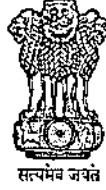


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
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F.No. 371/247-248/B/2019-RA / 2620 : Date of Issue : 24.06.2022

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ORDER NO. <sup>189-190</sup> /2022-CUS (SZ/WZ)/ASRA/MUMBAI DATED 23.06.2022  
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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Applicants : (i). Shri Parminder Singh Chadha,  
(ii). Shri. Shalu Chadha.

Respondent : Commissioner of Customs, Marmagoa, Goa.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
GOA-CUSTOM-000-APP-015 to 016/2019-20 dated  
31.05.2019 passed by the Commissioner Appeals, CGST  
& Customs, Goa.

**ORDER**

These two revision applications have been filed by (i). Shri. Parminder Singh Chadha and (ii). Smt. Shalu Chadha [herein referred to as the Applicants or alternately, as Applicant No. 1 (A1) or Applicant No. 2 (A2), resp.] against the Order-In-Appeal No. GOA-CUSTM-000-APP-015 to 016/2019-20 dated 31.05.2019 passed by the Commissioner Appeals, CGST & Customs, Patto, Panaji, Goa.

2. Brief facts of the case are that the DRI Officials had intercepted the applicants on 12.03.2015 at Dabolim Airport, Goa, where they had arrived from Dubai via Doha by Qatar Airways Flight No. QR-522/12.03.2015. Personal search of the applicant no. 2 resulted in the recovery of gold articles totally weighing 4152 grams and valued at Rs. 1,06,65,400/- concealed in the black coloured belt worn by her around her waist beneath the clothes worn by her. The same had not been declared to the Customs. Applicant no. 1 is the husband of applicant no. 2 and both were travelling together. In their statements recorded under Section 108 of the Customs Act, 1962, the applicants have admitted carriage, possession and non-declaration of the gold seized from them.

3. After due process of the law, and on directions of the Hon'ble High Court, Bombay at Goa, the case was adjudicated and Order-In-Original No. 07/2018-19-ADC(CUS) dated 31.07.2018 issued on 01.08.2018 (through F.No. DRI/MZU/GRU/INT/20-2015)] was passed by the Original Adjudicating Authority (OAA) viz Addl. Commissioner of Customs, Marmagoa, Goa after viewing the CCTV footage in the presence of the applicants and their designated representatives. The OAA ordered for the absolute confiscation of the seized gold bars and articles, totally weighing 4.152 Kgs and valued at Rs. 1,06,65,400/- under Sections 111(d), 111(i), 111(l), and 111(m) of the Customs Act, 1962. Penalty of Rs. 10,00,000/- each was imposed on the applicants under Section 112(a) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicants filed appeals with the Appellate Authority viz Commissioner (Appeals), CGST & Customs, Goa who vide his order No. GOA-CUSTM-000-APP-015 to 16-2019-20 dated 31.05.2019 disposed

of the appeals on grounds that the same were time barred as the Appeals were filed beyond period of 90 days from the date of communication of the order.

5. Aggrieved with the above order the Applicants have filed this revision Application on the following grounds of appeal;

- 5.1. that the OIA is cryptic and passed without going into the merits and facts of the case.
- 5.2. it is alleged that the applicants were not aware of the passing of the OIO dated 31.07.2018 and that they became aware of the same only during the COFEPOSA proceedings against Applicant no. 2; that since certified copy of the OIO had not been supplied to them, they were unable to file appeal in time.
- 5.3. that the purpose of filing of the condonation of delay before the appellate authority was to exercise abundant precaution and in reality, there had been no delay in filing the appeal before the appellate authority since OIO had been received by them only on 18.01.2019. Applicants have refuted that they had received the OIO on 03.08.2018 itself, as claimed by the respondent.
- 5.4. On the issue of delay in filing appeal, the applicants have relied on the ratio laid down by Apex Court in Collector, Land Acquisition, Anantnag v/s. Mrs. Katiji reported in 1987-2-SCC-107 wherein it was held that a liberal approach should be adopted as (a). ordinarily, a litigant does not stand to benefit by lodging an appeal late, (b). refusing to condone could result in a meritorious matter being thrown out and cause of justice would get defeated, (c). etc.
- 5.5. The applicants have stated that; they had been intercepted at the aerobridge; that at the aerobridge itself the applicant no. 2 on being inquired by the officers had revealed she was carrying gold; they denied that they had been intercepted at the green channel and allege as false the claim of the department that they had been trailed by the Officers from the aerobridge to the green channel; that they had requested for permission to make declaration of the

gold articles in their possession which had been allowed; that the video footage permitted by the Hon'ble High Court indicated clearly that the panchas were not present at the aerobridge and the immigration counter and only officers are seen; that they had not been given an opportunity to reach the red channel and had been intercepted and escorted from the aerobridge itself; that the video footage indicates that they (applicants) were not present at the green channel at any time which demolishes the contentions recorded in the panchnama; that since the footage of vital areas of the airport were not available, the adjudicating authority should have called for the footage of those areas; that the adjudicating authority ought to have asked for the detailed locations of the cameras in the arrival hall and ascertained that the areas near the immigration, customs etc were covered by the cameras or not; the adjudicating authority in the de-novo proceedings had shown prejudice against applicant no. 1 by enhancing the penalty which was more than that imposed by the initial adjudication authority and no justification for the enhancement had been given; that before rejecting their application on grounds of limitation, facts of their case should have been considered by the AA; that the applicants have challenged the service of the OIO and state that realistically, there had been no delay in filing the appeal before the AA; that they had never received the OIO form from the OAA on the date as alleged; that the respondent had erred in calculation of 127 days of delay in the OIA.; that in the entire SCN and in the investigations there was no evidence to prove that the seized goods were liable to be confiscated under Section 111(d), (i) and (m) of the Customs Act, 1962; that the goods seized had not been concealed in any manner.

