

**SPEED POST**



F. No. 373/423/B/SZ/2022-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 25/10/24.

Order No. 228/24-Cus dated 25-10-2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. CAL-EXCUS-000-APP-194-2022 dated 23.05.2022, passed by the Commissioner (Appeals), Central Tax and Central Excise, Cochin.

Applicant : Shri Mohammed Faisal Movval, Kasargod

Respondent : The Commissioner of Customs (Preventive), Cochin

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**ORDER**

A Revision Application No. 373/423/B/SZ/2022-RA dated 27.12.2022 has been filed by Shri Mohammed Faisal Movval, Kasargod (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CAL-EXCUS-000-APP-194-2022 dated 23.05.2022, passed by the Commissioner (Appeals), Central Tax and Central Excise, Cochin. The Commissioner (Appeals) has partially allowed the appeal against the Order-in-Original No. 19/2017-18 CUSTOMS dated 13.11.2017 passed by the Additional Commissioner, Central Tax & Central Excise, Calicut.

2. Brief facts of the case are that the Applicant, an Indian passport holder, who arrived in India at Cochin International Airport, Cochin from Sharjah on 14.08.2015, was intercepted by the officers of the Customs Air Intelligence Unit at the exit gate of the arrival hall of the Airport. When asked by the Customs officers as to whether he was in possession of any undeclared gold or any other valuables, he replied in the negative. Examination of the checked-in baggage of the Applicant resulted in recovery of four gold beadings which were concealed in aluminium strips. It was ascertained that the gold beadings were of 24 carat purity and weighing 1500 gms. A voluntary statement by the Applicant was recorded under Section 108 of the Customs Act, 1962 wherein he admitted to the non-declaration of gold before Customs authorities and the recovery of gold articles from his baggage. He further deposed that the baggage had been given to him by another person abroad. Thereafter, the Customs officers seized the gold beadings valued at Rs. 34,16,985/- (Tariff value) and Rs. 39,63,000/- (Market value) for further proceedings on the reasonable belief that the goods are liable for confiscation under the provisions of Customs Act, 1962. The Adjudicating Authority vide the above said O-I-O dated 13.11.2017, absolutely confiscated the impugned four gold beadings seized under Section 111(d), 111(i), 111(j), 111(l), 111(m), and 111(o) of Customs Act, 1962 from the Applicant. Besides, penalty of Rs. 4,00,000/- under Section 112(a) & (b) and penalty of Rs. 4,00,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved, the Applicant filed an appeal before Commissioner Appeals who has upheld the order of absolute confiscation of impugned gold and partially

modified the O-I-O by setting aside the penalty under Section 114AA and reducing the penalty under Section 112 to Rs. 60,000/-. Aggrieved by the OIA, the Applicant filed this Revision Application.

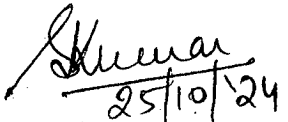
4. The instant revision application has been filed mainly on the grounds that the impugned order passed by the Lower Authorities is improper as it overlooked the valid and vital contentions of the appeal; that the Applicant was an eligible passenger under Notification No. 12/2012; that gold is not prohibited under baggage; that the order of absolute confiscation of the gold by the Original Authority and the confirmation thereof by the Commissioner (Appeals) is contrary to law and hence liable to be set aside. The prayer is to set aside the order of absolute confiscation and permit the Applicant to redeem the confiscated gold on payment of reasonable fine and concessional rate of duty.

5. Personal hearing in the matter was fixed on 20.09.2024. Shri Mohammed Zahir, Advocate appeared on behalf of the Applicant and stated that the 58 days delay in filing the RA was due to floods in Kasargod and house renovation of the Applicant due to which Applicant could not trace out the Order-in-Appeal. He further stated that the Applicants's statement was not admissible as the Mahazar is vitiated and quoted the judgement by the Hon'ble Supreme Court, division bench in the case of Commissioner of Customs Vs. M/s Atul automation, on the difference between prohibition and restriction, referring to Section 233 of the Customs Act, 1962. He prayed for the release of the impugned 1500 gms of gold. Smt. Latha R., Assistant Commissioner of Customs appeared from the Respondent and submitted that this is a case of outright smuggling, concealment, bringing gold in excess of the permitted quantity, non-declaration and violation of the Notification 50/2017 and requested that the O-I-A should be upheld.

6. On examination of the relevant case records, it is observed that the impugned Order-in-Appeal dated 23.05.2022 was received by the Applicant on 01.08.2022 as admitted by him. The revision application has been filed by the Applicant on 27.12.2022 causing a delay of around 58 days beyond the normal period of limitation. The reason cited in the COD application for the delay is the floods in Kasargod in the month of October, 2022 and to the renovation work of his house due to which he could not trace out the Order-in-Appeal. However, the Government

observes that not only are the these reasons not substantiated, but by the Applicant's own admission in COD application of the RA, the said O-I-A was already in possession of the Applicant more than two months before the purported floods in Kasargod (October, 2022 as stated in COD application). This is at variance with the Applicant's contention regarding non availability of the order due to floods. 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) of the Section 129DD of the Customs Act, 1962 provides discretion to the Government to allow an application to be presented within a further period of three 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 conspectus of the facts and circumstances of the instant case, the Government is constrained to hold that the applicant has been unable to show "sufficient cause" as required under Section 129DD of the Customs Act, 1962. The revision application is thus rejected on grounds of limitation without traversing the merits of the case.

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

  
25/10/24  
(Shubhagata Kumar)  
Additional Secretary to the Government of India

Shri Mohammed Faisal Mowval,  
S/o Shri Shafi South, Zainuddeen Manzil,  
Haddad Nagar, Movval P.O.,  
Kasargod -671 316

Order No. 228 /24-Cus dated 25-10-2024

Copy to:

1. The Commissioner of Central Tax, Central Excise & Customs (Appeals), Central Revenue Building, I.S Press Road, Kochi-682018.
2. The Commissioner (Preventive), Cochin, 5<sup>th</sup> Floor, Catholic Centre, Broad Way, Cochin - 682031.
3. Shri Mohammed Zahir, Advocate, 3/57-A, Nedungadi Gardens, West Nadakkavu, Calicut - 673 011.
4. PPS to AS (RA).
5. Guard file.

6. Spare Copy  
7. Notice Board

*Shailendra*  
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