

SPEED POST



F. No. 373/39/B/SZ/2021-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 25/03/25

Order No. 27/25-Cus dated 25-03-2025 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. 65/2020 dated 31.07.2020; passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Shri Mohammed Rizwan, Kasargod.

Respondent : Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru.

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ORDER

A Revision Application No. 373/39/B/SZ/2021-RA dated 15.02.2021 has been filed by Shri Mohammed Rizwan, Kasargod (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 65/2020 dated 31.07.2020, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. 62/2019-20 (AP-ADM) dated 19.09.2019, passed by the Additional Commissioner of Customs, Kempagowda International Airport, Bengaluru, as non-maintainable due to limitation.

2. The instant revision application relates to absolute confiscation of Indian and foreign currency attempted to be smuggled valued at Rs. 6,32,500/- (Indian currency) and Rs. 43,05,871/- (foreign currency viz. USD and Euros) alongwith all the materials used for concealment by the Applicant in the matter who was scheduled to depart for Dubai from Bengaluru, on 21.11.2017 and was intercepted by the officers of Directorate of Revenue Intelligence of Bangalore Zonal Unit, Bengaluru. The Adjudicating Authority vide the aforesaid O-I-O No. 62/2019-20 (AP-ADM) dated 19.09.2019, confiscated the impugned Indian and foreign currency alongwith material objects used to conceal the currency and penalty was also imposed on the Applicant under the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals), Bengaluru who has dismissed the appeal as time barred as per the provisions of Section 128 of the Customs Act, 1962. Aggrieved by the O-I-A, the Applicant filed this Revision Application.

4. The instant revision application has been filed mainly on the grounds that the said OIO dated 19.09.2019 was received at the Applicant's address on 30.09.2019 by his family member who was not aware as to what that letter contained and had not informed the applicant immediately as he was out of station; that the Applicant filed an appeal dated 24.12.2019 which was received in the office of appellate authority on 26.12.2019 which was the 87th day from the date of communication of the OIO and was well within the condonable period of 90 days as prescribed under Section 128 of the Customs Act, 1962; that the applicant received a letter/defect memo dated 31.12.2019 on 08.01.2020 from the office of Commissioner of Customs (Appeals), Bangalore wherein the applicant was directed to rectify the discrepancies in the appeal filed; but as the applicant was not well he was not in a position to rectify the deficiency or to file a rectified appeal immediately;

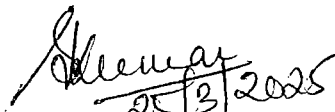
that he filed a rectified appeal on 04.02.2020. However, the Applicant has submitted that the actual date of submission of appeal ought to have remained the same, i.e. 26.12.2019 which happens to be on the 87th day from the date of communication of the OIO which was well within the condonable period of 90 days as prescribed under Section 128 of the Customs Act, 1962; that the appellate authority has erroneously calculated the time and has taken into consideration the date on which the discrepancies were removed and not the date on which the appeal was first received in the office, i.e. on 26.12.2019. The prayer is to set aside the impugned OIA and to pass necessary orders for condoning the delay and remanding back the case for restoring the appeal to decide the matter on merit.

5. Personal hearings in the matter were fixed on 27.01.2025 and 05.03.2025 in virtual mode. Sh. Sameer Kashimji, Advocate appeared on 05.03.2025 on behalf of the Applicant and submitted that this is a case of seizure of foreign currency by DRI, subsequent to which the currency was confiscated absolutely and penalty was imposed on the Applicant; that an appeal was filed with Commissioner (Appeals) which was rejected on grounds of limitation incorrectly. The condonable period is 90 days and the appeal was originally filed on the 87th day. The deficiency memo was issued from Commissioner (Appeals) office on 31.12.2019 which was received by the Applicant on 08.01.2020; that the Applicant then approached the appellate authority as he had been unwell and was given 02 weeks time to rectify the appeal and same was filed on 04.02.2020 but the same was dismissed by Commissioner (Appeals) on the grounds that the delay had become more than 90 days; that he submitted that this is erroneous as the date of submission remains the original submission date, the deficiency rectification notwithstanding. He prayed for the said RA to be allowed and the case to be remanded back to Commissioner (Appeals) to be heard on merits. No one appeared on behalf of the Respondent department side and no request for adjournment has been received so far in the matter. Therefore, it is presumed that the Respondent has nothing to add in the matter.

6. The Government has examined the matter. It is a fact on record that the appeal was filed on 26.12.2019 which fell within the condonable period of 90 days as prescribed under Section 128 of the Customs Act, 1962. It is also a fact on record that the applicant received a communication dated 31.12.2019 from the office of Commissioner (Appeals), Bengaluru asking the applicant to rectify the discrepancies in the appeal filed. It was then subsequently that Commissioner (Appeals) dismissed the matter as being time barred by

taking the date of submission as 04.02.2020, i.e., date of filing of rectified appeal rather than the date when it was first received in the office of Commissioner (Appeals) as mentioned above. In terms of the proviso to Section 128 of the Customs Act, 1962 that the Commissioner of Appeals may, if he is satisfied that the Applicant was presented by sufficient cause from presenting the appeal within 60 days, allowed to be presented within a further period of 30 days. Thus, the condonable period would be 90 days. It is seen from the order of Commissioner (Appeals) that the date of submission of the appeal, the deficiency notwithstanding, was within 90 days i.e., on the 87th day. However, this does not find any mention in the OIA despite the fact that the office of Commissioner (Appeals) corresponded with the Applicant and also gave him time for removal of deficiency. In this context, it appears to be unjust that the case was dismissed on the grounds of limitation without traversing the merits of the case. Thus, the Government finds that it would be in the interest of justice and fairness if the matter is remanded back to the Appellate Authority to consider the matter afresh on merits after giving the Applicant sufficient opportunity to be heard in person.

7. The revision application is, accordingly allowed by way of remand to Commissioner (Appeals) for considering the case on merits within three months from the date of receipt of this order, after following the principles of natural justice.


25/3/2025
(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Mohammed Rizwan,
S/o Shri Ahmed Hassan,
House No.10/295(19/357),
Manjeshwar GP, Raseena Manzil,
J M Road, Udyawara, Manjeswaram,
Kunjathur, Kasargod, Kerala – 671 323.

Order No. 27 /25-Cus dated 25-03- 2025

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Pr. Commissioner of Customs, Airport & Air Cargo Complex, Air India SATS, Air Freight Terminal, Kempegowda, Bengaluru-560300.

3. Sh. Sameer Kashimji, Advocate, 22, Sweet Home Apartments, Britto Lane, Falnir, Mangaluru, Karnataka-575 001.
4. PA 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.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi