

SPEED POST



**F. No. 373/259/B/2018-R.A.
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 25/01/24

Order No. 26 / 24-Cus dated 25-01-2024 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 190/2018 dated 16.04.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

APPLICANT : Shri Riasuddeen Karippody Ahmad, Kasargod.

RESPONDENT : The Commissioner of Customs, Mangaluru.

ORDER

A Revision Application No. 373/259/B/2018-R.A. dated 16.07.2018 has been filed by Shri Riasudden Karippody Ahmad, Kasargod (hereinafter referred to as the Applicant) against Order-in-Appeal No. 190/2018 dated 16.04.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the Appeal filed by the Applicant herein against the Order-in-Original No. 20/2017 ADC dated 21.08.2017, passed by the Additional Commissioner of Customs, Mangaluru, on the grounds of limitation.

2. Briefly stated, the Applicant was intercepted by Customs Officers on 13.10.2016 when he was about to depart from Mangaluru International Airport to Mumbai. On enquiry, the Applicant informed that he was not in possession of any goods of high value in his accompanied baggage. Upon being asked about the details of goods carried by him in his baggage, he informed that his baggage contained only personal effects and foodstuff and did not contain any goods of high value. During scanning of one of his baggage images of some dense material were noticed. During open examination of that baggage a pair of blue coloured denim trousers was found which seemed to be having some dense material. These trousers had, along with other contents two polythene wrapped bundles in them. During examination of the said trousers, eight hard objects wrapped in black adhesive tape were found and recovered. Upon removing the black adhesive tapes, eight yellow-coloured metallic objects, which appeared to be cut pieces of a bar, were found. Upon opening the two polythene cover wrapped bundles, the officers found small transparent polythene sachets packed inside and each of the sachets was found to be containing red coloured filament type soft material inside and a label with the wordings 'Tashrifat SAFFRON', 'Product of Iran' and a tick mark made on the grading 'Filaments Grade 2' printed on the said label in each of the said sachets. A total of 80 small sachets of 25 grams each were recovered which were found to contain filaments of Saffron, the total weight of which was found to be 2 Kgs. Sh. B. Rathnakar, Jewellery Valuer of M/s Rathan Jewellers, Mangalore verified and assayed the eight yellow coloured metallic objects and reported that the said metallic objects

of assorted size and shape were made of gold of 24 carat purity the total weight of which was 233.300 grams, valued at Rs. 7,04,566/-.

The Applicant in his voluntary statements dated 13.10.2016 and 19.10.2016, tendered under Section 108 of the Customs Act, 1962, stated inter-alia that he was into garment business and travelled from India to Dubai and back in the course of his business; that during the course of one of his visits to Dubai, he came in contact with one Shafique who was also from Kasaragod, who suggested that he may be helpful in getting good orders for his garments business; that during the course of his visit, he met Shafique and discussed with him about his plans of travelling back to India and about his travel to Mumbai in connection with obtaining samples and placing orders for garments to be taken to Dubai; that after knowing his plans to visit Mumbai, Shafique revealed to him that he was into gold smuggling business between Dubai and India and that he had already sent a consignment of gold and Iranian origin saffron and was successful in getting them into India without payment of duty: that Shafique then told him that the said gold and Saffron was in Kasaragod and that it had to be delivered to a person in Mumbai and since he was planning to travel to Mumbai after seeing his ailing mother in Kasaragod, Shafique asked him as to whether he can carry the said gold and Iranian origin saffron to Mumbai and delivered the gold and Iranian origin saffron to his contact in Mumbai; that Shafique promised him Rs. 10,000/- as monetary consideration as well as goods garments orders for the said work; that he accepted his offer since he was also into financial difficulties and since his mother who was a diabetic, recently had a stroke and was presently undergoing medical treatment; Shafique then told him that he would get his ticket from Mangalore to Mumbai arranged and the ticket would be delivered to him, once he reached Kasaragod; that accordingly, he travelled back to India by Jet Airways Flight on 12.10.2016 and went to his hometown in Kasaragod; that on reaching Kasaragod, his air ticket for his journey from Mangaluru to Mumbai on 13.10.2016 was handed over to him by one of the contacts of Shafique at Kasaragod and also a pair of trousers bearing the brand name 'Momento' containing concealed gold and two polythene carry bags containing saffron; that Shafique had told him that the gold and saffron had been purchased in Dubai and had been illegally

brought into India; that Shafique also said that there were no bills for the same and no duty paid documents for the said gold and saffron.

