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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/385/B/WZ/2022-RA/116 : Date of Issue : 03.01.2024

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ORDER NO. 04/2024-CUS (SZ/WZ)/ASRA/MUMBAI DATED 03.01.2024  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE  
CUSTOMS ACT, 1962

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**F.No. 371/385/B/WZ/2022-RA**

Applicant : (i). Shri Javed Khan alias Javed Mukhtar Deshmukh,

Respondent : Pr. Commissioner of Customs, Pune.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
PUN-CT-APP-II(VNT)-06-2022-23 dated 21.04.2022  
issued on 21.04.2022 through  
GAPPL/COM/CUSP/147/2022 passed by the  
Commissioner (Appeals-II), Central Tax, Pune.

**ORDER**

This revision application has been filed by Shri. Javed Khan alias Javed Mukhtar Deshmukh [herein referred to as the Applicant] against the Order-In-Appeal No. PUN-CT-APP-II(VNT)-06-2022-23 dated 21.04.2022 issued on 21.04.2022 through GAPPL/COM/CUSP/147/2022 passed by the Commissioner (Appeals-II), Central Tax, Pune.

2(a). Brief stated, a passenger named Shri. Amjad Kasam Khan (hereinafter referred as 'pax') who had arrived from Dubai by Air India Flight No. IX-212 was intercepted at the Pune International Airport (PIA) on 10.09.2017 by Officers of Customs while he had crossed the green channel without filing a Customs Declaration. To the query whether he was in possession of any dutiable goods, the pax had replied in the negative. On passing his bag through the X-ray machine, suspicious images showing concealment were seen. Examination of the bag indicated something suspicious under the outer cloth lining of his bag which was cut open. 3 nos (three) rhodium plated white coloured metallic wires suspected to be made of gold were found concealed in it. A multi-functional digital amplifier and one rechargeable LED emergency light were found in the bag. 59 nos (fifty nine) of rhodium plated metal plate chips were recovered from the transformer of the amplifier and seven nos of rhodium plated metal bars were recovered from the emergency light. These metal plates and metal chips appeared to be made of gold.

2(b). A Government Approved Valuer was called for verification who certified that all these articles i.e. 3 nos of Rhodium plated wires, 59 nos Rhodium plated metal plate chips and 7 nos of Rhodium plated metal bars were all made of gold of 24KT purity, totally weighing 3159.55 grams and valued at Rs. 1,00,06,295/-

2(c). In his statements recorded under Section 108 of the Customs Act, 1962, the pax stated that he was only a carrier and had happened to meet the applicant who suggested to him to go Dubai and bring a bag containing gold for

which would be paid Rs. 15,000/-; that he agreed to the same, that the applicant arranged his stay at Dubai as well as his visa and booked air ticket for 06.09.2017 and return ticket for 10.09.2017 which was sent to him by whatsapp; that applicant had informed him on 10.09.2017 through whatsapp that a driver of a traveller car would pick him up from the hotel and hand over a bag at Dubai Airport; that accordingly, on 10.09.2017, a driver reached his hotel at Dubai where he was staying and on reaching Dubai Airport had handed over a trolley bag to him; that on his arrival at Pune he was intercepted by Customs; that he admitted that he was to hand over the bag to a person named Javed who was waiting outside the airport; that he was taken outside the airport and a person approached him who was intercepted by Customs; that this person was named Arshad Ahmed; that the owner of the gold was the applicant; that he was not aware that one Arshad Ahmed was waiting outside the airport to receive the bag;

2(d). During the personal search of Arshad Ahmed, mobile phones were recovered; that a message forwarded by one Javed was found; this message was the mobile no, photograph and photo of passport of pax;

2(e). In his statement recorded under Section 108 of the Customs Act, 1962, Shri. Arshad Ahmed stated that he had come to PIA at the request of the applicant to receive the pax and take the trolley containing the gold; that the applicant was his friend and they used to talk on phone; that on 10.09.2017, the applicant had called him and told him to collect the trolley bag from the pax; that the details of the pax i.e photograph, phone no and details of passport were sent by the applicant to him on whatsapp; that applicant resides at Khargar and in his subsequent statement gave the applicant's residential address at Khargar;

2(f). Numerous summons were issued to the applicant viz, on 14.11.2017, 22.11.2017, 04.12.2017 at his address at Khargar; Numerous summons were also issued to the applicant's address at Mahad viz on 06.12.2017, 03.01.2018

and 17.01.2018. However, the applicant did not respond to these summons; Thereafter, on 14.02.2018, a team of Customs Officers had visited the applicant's village and found his house was locked;

2(g). Investigations carried out revealed that the applicant was found involved in a case of smuggling of gold weighing 2467.87 grams, valued at Rs. 73,02,428/- booked on 18.08.2017; that the gold was recovered from a passenger named Ms. Rafatjahan; that in the adjudication proceedings a penalty of Rs. 1,50,000/- had been imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962;

