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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/417, 418 & 419/B/WZ/2022-RA | 12/3 Date of Issue : 09.01.2024

ORDER NO.05-07/2024-CUS (WZ)/ASRA/MUMBAI DATED 08.01.2024
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.

F.No. 371/417, 418 & 419/B/WZ/2022-RA

Applicant No. 1 / (A1) : Ms. Asha Jairam Ghind,
Applicant No. 2 / (A2) : Shri. Rohit Panikar @ Gudda,
Applicant No. 3 / (A3) : Shri. Chetbahadur Bist. }

.....**APPLICANTS.**

Respondent : Pr. Commissioner of Customs, CSMI Airport,
Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No.
MUM-CUSTM-PAX-APP-1877/2021-22 dated 01.03.2022
issued on 03.03.2022 through F.No. S/49-1004/2020-
Appeal passed by the Commissioner of Customs (Appeals),
Mumbai - III.

ORDER

These three revision applications have been filed by (i) Ms. Asha Jairam Ghind, (ii). Shri Rohit Panikar @ Guddu and (iii) Shri Chetbahadur Bist [hereinafter referred to as the Applicants or alternately and more specifically as Applicant no. 1 (A1), Applicant no. 2 (A2) and Applicant no. 3 (A3), resp.], against the Orders-in-Appeal No. MUM-CUSTM-PAX-APP-1877/2021-22 dated 01.03.2022 issued on 03.03.2022 through F.No. S/49-1004/2020 passed by the Commissioner of Customs (Appeals), Mumbai - III. Government notes the OIAs, OIOs and their submissions are common, hence the said 3 Revision Applications are being taken up together for a decision.

2(a). Brief facts of the case are that the applicant no 1 was intercepted on 22.12.2018 by Customs Officers at CSMI Airport as she was about to depart to Dubai by Jet Airways Flight No. 9W 558 / 22 12.2018. A1 had crossed the immigration. To the query put to her about the quantum of foreign currency carried by her, she had replied in the negative. On sustained interrogation, A1 admitted that she was carrying foreign currency which had been concealed in her body cavity. She voluntarily ejected two packets from which 46 nos of EURO in denomination of 500, totaling EURO 23000/-, equivalent to Rs. 18,12,400/-

2(b). In her statement recorded under Section 108 of the Customs Act, 1962, A1 admitted to knowledge, possession, concealment, carriage, non-declaration and recovery of the foreign currency from her; that she did not have any legal / valid purchase documents for the said foreign currency; that she was not the owner of the foreign currency; that the seized foreign currency had been handed over to her by her friend Guddu; that Guddu was from Ulhasnagar and had mobile no 7020224363; that she had been promised a monetary consideration of Rs. 10,000/-that she was aware that carrying foreign currency in excess of USD 5000 with a declaration and licit document for its procurement was an offence; that she was aware that Ms. Diksha Matta too had been intercepted by

Customs and EURO 23,000/- was recovered from her; that Ms. Diksha Matta was her daughter and Guddu had given her the currency to be handed over at Dubai; that A3 had advised them to travel on different flights to Dubai.

2(c). The seized foreign currency was deposited in the State Bank of India and a credit confirmation of Rs. 17,87,118/- was received.

2(d). Investigations of the mobile no of Guddu provided by A1 indicated that the same was in the name of applicant no. 3. Statement of A3 was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he was working in a hotel at Bangalore; that he knew Guddu who was his childhood friend and his real name was Mr. Rohit Panikkar (i.e. A2); that he provided the mobile no of A2; that he had given the SIM card of his mobile no. viz 7020224363 to A2; that A2 was a money lender;

2(e). It was alleged that summons dated 11.04.2019, 02.05.2019, 14.05.2019 and 31.05.2019 were issued to A1. However, she had failed to turn up.

2(f). It was also alleged that summons dated 06.05.2019 was issued to A2 at the address provided by A3; that Summons dated 17.05.2019 was issued to the address obtained from the CDR / SDR of his mobile no i.e. A2; that summons dated , 29.05.2019 had been hand delivered to his mother. However, the same had been returned back. A2 had not joined the investigations.

3. After due process of the law, the Original Adjudicating Authority (OAA), viz Additional Commissioner Of Customs, CSMI Airport, Mumbai, vide common Order-In-Original No. ADC/SKR/ADJN/68/2020-21 dated 05.08.2020 issued on 12.08.2020 through S/14-6-13/2019-20/Adjn (SD/INT/AIU/566/2018-AP'A) ordered for the absolute confiscation of the foreign currency equivalent to Rs. 17,87,118/- under Section 113(d), 113(h) & 113(i) of the Customs Act, 1962

and a personal penalty of (i). Rs. 1,50,000/-, (ii). Rs. 1,50,000/- and Rs. 15,000/- were imposed on the A1, A2 and A3 respectively under Section 114(i) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicants filed appeals before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III, who vide common Orders-In-Appeal Nos. MUM-CUSTOM-PAX-APP-1877/2021-22 dated 01.03.2022 issued on 03.03.2022 through F.No. S/49-1004/2020, who held that the absolute confiscation of the foreign currency by the OAA was correct and did not find it necessary to interfere in the personal penalties imposed on the applicants.