The original authority, vide the aforesaid Order-in-Original dated 21.08.2017, ordered absolute confiscation of the subject gold objects as well as subject Saffron under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 3,50,000/- was also imposed on the Applicant, under Section 112 of the Act, *ibid*. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals), on the grounds of limitation.

3. The Revision Application has been filed, mainly, on the grounds that no clarification was sought from the applicant in respect of letter dated 12.04.2018 vide which the adjudicating authority had informed the appellate authority that the OIO was dispatched on 28.08.2017 by SPAD and the same was received by the applicant himself on 30.08.2017; that absolute confiscation and penalty imposed upon the applicant by the adjudicating authority is contrary to law and against the settled principles of law.

4. Personal hearing in the matter was fixed on 10.08.2023. Sh. Abdul Shukoor, Advocate appeared for the Applicant and submitted that he was unwell and would like to heard another day; on the subject of CoD however, he submitted that in reply to his RTI on the subject, the Customs Authorities have sent/attached despatch of SCN at another address/pin code. AC Customs responded that OIO was sent correctly and received by the applicant, as discussed in Commissioner (Appeals)'s order. However in view of applicant's request for postponement, personal hearing was refixed for 04.09.2023. In the hearing held on 04.09.2023, Sh. Shukoor reiterated that he had obtained documents under RTI which establish that the OIO was not received by his client as it was posted to the wrong address by Customs and sought that RA should obtain the acknowledgement of Speed Post from Customs. He reiterated request for condoning the delay. On merits, he stated that his client was a domestic passenger and did not violate any Customs provisions. Weight of the impugned gold is quite less; it is not seized from Customs area, lack of reasonable

belief which should exist prior to seizure. He reiterated the small quantity of gold. He sought reduction of RF and PP.

5. The Government has examined the matter carefully. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), on the grounds of limitation, without considering the merits of the case. The Commissioner (Appeals) in para 8 of the OIA has recorded that the impugned OIO No. 20/2017 passed by the Additional Commissioner of Customs, Mangaluru is dated 23.08.2017; that it has been ascertained from the office of the adjudicating authority vide letter dated 12.04.2018 that the order was dispatched on 28.08.2017 by SPAD and the same was received by the Applicant himself on 30.08.2017 as seen from the dated acknowledgement; that accordingly, the appeal should have been filed on or before 29.10.2017; that whereas the appeal has been filed on 19.02.2018 with the assertion that the copy of the impugned order was received by the applicant only on 11.01.2018.

It is seen from the acknowledgement copy of the AD that the order was indeed received by the applicant himself on 30.08.2017. Infact, the Government observes that the subject revision application is conspicuously silent and says nothing whatsoever in respect of the signed acknowledgement by the Applicant on the acknowledgement copy of the AD. Thus this appears to be a deliberate attempt to incorrectly establish that the order was received late whereas the dated acknowledgement by the applicant clearly establishes that the Commissioner (A)'s finding was correct and the case is indeed hit by limitation.

It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days. The Commissioner (Appeals) can condone a delay up to thirty days, on sufficient cause being shown. As correctly highlighted by the Commissioner (Appeals), the Hon'ble Supreme Court has, in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} held that the Commissioner (Appeals) cannot condone the delay in filing of an appeal beyond the statutory provided condonable period. Therefore, the Government finds no infirmity in the

impugned OIA. Thus, the present revision application appears to be just a perfunctory exercise to prolong the dispute.

6. The revision application is rejected for the reasons aforesaid.

Shubhagata Kumar
25/11/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri. Riasuddeen Karippody Ahmad
S/o Sh. Karippody Ahmad
H.No. MP-XVI/412
Izzath Nagar, Hidayath Nagar P.O.
Kasargod, Kerala-671123

Order No. 26 /24-Cus dated 25-01-2024

Copy to:-

1. The Commissioner of Customs, New Custom House, Panambur, Mangalore-575010.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. Sh. K.P.A Shukoor, Advocate, United Law Chambers, 2nd Floor, Krshnaprasad Building, K.S. Rao Road, Mangaluru-575001, D.K District, Karnataka.
4. PPS to A.S (RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

Shailendra Kumar Meena
25/11/24

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