

REGISTERED
SPEED POST

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

F.No. 373/55/B/17-RA) 2362

Date of Issue 13/12/2018

ORDER NO. ¹⁰³²/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.11.2018 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA ,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

Applicant : Shri R. Dharmaraj

Respondent : Commissioner of Customs, (Airport), Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
24/2017 - TRY (CUS) dated 14.02.2017 passed by the
Commissioner of Cus and C. Ex. (Appeals),
Tiruchirapalli.



ORDER

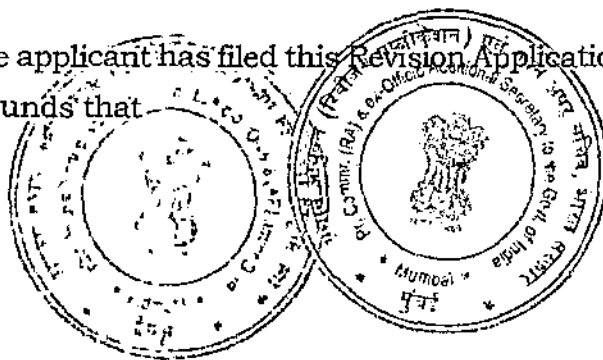
This revision application has been filed by Shri Dharmaraj (herein referred to as Applicant) against the Order in Appeal 24/2017 – TRY (CUS) dated 14.02.2017 passed by the Commissioner of Customs (Appeals), Tiruchirapalli.

2. Briefly stated the facts of the case are that the applicant, arrived at the Trichy Airport on 18.04.2014. He was intercepted as he was crossing the green channel and examination of his baggage resulted in the recovery of assorted gold jewelry totally 604.8 gms valued at Rs. 16,92,835/- (Rupees Sixteen lakhs Ninety two thousand Eight Hundred and Thirty five). The gold was recovered from the innerwear worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 66/2015 dated 29.09.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act,1962 and imposed penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) on 11.07.2016 with a condonation of delay application seeking condonation of 26 days, stating that the Order in Original was received on 13.04.2016. The Commissioner(Appeals) vide Order-In-Appeal C. Cus-I No. 24/2017 – TRY (CUS) dated 14.02.2017 rejected the appeal of the Applicant as time-barred without going into the merits of the case. In his order the Commissioner(Appeals) avers that the Order-In-Original No. 66/2015 dated 29.09.2015, was dispatched to the Applicant by speed post on 06.10.2015, which was received by the Applicant on or before 08.10.2015 and accordingly the Appeal should have been filed on or before 06.01.2016, including the condonable period of 30 days as per section 128 of the Customs Act,1962. The Applicant has filed the Appeal on 11.07.2016 even after lapse of the condonable period from the date of receipt of the order.

5. The applicant has filed this Revision Application inter alia on the following grounds that



5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The applicant had not attempted to import any of the goods in contravention of any rules and regulations; It is not known on what basis the Customs authorities have concluded that the above goods are sensitive; There is no violations of the provisions of the Customs Act and the Commissioner had arrived at a decision without application of mind; Irrelevant facts have been considered and relevant facts have been left out; The Commissioner has failed to act in a bonafide manner and therefore the order is tainted; The entire goods were declared as required under section 77 of the Customs Act; The penalty of Rs. 60,000/- is arbitrary and unreasonable; The goods are not prohibited and it is mandatory for release on payment of fine as per section 125 of the Customs Act; The section 125 of the Customs Act, 1962 it is observed that in case of non-prohibited goods, held liable of confiscation shall be released on payment of fine the word "shall" makes it mandatory to impose fine in lieu of confiscation;

5.2 In addressing the issue of the appeal being timebarred the Applicant submits that as directed by the Appellate unit he had deposited an amount of Rs. 18,750/- @ 7.5% of the penalty imposed; The intimation of personal hearings did not mention that the hearing was scheduled for explanation of delay, and merits of the case was discussed; No notice was given to the Applicant, nor was he informed that the Appeal has been filed beyond the time limit; The submissions of the department that the order in original was received by the Applicant on 29.09.2015 is totally incorrect, As the Applicant had received the order on 13.04.2016, and he had accordingly filed the Appeal seeking a condonation of delay of 26 days; the findings of the Commioner (Appeals) that the Applicant had received the Order on or before 08.10.2015 is without any evidence; The Applicant was not given any notice that the Appeal was time barred, nor was the delay in filing the Appeal discussed during the personal heard therefore the order of the Commissioner (Appeals) is in clear violation of natural justice and not sustainable in law.

5.3 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal and allow the gold for re-export or

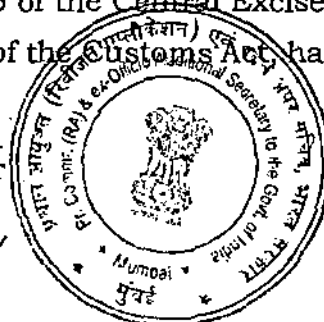


pass further or other orders as deem fit and proper in the facts and circumstances of the case.

5. A personal hearing in the case was scheduled in the case, the Advocate for the respondent Shri A. K Jayaraj Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for a lenient view in the matter and re-export of the gold and that the Revision Application be allowed as there was no ingenious concealment of the gold.

6. The Government has gone through the facts of the case. Government observes that the Commissioner (Appeals) in his order 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 extended period of sixty plus thirty days. Without going into the merits of the case, the Commissioner (Appeals) has held that he has no powers to entertain an appeal beyond the period of 90 days and rejected the appeal as time barred.

7. 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 :



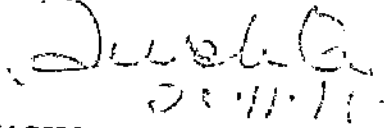
"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It 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."

8. 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 applicant in his written submissions dated 19.01.2018 is out of place. The Revision Applicant also has not brought out any evidences to prove that the Order in Appeal was received by him on the date mentioned by him in the Appeal.

9. In view of above discussions, Government upholds the impugned Order in Appeal No. 24/2017-TRY (CUS) dated 14.02.2017 passed by the

Commissioner of Cus and C. Ex. (Appeals), Tiruchirapalli, and dismisses the instant revision application.

10. So, ordered.


(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ¹⁰³² /2018-CUS (SZ) /ASRA/~~MUMBAI~~

DATED 30-11-2018

To,

Shri R. Dharmaraj
c/o M/s A.K. Jayaraj, Advocate
New No. 3, Old No. 2, 1st Floor,
Thambusamy Road,
Kilpauk, Chennai 600 010.

Copy to:

1. The Commissioner of Customs(Airport), Tiruchirapalli.
2. The Commissioner of Cus and C. Ex. (Appeals), Tiruchirapalli.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

