

SPEED POST



F. No. 373/305/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.....11/5/23

Order No. 178/23-Cus dated 11-05-2023 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 129 DD of the Customs Act 1962, against the Order-in-Appeal No. C.Cus.I No. 98/2018 dated 31.10.2018, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicants : Sh. Mohammed Ali Kurukkalavida, Kannur

Respondent : Pr. Commissioner of Customs, Chennai-I

* * *

ORDER

A Revision Application No. 373/305/B/SZ/2018-RA dated 12.11.2018 has been filed by Sh. Mohammed Ali Kurukkalavida, Kannur (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. C.Cus.I No. 98/2018 dated 31.10.2018, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 470/2016 dated 23.02.2016, passed by the Joint Commissioner of Customs (Airport), Chennai, as time barred.

2. Briefly, facts of the case are that the Applicant was intercepted by the Customs officers, on 10.02.2015, at the exit of the arrival hall of Chennai airport. Upon being questioned by the Customs officers whether he was carrying any gold/contraband either in his baggage or on his person, he replied in negative. Upon being again questioned in the presence of witnesses and in the presence of Superintendent of Customs (AIU) whether he was in possession of gold/contraband goods either in his baggage or on his person, he replied that he was having some food stuff and toiletries valued at Rs. 5,000/- and his used clothes and personal effects in his baggage but was not carrying any gold or contraband either in his baggage or on his person. Upon the search of his person, two black adhesive tape covered bundles were recovered from a black colour purse which was kept in the front right side pocket of the blue colour jeans pant worn by him. On cutting open the first black adhesive tape bundle in the presence of the witnesses, two yellow colour metal cut bars with foreign markings were recovered. Whereas from the second bundle, one no. of yellow coloured metal cut bar with foreign markings was recovered. The Government of India approved gold appraiser certified the gold bars to be of 24 carat purity, totally weighing 1116 gms and collectively valued at Rs. 30,94,668/-. In his statement dated 10.02.2015, recorded under Section 108 of the Customs Act, 1962, he, inter-alia, stated that he was a driver and earning Rs. 8,000/- per month in his native place; that he went to Dubai on 21.05.2014 and after working there for six months as a sales man, returned to India on 26.12.2014; that at Sharjah airport an unknown person approached him and gave two gold cut pieces and one gold bar totally weighing 1116 grams to take to Chennai by concealment in his pant pocket and to be delivered to a person outside airport for which he was offered

Rs. 20,000/-; that as he was badly in need of money, he agreed for it; and that the unknown person at Sharjah took his photo and told that the photo would be sent to his associate at Chennai who would meet him outside Chennai Airport for receiving the two gold cut pieces and one gold bar. The Original Authority, vide the Order-in-Original dated 23.02.2016, ordered absolute confiscation of the gold items under Section 111(d) & (l) of the Customs Act, 1962 and imposed a penalty of Rs. 3,10,000/- on the Applicant herein under Section 112 (a) of the Act, *ibid*. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), as time barred.

3. The Revision Application has been filed, mainly, on the grounds that Order-in-Original was received by Applicant on 01.05.2018, in response to a request under the RTI Act, 2005 and as such the appeal had been filed within time; that gold is not prohibited; that he is an eligible passenger to bring gold; and that the impugned order be set aside and re-export of gold be permitted with lesser redemption fine or personal penalty.

4. Personal hearing in the matter was fixed on 10.05.2023, in virtual mode. No one appeared for either side. However, subsequently, Smt. Kamalamalar Palanikumar, Advocate of the Applicant, requested, vide email dated 10.05.2023, to pass order with the available records as she could not join the hearing. Hence, the matter is taken up for disposal based on available records.

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 herein on the grounds of limitation. It is recorded by Commissioner (Appeals) that, as per records, the Order-in-Original was despatched on 26.02.2016 and was not returned undelivered. It is further recorded that as per the All India Delivery (Transit) Norms for speed post, the speed post article should be delivered within 4-6 days from the date of booking. Accordingly, the Commissioner (Appeals) has found the appeal to have been filed even beyond the condonable period in terms of the sub-section (1) of Section 128 of the Customs Act, 1962. The Commissioner (Appeals) has also recorded that the Applicant herein had not submitted any proof for the date of receipt of the Order-in-Original. The Government observes that

the Order-in-Original is dated 23.02.2016 and, as per records, it was despatched to the Applicant on 26.02.2016, by Speed Post. Section 153 of the Customs Act, 1962, which provides for mode for service of notice, orders, etc., as it stood at the relevant time, read as under:

"153. Service of order, decision, etc. – Any order or decision passed or any summons or notice issued under this Act, shall be served, -

(a) By tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) If the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."

Further, Section 27 of the General Clauses Act, 1897 provides as under:

"27. Meaning of service by post. – Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Thus, on a combined reading of the two provisions extracted above, it is apparent that the service of the Order is deemed to have been effected at the time at which it would be delivered in the ordinary course of post, unless the contrary is proved. No doubt, in the present case, the Order was despatched by "speed post" and not by "registered post", and, hence, a plea can be taken that the order was not served in a manner prescribed by law. However, the Government finds that the Hon'ble Orissa High Court has, in the case of Jay Balaji Jyoti Steels Ltd. Vs. CESTAT, Kolkata {2015 (37) STR 673 (Ori.)}, held that "speed post" also has to be treated as "registered post", in view of Section 28 of the Indian Post Office Act, 1898 read with Rule 66B of Indian Post Office Rules, 1933. Thus, the view taken by the Commissioner (Appeals) that the Order-in-Original was served on the Applicant herein, within 4-6 days of date of dispatch, i.e., 26.02.2016 by speed post, cannot be faulted unless the Applicant proves to the contrary. The Applicant has attempted to do so by submitting that, as he did not receive the Order-in-Original, he filed an RTI application dated 09.04.2018 pursuant where to he received a copy on 01.05.2018. However, the Government finds that the Applicant had participated in the proceedings before the original authority by filing a written reply dated 11.11.2015 as well as appeared for personal hearing on

30.11.2015. In such a case and specially when goods valued at about Rs. 30 lakhs were involved, no prudent person will wait for two and a half years before checking the status/outcome of the case. As such, the Government is not persuaded to accept the subject submission made by the Applicant.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

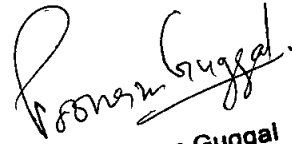
Sh. Mohammed Ali Kurukkalavida
S/o Mammoo Kurukkalavida
431B, "Alras", Varapra,
Chendayad Post, Panoor,
Kannur (Via), Kerala-670692.

Order No. 178/23-Cus dated 11-05-2023

Copy to:

1. The Commissioner of Customs (Appeals-I), 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. The Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.
3. Ms. Kamalamalar Palanikumar, Advocate, No. 10, Sunkram Street, Second Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
- ✓ 6. Spare Copy.
7. Notice Board.

ATTESTED



पूनम गुग्गल / Poonam Guggal
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066