

SPEED POST



F. No. 373/272/B/SZ/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...17/10/23..

Order No. 239 /23-Cus dated 17-10-2023 of the Government of India passed by Ms. 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. 180/2018 dated 04.04.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicants : Sh. Mohammed Sazi Padappila Abdul Khader, Kasargod.

Respondent : Commissioner of Customs (P), Mangaluru.

* * *

ORDER

A Revision Application No. 373/272/B/SZ/2018-RA dated 05.09.2018 has been filed by Sh. Mohammed Sazi Padappila Abdul Khader, Kasargod (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. 180/2018 dated 04.04.2018, passed by the Commissioner of Customs (Appeals), Bangalore. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 51/2017(AP) dated 23.09.2017, passed by the Assistant Commissioner of Customs, Mangaluru International Airport, Mangalore, as time- barred.

2. Briefly stated, a passenger, namely, Sh. Mohammed Sazi Padappila Abdul Khader Kasargod was intercepted at Mangalore airport on 22.10.2016 by Customs officers, after he arrived from Dubai. After examination of his checked-in baggage, 2 rough crude gold rings weighing 58.470 grams of 24 Carat purity and valued at Rs. 1,77,749/- , 31 pairs of black coloured canvas shoes with mark "HAPPY*STAR"(made in PRC), 48 packs of "FAIZA" beauty cream (made in Pakistan) and 24 packs of "OLAY" beauty cream (made in Thailand) were recovered. The Applicant had not declared the said items as required under Section 77 of the Customs Act, 1962. As the Applicant was could not produce any document evidencing purchase of the recovered goods, the goods were seized under Section 110 of the act, *ibid*. Thereafter, the Applicant was issued with a show cause notice dated 27.03.2017, wherein, he was asked as to why goods recovered and seized from him as mentioned above should not be confiscated and penalties under Section 112 and Section 114 of the Act, *ibid* should not be imposed on him. After due process of law, the original authority, vide the Order-in-Original dated 23.09.2017, ordered absolute confiscation of the seized goods, imposed a penalty of Rs.20,000/- under Section 112(a) and a penalty of Rs.15,000/- under Section 114AA of the Act, *ibid*. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals).

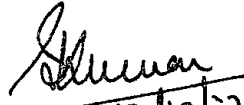
3. The Revision Application has been filed, mainly, on the grounds that the Order-in-Original passed by the original authority is wrong, contrary to law and facts of the case; that the original authority ought to have considered and appreciated the contention of the Applicant that absolute confiscation is not warranted; that the original authority ought to have considered whether the goods other than prohibited goods are liable to be released on payment of redemption fine and duty, if the importer opts so, as provided under Section 125 of the Act ,ibid.

4. Personal hearing in the matter was held on 04.09.2023, in virtual mode. Shri Abdul Shakoor, Advocate appeared for the Applicant and prayed for a lenient view. No one appeared for the respondent department nor has any request for adjournment been received. It is, therefore, presumed that the department has nothing to add into the matter.

5. The Government has carefully examined the matter. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant on the grounds of limitation. It is not denied by the Applicant herein that the appeal was indeed filed with a delay as recorded by the Commissioner (Appeals). The Government observes that, in terms of sub-section (1) of Section 128 of the Customs Act, 1962, an appeal may be preferred before the Commissioner (Appeals) within a period of 60 days from the date of communication of the order appealed against. Further, as per proviso to said sub-section (1), the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of 30 days. Therefore, in terms of Section 128, an appeal can be filed before the Commissioner (Appeals) within a total period of 90 days, including the condonable period of 30 days. As brought out by the Commissioner

(Appeals), the appeal was filed before him on 19.02.2018 when the order of the original authority had been received by the Applicant herein on 04.10.2017 itself. Thus, it is evident that the appeal was filed much beyond the condonable period of 30 days. It is settled by the judgments of Hon'ble Supreme Court in the cases of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} and Amchong Tea Estate vs Union of India {2010 (257) ELT 3 (SC)} that the Commissioner (Appeals) does not have powers to condone the delay beyond the statutorily prescribed condonable period. Therefore, the Government does not find any infirmity in the impugned Order-in-Appeal .

6. The revision application is, accordingly, rejected.


17/10/23
(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Mohammed Sazi Padappila Abdul Khader,
S/o Sh. Abdul Khader Padapilla Mammunhi,
House No. VI/632, Madhur Panchyath,
P.O., Hidayath Nagar Vidyanagar,
Via ,Kasargod, Kerala-671123.

Order No. 238 /23-Cus dated 17-10-2023

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. K.P.A Shukoor, Advocate, United Law Chambers, 2nd Floor, Krishnaprasad Building, K.S. Rao Road, Mangaluru-575001.
4. PPS to AS(RA).

F. No. 373/272/B/SZ/2018-RA

- 5. Guard File.
- 6. Spare Copy.
- 7. Notice Board.

Shailendra
18/10/23
ATTESTED
(शैलेन्द्र कुमार शर्मा)
अग्रणी अधिकारी / Section Officer
वित्त महाविभाग (वित्त विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

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