3. After due process of the law and investigations, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, Pune adjudicated the case and vide his Order-In-Original No. PUN-CUSTOMS-000-ADC-01/18-19 dated 26.06.2018 issued on 26.06.2018 and ordered for the absolute confiscation of the seized gold, totally weighing 3159.55 grams valued at Rs. 1,00,06,295/- under Sections 111(d), 111(l), and 111(m) of the Customs Act, 1962. Among others involved in the case, a penalty of Rs. 20,00,000/- was imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority (AA) viz Commissioner (Appeals-II), Central Tax, Pune who vide his Order-in-Appeal no. PUN-CT-APP-II(VNT)-06-2022-23 dated 21.04.2022 issued on 21.04.2022 through GAPPL/COM/CUSP/147/2022, disposed of, the appeal on grounds that the same was time barred as the Appeal was filed beyond period of 90 days from the date of communication of the order and held that the appeal had been filed after a lapse of two years.

5. Aggrieved with the above order, the Applicant has filed this revision Application and has made an exhaustive submission alongwith case laws on the following grounds of appeal;

5.01. that the applicant was never duly served any summons and was never examined during the investigations; that statement of co-accused cannot be relied upon in the absence of any corroborative evidence

5.02. that the CDRs obtained from M/s. Bharati Airtel Ltd and M/s. Vodafone Mobile Services Ltd cannot be relied upon;

5.03. that a show cause notice nor any OIO had been served to him; therefore, the impugned OIO dated 26.06.2018 was liable to be set aside;

5.04. that the decisions of the Tribunals, High Courts and Apex Court which had been relied upon by the applicant were rejected by the AA without proper application of mind; that these decisions apply to the applicant's factual situation; that the AA had read these decisions in isolation and had failed to read the decisions in context with the applicant's case; that the order of AA was vitiated on account of bias, had violated principles of natural justice and fair play; there the OIA was not sustainable;

5.05. that the recovery proceedings initiated by the department was not sustainable;

Under the circumstance, the applicant has prayed to the revision authority to set aside the impugned OIA and to allow his revision application and to stay the operation of the impugned OIO and to grant any other relief as may be found fit and proper.

6(a). Personal hearings in the case were scheduled for 18.10.2023, 25.10.2023.

6(b). Shri. Prakash Shingrani, Advocate appeared on behalf of the applicant for personal hearing on 18.10.2023. and submitted that applicant did help applicant no 1 (pax) in booking the tickets as he approached him. He further submitted that instant applicant has nothing to do with the activity of bringing gold by the applicant no 1 (i.e. pax) in the case. He further submitted that Section 112 of Customs Act has been incorrectly invoked against the applicant. He requested for setting aside the penalty.

(c). No one appeared on behalf of the respondent.

7. Government has carefully gone through the relevant records available in the case file & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7.1. At the outset, from the impugned Order-In-Appeal dated 31.05.2019, Government observes that the Commissioner (Appeals) has taken into consideration the provisions of Section 128 of the Customs Act, 1962 and has observed that the appeal had been filed beyond the period of sixty days and also beyond the condonable period of 30 days i.e the actual date of filing the appeal was after the expiry of 90 days from the date of communication of the OIO. Without going into the merits of the case, the Commissioner (Appeals) has held that he has no powers to entertain an appeal filed beyond the period of 90 days and rejected the appeal as time barred. In doing so, Government notes that the Commissioner (Appeals) has carefully and minutely gone through the dates and as a step towards serving the ends of justice, had obtained a report from the respondent on the issue of service of the Order-in-Original dated 26.06.2018.

8.1 On the issue of time bar and the number of days available to file an appeal with the Appellate Authority and the powers vested with him, Government observes that it is imperative to understand the provisions of Section 128 of the Customs Act, 1962.

The provisions of Section 128 of the Customs Act, 1962 which provides for appeal to Commissioner (Appeals) reads as under :

128.

*Appeals to Commissioner (Appeals). –*

*(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:*

*Provided that 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 sixty days, allow it to be presented within a further period of thirty days.*

*(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*

*Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.*

*(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.”*

8.2. It would be noteworthy to reproduce para 8.3 of the impugned O-I-A dated 21.04.2022 passed by the AA;

*“On a perusal of the grounds of appeal, I, find that one of the contentions raised by the appellant is that the impugned OIO*

was never served on the appellant. Since a contention of non-receipt of OIA has been raised by the appellant, I, find it necessary to address this contention at the outset, itself. Therefore, before proceeding any further, I find that it is imperative to examine the veracity of the claim of non-receipt of the impugned OIO by the appellant. Since, documentary evidence regarding service of the impugned OIO by the appellant was not available on record, this office initiated correspondence with the office of the respondent vide letter of even no dated 11<sup>th</sup> March, 2022, requesting them to provide documentary evidence to substantiate receipt of the impugned OIO by the appellant. Response thereof was received from the office of the respondent vide a letter F No. VIII/Cus/Adj./SCN/Amjad and others/34/17-18 dated 18.04 2022. As an enclosure to the said letter, the office of the respondent forwarded acknowledgement dated 17.09.2018 wherein receipt of the impugned OIO is seen to have been acknowledged by Shri Mukhtar Deshmukh, father of Javed Khan on 17.09.2018. From this acknowledgement of the appellant's father, it is evident that impugned OIO was served on the appellant's father on 17.09.2018. I find from the grounds of appeal that this fact has not been disputed by the appellant inasmuch as the appellant through his Advocate at para 3.3(i) of the grounds of appeal has admitted this fact while also admitted the fact that the appellant and his father were staying in the same house. At this juncture, I find it necessary to refer to the provisions of Section 153 of the Customs Act, 1962 which provides for the mode and manner of delivery of notices, orders etc. Relevant part is reproduced below;

