3,42,832/-, under Section 113(d) of the Customs Act, 1962. Besides a penalty of Rs. 1,00,000/- was imposed on the Applicant under Section 114(i) of the Act, *ibid*.

2. Brief facts of the case are that on 26.06.2014, the Customs officers intercepted the applicant who was destined for Dubai from Mangaluru International Airport on the basis of credible intelligence. On the enquiry by the officers as to whether he was carrying any foreign currency with him, the applicant replied in the negative. However, on the search of his person, a bundle of foreign currency notes that was kept in his trouser pocket was recovered, consisting of the above mentioned foreign currency. In his statement dated 26.06.2014, recorded under Section 108 of the Customs Act, 1962, the applicant stated *inter-alia* that he had no valid documents to show the purchase of currency from any authorized exchange dealers and that the said amount was given to him by his elder brother Rafiq for handing over the same to one Thariq who had a mobile shop where he was working in Dubai; that for this job he was promised good remuneration by Mr. Thariq and accordingly, he carried the said foreign currency notes. The matter was adjudicated *vide* order dated 05.08.2014. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) which has been rejected.

3. The revision application has been filed mainly on the grounds that the order of Commissioner (Appeals) was passed without giving an opportunity to the applicant to be heard in person; that carrying foreign currency is not prohibited item for export; that he

was carrying back the said currency which he had saved from his hard work for his personal use and bonafide reasons and not for any illegal purpose; and that his statement was obtained by coercively.

4. Personal hearing in the matter was held on 13.09.2024. The Assistant Commissioner, Mangaluru Customs appeared for the Respondent and submitted that the applicant's case is barred by limitation. On merits too, AC (Customs) stated that the applicant was carrying foreign currency in violation of law and had no documents to evidence licit acquisition of the impugned currency. He prayed that the application be rejected and OIA be upheld. None appeared for the applicant and no request for adjournment has been received. As such, it is presumed that the applicant has nothing to add in the matter.

5. The Order-in-Appeal was passed on 31.03.2016 and the revision application has been filed on 21.06.2022. The applicant has contended in his application for condonation of delay, that he did not receive the OIA. It was only when he filed an application under RTI Act, 2005 for providing OIA that he received the same and that he received the OIA vide letter dated 18.05.2022. Hence the effective date of communication of OIA should be taken as 18.05.2022 which is within the limitation period.

6. The Government has carefully examined the matter. As per records, the Order-in-Appeal was despatched on 20.04.2016 and was not returned undelivered. It is further recorded that as per the All India Delivery (Transit) Norms for speed post, a speed post article is usually delivered within 4-6 days from the date of booking. 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 of notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."

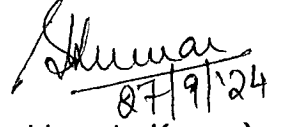
Further, Section 27 of the General Clauses Act, 1897 provides as under:

"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. As regards the use of Speed Post, 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. Thus, it can be safely presumed that the Order-in-Appeal was served on the Applicant herein, within 4-6 days of date of dispatch, i.e., 20.04.2016 by speed post and it cannot be faulted unless the Applicant proves to the contrary. Further, the Respondent vide email dated 17.09.2024 has informed that the said OIA was despatched from the office of Commissioner (Appeals) on 20.04.2016 and it was received by them on 25.04.2016. The Applicant has attempted to do so by submitting that, as he did not receive the Order-in-Appeal, his counsel obtained it and pursuant to that he received a copy on 18.05.2022. However, the Government finds that the Applicant wrote to Commissioner (Appeals) vide letter dated 14.01.2016 requesting for adjournment of personal hearing, evidencing that the applicant was well aware of the appellate proceedings. Hence, his contention of not receiving the OIA and further obtaining the OIA through his counsel on 18.05.2022 appears to be a made-up plea to cover up the time lapse in filing the appeal on time.

7. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, proviso to said sub-section (2) provides discretion to the Government to 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. As mentioned above, it can be safely presumed that the Order-in-Appeal was served on the Applicant herein, within 4-6 days of date of dispatch, i.e., 20.04.2016 by speed post and it cannot be faulted unless the Applicant proves to the contrary. The revision application has been filed more than five years beyond the condonable period of 03 months. Hence, this delay is beyond the statutorily provided period under section 129DD of the Customs Act and cannot be condoned.

8. The revision application is therefore rejected as barred by limitation.



(Shubhagata Kumar)

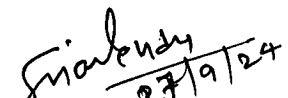
Additional Secretary to the Government of India

Sh. Theruvath Muneer
Pallikal, Thalagara P.O
Kasaragod-671122

Order No. 205 /24-Cus dated 27-09-2024

Copy to:

1. The Commissioner of Customs (Appeals), BMTc Building, Above BMTc Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Commissioner of Customs, New Custom House, Panambur, Mangalore-575010.
3. Sh. Sameer Kashimji, Advocate, 22, Sweet Home Apartments, Britto Lane, Falnir, Mangaluru-575001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.


ATTESTED (Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
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