

SPEED POST



F. No. 373/281/B/2018-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...4/10/23...

Order No. 227/23-Cus dated 03/10/2023 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 under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. TCP-CUS-000-APP-113-2018 dated 28.06.2018 passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. K.A. Venkatesan, Chennai.

Respondent : Commissioner of Customs (Preventive), Tiruchirappalli.

ORDER

A Revision Application No. 373/281/B/SZ/2018-RA dated 04.10.2018 has been filed by Sh. K.A. Venkateshan, Chennai, (hereinafter referred to as the Applicant), against the Order in Appeal No. TCP-CUS-000-APP-113-2018-TRY (CUS) dated 28.06.2018 passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against O-I-O No. TCP-CUS-PRV-JTC-004-17 dated 11.08.2017 passed by the Joint Commissioner of Customs, Tiruchirappalli for non-fulfilment of provisions of section 129E of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant while travelling from Chennai to Singapore on 27.08.2016 was found to be carrying assorted foreign currencies equivalent to Indian Rs. 92,02,693/-. As the Applicant did not have any valid legal document for the recovered foreign currencies and was found attempting to smuggle the same out of India, the recovered foreign currencies were seized for further action under the act *ibid*. After due process of law, Joint Commissioner of Customs, Trichy vide O-I-O No. TCP-CUS-PRV-JTC-004-17 dated 11.08.2017 passed following order:

- (i) Absolute confiscation of assorted foreign currencies equivalent to Indian Rs. 92,02,693/- under Section 113(d) & (e) of the Customs Act, 1962.
- (ii) Imposition of penalty of Rs. 18,40,000/- on the applicant under section 114(i) of the act *ibid*.

Aggrieved with the said OIO, the Applicant preferred an appeal with the Commissioner (Appeals). However, appeal filed by the Applicant was rejected by the Commissioner (Appeals) for non-payment of pre-deposit by the Applicant without traversing into the merits of the case.

3. The revision application has been filed, mainly, on the grounds that impugned OIA is not on the merits of the case but due to non-production of the original demand draft;

and that the Applicant was not provided with an opportunity to pay the said amount and hence the said order is liable to be set aside.

4. Personal hearing in the matter was held in virtual mode on 10.08.2023, Sh. Salil Arora and Sh. R. Arunachalam, Advocates appeared for the Applicant and submitted that they did not wish to make any submission on merits of the case. They only sought that the case be referred back to the appellate authority since the requisite pre-deposit has been made now. They have also quoted case laws to support their prayer. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The applicants vide their letter dated 11.08.2023 reiterated their request for the matter to be remitted back to the Commissioner (Appeals). The applicant placed reliance on the orders passed by the revisionary authority in the matters of;

(i) Order No. 25/14-Cus dated 30.01.2014 under F.No. 371/72/B/13-RA in the case of Sh. Mohammed Nizar B.Raheem.

(ii) Order No. 47/19-Cus dated 19.11.2019 under F. No. 372/07/DBK/2018-RA in the case of M/s Calcutta Lamination Industries, Kolkatta.

6. The Government has examined the matter carefully. The ground, on which the appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals) is that the Applicant herein did not make mandatory pre-deposit of 7.5% as required in terms of Section 129E of the Customs Act, 1962. Relevant extracts of Section 129E ibid are reproduced as under:

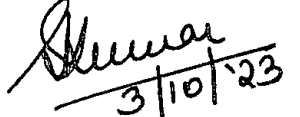
"Section 129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal: The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

- (i) *Under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;*
- (ii) *Against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*"

On a plain reading of Section 129E, it is apparent that the appeal cannot be entertained by the Commissioner (Appeals) unless requisite pre-deposit has been made. Admittedly, the Applicant had a demand draft made for Rs. 1,38,000/- but failed to submit any challan/receipt for proof that the amount has been credited into the Government exchequer, as recorded by the Commissioner(Appeals) in impugned OIA. Further, she recorded that the payment of mandatory pre-deposit cannot be considered to have been made unless it has been credited into the Government account. No fault can be found in the said finding of the Commissioner (Appeals). However, the Government also observes that on record, photo copy of a demand draft No 317866 dated 02.11.2017, issued by Canara bank in the name of "The Commissioner of Customs, Trichy" for a value of Rs. 1,38,000/- has been placed. The Applicant has submitted that by misunderstanding, he failed to deposit the pre-deposit with the Government exchequer. Preparation of demand draft in the name of Custom's authority before the passing of impugned OIA shows sincerity on part of the Applicant. The Applicant has submitted a copy of TR-6 Challan No. Nil dated 29.09.2018 evidencing the payment of pre-deposit of Rs.1,84,000/-. In light of these developments, the Government observes that requisite pre-deposit has been paid by the appellant (Applicant herein) and ends of justice will be met if the matter is re-examined in light of appellant's (Applicant herein) claim.

Accordingly, the matter is remanded back to Commissioner (Appeals) with the direction to decide the case on merits after verifying the genuineness of TR-6 Challan.

7. The revision application is allowed by way of remand to Commissioner(Appeals) to re-examine the matter and pass a reasoned order at the earliest.


3/10/23
(Shubhagata Kumar)

Additional Secretary to the Government of India

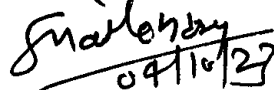
Sh. K.A. Venkateshan, S/o Sh. K.Arunachalam,
No.2/278,Bose street, Krishnamoorthy Nagar, Kodungaiyur,
Chennai-600118.

Order No. 227 /23-Cus dated 03.10.2023

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Sh. Salil Arora, Advocate, D-302, Shubham apartments, Plot No.13, Sector-22, Dwarka, New Delhi.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED


04/10/23

(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

श्री अशोक कुमार (श्री अशोक कुमार)
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