5. Aggrieved with the above order, all the Applicants have filed a common revision application and have submitted a voluminous pleading. The grounds of revision are not reproduced here, as in the preliminary scrutiny, it was noticed that there was a delay on the part of the applicants in filing these revision applications. The applicants have not filed an application for condonation of delay.

6. Personal hearing was scheduled for 31.10.2023, 16.11.2023. Shri. Prakash Shingarani, Advocate, appeared on 31.10.2023 and submitted that applicant was carrying some foreign currency which was absolutely confiscated. He further submitted that applicant has no past history of any offence. He requested to give option to redeem the same on reasonable fine and penalty.

7. Government has gone through the facts of the case and the submissions, furnished alongwith the revision applications. At the outset, the Government notes that the applicants have filed these common revision applications on 14.09.2022. Government observes that the impugned OIA dated 01.03.2022 was issued on 03.03.2022. In the FORM-CA-8 filed with the Revisionary Authority, column pertaining to the date of communication of the Order of the appellate

authority has been left blank. Taking into consideration the date of issue of the impugned O-I-A i.e. 03.03.2022, the applicants were required to file the applications by 01.06.2022 (i.e. taking the first 3 months into consideration) and by 31.08.2022 (i.e. taking into consideration a further condonable extension period of 3 months). The combined revision application has been filed on 14.09.2022. There is an inordinate delay of 3 months and 14 days from the normal period. Government notes that even after considering the extended period i.e 180 days in total, there is a delay of nearly 14 days.

8. For understanding the relevant legal provisions, the relevant section is reproduced below :

SECTION 129DD. Revision by Central Government.-

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

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(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

9. From above, it is clear that the applicants were required to file the revision applications within 3 months from the communication of the appellate order. The delay thereafter, upto 3 months can be condoned. Since, the revision application is filed even beyond the condonation period of three months, the same has clearly become time barred and there is no provision under Section 129DD to condone the delay beyond this period of three months.

10. The Hon'ble Supreme Court in the case of *Collector Land Acquisition Anantnag & Others v. Mst. Katji & Others* reported in 1987 (28) E.L.T. 185 (S.C.) has held that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

11 Further, the Hon'ble 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, 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."

12. Government notes that even after taking into consideration the extended period of 3 months as provided in Section 129DD, there is a delay of 14 days. Having found there was a delay beyond the prescribed limit, the reason for delay becomes immaterial and infructuous. The opportunity open to the applicants was to submit the date of communication of the impugned order i.e. the date on which they had received the impugned O-I-A. However, Government notes that in their common revision application, this section has been left blank. This indicates, that there is no case that the copy of the said Order-In-Appeal was supplied late or was received late. The applicants should have made adequate and timely arrangement to plead their case. The law does not come to the aid of the tardy litigant. In the present case there is a delay of 14 days in filing the Revision Application from the extended period. As already explained at paras 9 & 10 supra, the statutory period for filing Revision Application is 90 days and thereafter, a condonable period of a further 90 days. Government observes that the applicants have filed Revision Applications much beyond this threshold (i.e. 90+90 days). All the Supreme Court Judgments referred to in foregoing paras are binding precedent and does not come to the aid of the applicants.

13. Government also notes that the impugned O-I-A has been issued on 01.03.2022. Government observes that due to the Covid pandemic, the Apex Court had granted a moratorium for filing appeals etc. This moratorium was from 15.03.2020 to 28.02.2022 [Misc. Appln. No. 21/2022]. In the case of the applicants, this moratorium too does not come to their rescue.

14. In view of the aforesaid discussions, Government holds that the Revisionary Authority, Government of India can condone the delay in filing application only upto the extended condonable period of three months and not beyond that. Since, in the present case, the revision applications have been filed even beyond the condonation period of three months, Government is constrained to hold that the 3 revision applications filed by the applicants have clearly become time barred and there is no provision under Section 129DD of the Customs Act, 1962 to condone the delay beyond the condonable extension period of three months.

15. Thus, without going into the merits of the case, the 3 revision applications stand dismissed as time barred


(SHRAWAN KUMAR)

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

ORDER No. 05-/2024-CUS (WZ) /ASRA/MUMBAI DATED 08.01.2024

To, 07

1. Ms. Asha Jairam Ghind, 602, Mayapuri, Behind Thakur Studio, Ulhasnagar, Thane - 421 005.,
2. Shri. Rohit Panikkar @ Guddu, Durga Pada, Shiv Mandir Road, Opp. Durga Temple, Ambernath Gaon, Ambernath TK, Thane - 421 501.,
3. Shri Chetbahadur Bist, Ganga Bhawani Krishna, House No 1952/7, Near Shiv Mandir Road, Durga Devi Pada, Ulhasnagar, Thane - 421 006.
4. Pr. Commissioner of Customs, Level - II, Terminal - 2, Chhatrapati Shivaji Maharaj Airport, Sahar, Andheri West, Mumbai - 400 099.

Copy To,

1. Shri. Prakash K. Shingrani, Advocate, 12/334, Vivek, MIG Colony, Bandra (E), Mumbai - 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.