**Section 153. Modes for service of notice, order, etc.-**

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely. -

(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him (emphasis supplied);



*The fact that the impugned OIO was served on the appellant by tendering it to the appellant's father (an adult member of the appellant's family residing with the appellant at Upper Tudil, Tal. Mahad, Dist. Raigad) as provided for in sub-section (a) of Section 153 (1) has been confirmed in writing by the office of the respondent alongwith documentary evidence and has also been corroborated by the appellant himself in the grounds of appeal. Therefore, I observe that service of the impugned OIO to the appellant's father is one of the authentic modes of delivery prescribed in law. Therefore, I find that having delivered the impugned OIO to the appellant's father as provided for in Section 153 (1) (a) of the Customs Act, 1962 under a dated acknowledgement, it is equivalent to having served the impugned OIO on the appellant. Thus, by virtue of the aforesaid mode of delivery and in view of the provisions of Section 153(2) of the Customs Act, 1962, the impugned OIO is deemed to have been served on the appellant and received by him."*

8.3. Applicant has not been able to controvert the fact of service of Order-In-Original through delivery to his father as held by the AA in the OIA. Therefore, in view of irrefutable evidence of service of Order-In-Original, relevant date for filing appeal would start from this date of service.

9. From the plain reading of the provisions of Section 128 of the Customs Act, it is clear that an appeal should be filed within sixty days from the date of communication of the decision or order that is sought to be challenged. However, in view of the proviso thereto, the Commissioner (Appeals) is empowered to allow the appeal to be presented within a further period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days. Thus, the Commissioner (Appeals) is empowered to extend the period for filing an appeal for a further period of thirty days and no more. Therefore, once there is a delay of more than ninety days in filing the appeal, the Commissioner (Appeals) has no power or authority to permit the appeal to be presented beyond such period. This issue

has been decided by the Supreme Court in the case of Singh Enterprises v. Commissioner of Central Excise, Jamshedpur, (2008) 3 SCC 70 = 2008 (221) E.L.T. 163 (S.C.), wherein the Court in the context of Section 35 of the Central Excise Act, 1944, which is in *pari materia* with Section 128 of the Customs Act, has held thus :

*“8 The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the Legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.”*

10. The above view is reiterated by the Supreme Court in Amchong Tea Estate v. Union of India, (2010) 15 SCC 139 = 2010 (257) E.L.T. 3 (S.C.) and Commissioner of Customs and Central Excise v. Hongo India Private Limited, (2009) 5 SCC 791 = 2009 (236) E.L.T. 417 (S.C.). In the light of the above settled legal position, the reference to various case laws by the applicants vide their written submissions is out of place.

11. In the present case, by rejecting the appeals on the grounds of being time barred, Government notes that the appellate authority has passed a judicious and legal order. Government does not find sufficient ground to interfere in the same. Government also notes that the aforesaid case laws too has been relied upon by the AA while rejecting the appeals on the grounds of same being time barred. The AA has observed that the delay was more than 2 years as the appeal had been filed on 22.03.2021.

12. In view of above discussions, Government upholds the impugned Order in Appeal No. PUN-CT-APP-II(VNT)-06-2022-23 dated 21.04.2022 issued on 21.04.2022 through GAPPL/COM/CUSP/147/2022 passed by the Appellate Authority, i.e. Commissioner (Appeals-II), Central Tax, Pune and dismisses the instant revision application as being devoid of merit.

13. Accordingly, revision application is dismissed.

  
( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

**ORDER NO. 04/2024-CUS (SZ/WZ)/ASRA/MUMBAI DATED 08.01.2024**

To,

1. Shri. Javed Khan alias Javed Mukhtar Deshmukh, **Address No. 1;**  
Flat No. 1-502, Sector - 12, Goodwill Apartments, Kharghar, Navi

Mumbai; **Address No. 2;** C/o. Shri. Muktar Deshmukh, Upper  
Tudil, Tal. Mahad, Dist: Raigad;

2. Pr. Commissioner of Customs, GST Bhavan, 41/A, Sassoon Road,  
Pune 411 001..

Copy to:

1. Shri. Prakash K. Shingrani, Advocate, New MIG Colony, 6<sup>th</sup> Floor,  
Vivek Bldg, Behind PF Office, Bandra (East), Mumbai - 400 051,
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.