

REGISTERED
SPEED POST



F.Nos. 371/91 & 92/B/13-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. 6-1-14...

ORDER NO. 1-2/14-Cus DATED 01-01-2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT 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. 225-
226/Mum-III/13 dated 9.5.2013 passed by
Commissioner of Customs (Appeals) Mumbai Zone-III,
Mumbai

APPLICANT : Shri Jayesh Vinodray Mashru and
Shri Kirit Bhagwandas Gadhia
C/o Shri A.M. Sachwani, Advocate
Nulwala Building, Ground Floor,
41, Mint Road, Opp. GPO Fort,
Mumbai - 400 001

RESPONDENT : Commissioner of Customs(Airport), Mumbai

ORDER

These revision applications are filed by applicants Shri Jayesh Vinodray Mashru and Shri Kirit Bhagwandas Gadhia C/o C/o Shri A.M. Sachwani, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp. GPO Fort, Mumbai against the orders-in-appeal No. 225-226/Mum-III/13 dated 9.5.2013 passed by Commissioner of Customs (Appeals) Mumbai Zone-III, Mumbai with respect to order-in-original No. JC/RPK/Adjn/10/11-12 dated 18.08.2011 passed by Joint Commissioner of Customs, CSI Airport, Mumbai.

2. Brief facts of the case are that on 16.04.2012, passenger Shri Jayesh Vinodray Mashru, hereinafter applicant NO.1, was intercepted at the departure lounge near Customs counter, CSI Airport Mumbai after he had checked in for departure to Dubai. Examination of his baggage led to the detection of various foreign currencies collectively equivalent to Indian currency of Rs.50,54,659/- which were seized under the provisions of the Customs Act, 1962 read with section 6(3)g of Foreign Exchange Management Act 1999 and Regulations framed thereunder. During investigations it was revealed that one Shri Kirit Bhangwandas Gadhia, hereinafter applicant No.2 was involved in procurement and handling over the foreign currencies and hence both the incumbents were made party to the show cause notice issued by the department and penalized in the order.

3. The case was adjudicated by the Joint Commissioner of Customs, CSI Airport, Mumbai vide order-in-original No. JC/RPK/ADJN/10/2011-2012 dated 18.08.2011 who ordered confiscation of the impugned foreign currencies equivalent to Indian Rs.50,54,659/- under the provisions of section 113(d), (e) and (h) of the Customs Act, 1962 denying redemption under section 125 of the Customs Act, 1962, in view of the facts and circumstances of the case. Personal penalties of Rs.10,00,000/- and Rs.15,00,000/- were imposed on both S/Shri Jayesh Vinodray Mashru and Kirit Bhagwandas Gadhia under section 114(i) of the Customs Act, 1962 respectively.

3. Being aggrieved with the said order-in-original, applicants filed appeals before Commissioner (Appeals) alongwith stay applications. Commissioner (Appeals) vide

interim stay order No. 124 & 125/Mum-III/13 dated 19.03.2013 ordered for pre-deposit of demands made against both the persons, within three weeks. Applicants die not make any pre-deposit within stipulated time. Commissioner (Appeals) rejected the appeal for non-compliance of provisions of section 129 E of Customs Act, 1962.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 129 DD of Customs Act 1962 before Central Government on the following grounds :-

4.1 The applicant submits that the respondent has basically dismissed the appeal for non-compliance of the order of pre-deposit of penalty. The respondent has not at all considered the merits of the case.

4.2 The applicant submits that the order passed by the respondent clearly reflects non application of mind on the part of the respondent inasmuch as the respondent has observed in para 9 of the interim order dated 12.03.2013 that this is not a case where the demand of duty may be said to be so palpably erroneous, when in fact in this case there is no element of duty involved. The impugned order deserves to be set aside on this ground itself.

4.3 The applicant submits that respondent ought to have appreciated that the impugned goods (i.e. foreign currency equivalent to Rs.50,54,659/-) are lying with the department and there is no element of duty to be recovered and therefore, the Revenue is secured and therefore, insistence on pre-deposit of penalty amount demanded, prior to hearing of the appeal was uncalled for and the same had caused cause undue hardship to the applicant and the same had resulted in denial of right of appeal to the applicant. The applicant submits that the applicant craves leave to refer to and rely upon certain orders where pre-deposit of penalty amount demanded has not been insisted in similar circumstances.

4.4 In addition, applicants contested the impugned order-in-appeal on merits also.

4.5 Applicants have also field applications for condonation of delay in filing revision application.

5. Personal hearing scheduled in these cases on 23.12.2013 at Mumbai was attended by Shri N.J. Heera, Advocate on behalf of the applicants who reiterated the grounds of revision applications. It was also contended that applicants are facing acute financial hardship and therefore requirement of pre-deposit may be waived.
6. Government has carefully gone through the relevant case records/ oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.
7. On perusal of records, Government observes that Commissioner (Appeals) has rejected the appeals of both the applicants on the ground of non complying with the provisions of section 129E of Customs Act, 1962 as they failed to make the pre-deposit as ordered by Commissioner (Appeals) in the interim stay order dated 19.03.2013. Applicants have now filed these revision applications on the grounds stated above. Applicants have also filed applications for condonation of delay in filing these revision applications.
8. In these cases the revision applications are filed on 13.09.2013 against the order-in-appeal dated 09.05.2013 received on 22.5.2013. The revision applications were required to be filed within three months of receipt of the impugned order-in-appeal i.e by 22.8.2013. As such these revision applications are filed after a delay of 22 days. The application for condonation of said delay are filed on the grounds of personal problem and domestic difficulties and for the reasons beyond their control. Applicants have cited the judgment of Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag vs. M/s Katji reported in (1987) 2 SCC 107 wherein it was held that a liberal approach shall be followed in condoning the delay because ordinarily a litigant does not stand to benefit by lodging an appeal late. As per provisions of section 129 DD (2) first proviso, the delay upto 3 months can be condoned. Government therefore by following the principles laid down in the above said judgment of Hon'ble Supreme Court condone the said delay in filing these revision applications and takes up said applications for decision on merits of the case.
9. Government notes that applicants have contended that no demand of duty is involved in these cases, the total foreign currency is lying with the department, they are

facing financial hardship and therefore requested to waive the requirement of making pre-deposit of penalty imposed on them. Government notes that Hon'ble CESTAT Mumbai Bench in order No. S/417-419/09/SMB dated 23.11.2009 in the case of Shri Atul D. Sonpal of M/s Sharp Industries Mumbai waiving the requirement of pre-deposit under section 129E, had observed as under :-

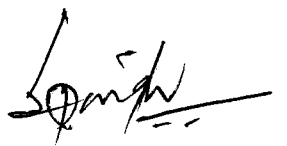
" 3. Considering the fact that the impugned goods are in the custody of the department, I grant waiver of pre-deposit of penalties and stay demand thereof. Further applicants are directed that they shall not be redeemed the goods during pendency of the appeals."

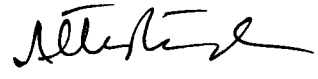

Government notes that in this case entire seized foreign currency is with the department and therefore the pre-deposit amount can be reduced keeping in view the financial hardship being faced by applicants. Government therefore, taking into account the overall circumstances of the case directs that pre-deposit of Rs.1,00,000/- may be made by each of the applicants under section 129E of Customs Act 1962 within 4 weeks on the receipt of this order. Thereafter on receipt of confirmation of making the said pre-deposit by the applicants, the impugned appeal will be restored and Commissioner (Appeals) will decide them on merits in accordance with law.

10. The revision applications are disposed off in terms of above.

11. So ordered.

Shri Jayesh Vinodray Mashru and
Shri Kirit Bhagwandas Gadhia
C/o Shri A.M. Sachwani, Advocate
Nulwala Building, Ground Floor,
41, Mint Road, Opp. GPO Fort,
Mumbai - 400 001


(D.P. Singh)
Joint Secretary to the Govt. of India

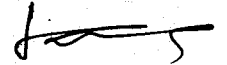


(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आरए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.,
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 1-2/14 -Cus Dated 01.01.2014

Copy to:

1. The Commissioner of Customs (Airport), Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400059
2. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400059
3. The Joint Commissioner of Customs, CSI Airport, Mumbai
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(T.R. ARYA)
SUPRINTENDENT (REVISION APPLICATION)