5.6. The applicants have relied on the following case laws;

- (a). GOI order no. 69/14-Cus dated 07.04.2014 in the matter of Badrul Muneer Ambidattil where confiscated goods have been allowed on payment of redemption fine and reduced amount of penalty.

- (b). Dhanak Madhusudan Ramji vs. CC (Airport) Mumbai 2009(237) ELT 280 (Tri-Mumbai) that jewellery and foreign currency were not prohibited items and only charge was non-declaration. Goods allowed to be redeemed on payment of fine and penalty.
- (c). T Elvarasan vs CC (Airport), Chennai 2011 (266) ELT 167(Tri-Madras) Petitioner living abroad for more than 6 months allowed to bring 10 Kgs of gold. Gold not prohibited item. Case pertained to non-declaration. Goods allowed on payment of fine and penalty.
- (d). Yakub Ibrahim Yusf vs. CC, Mumbai 2011 (263)ELT 685 (Tri-Mum), scope of prohibited goods which refers to arms, ammunition, addictive drugs. Option of redemption of goods to be given to person from whose possession impugned goods are recovered.
- (e). Sapna Sanjeev Kohli vs. CC (Airport), Mumbai 2008(230)ELT (Tri-Mumbai), confiscation of foreign currency as proceeds of smuggled goods not sustained.
- (f). Mohini Bhatia vs. CC 1999 (106) ELT 485 (Tri-Mumbai) on gold not being a prohibited item.
- (g). etc.

5.7. The applicants have prayed that the case may be remanded back to the adjudicating authority to be decided afresh on merits or to grant any other reliefs as deemed fit.

6.1. Personal hearings in the case were scheduled on 11.01.2022 / 03.02.2022.

(a). Shri. V.M. Advani and Shri. N.J Heera both advocates for the applicants appeared physically for the hearing on. 13.01.2022. They submitted that they received the OIO only when they learn about it in another case. They had filed appeal before the Commissioner (Appeals) within the stipulated time. Hence, they contended that their appeal was not time barred. They further submitted that their client filed a declaration which was not accepted. Also, they submitted that CCTV footage will reveal that they were intercepted immediately after deplaning and were not allowed to file a declaration.

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

(c). Accordingly, the applications are being taken up for decision on the basis of records available in file and written submissions made by applicants and submissions made by them during the hearing.

6.2 Government has carefully gone through the relevant records available in the case files & written submissions and perused the impugned Order-in-Original and Order-in-Appeal and the Orders of the Hon'ble High Court, Bombay at Goa.

7.1. Government observes from impugned Order-In-Appeal dated 31.05.2019 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 thereafter i.e. actual date of filing appeals were 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 the records such as acknowledgement /tracking report of speed post furnished by the respondent on the issue of dispatch of the Order-in-Original dated 31.07.2018.

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. Appellate Authority has discussed the issue under para 8 of his Order. For the sake of clarity, the same is reproduced here,

*"8. I find that, the Appellants-1 and 2 have mentioned in their Appeals Form CA-1, that the date of communication of the Order-in-Original No. 07/2018-19-ADC(Cus) dated 31.07.2018 is 18.01.2019. The Appeals have been filed on 07.02.2019 along with the applications for condonation of delay in which it is stated that the Appellants have received the copy of the impugned Order on 18.01.2019 and therefore according to them the appeals are filed with the permissible time limit under the Act but the said applications for condonation of delay are being preferred by way of abundant precaution. I have seen the copies of the consignment tracking status and the Booking register of the Postal authority furnished by the Respondent vide Office Note F.No. DRI/MZU/GRU/INT/20-2015 dated 24.04.2019, in respect of the booking and delivery on 03.08.2018 and 06.08.2018 respectively and*

*not on 18.01.2019 as stated by the Appellants. Therefore, from the facts on record, I find that the Appeals filed on 07.02.2019 are beyond the stipulated time of sixty days from the date of receipt of the Order in Original, by 127 and 124 days respectively. I find that the Appellants were required to file the appeals with sixty days, however, if sufficient reason has been given by the Appellants for not being able to file the appeal within the said period, in exceptional circumstances, the provision has been made in the statute that the Commissioner (Appeals) may, if sufficient cause is shown to his satisfaction, allow the appeal to be presented within a further period of 30 days only. The said extension can be granted by Commissioner (Appeals) for a further period of 30 days only as per the Statute. However, the Condonation of Delay applications submitted on 07.02.2019 are after 187 and 184 days respectively from the date of receipt of the Order in Original, i.e. (60+30+97) and (60+30+94) i.e. 97 and 94 days beyond period of thirty days statutorily permitted”.*

8.3. Applicants have not been able to controvert the fact of service of Order-In-Original through speed post as is evident from acknowledgement / tracking report of postal department. Mere request for getting of another copy of Order-In-Original and supply of Order-In-Original subsequently cannot be the reason for bypassing the statutory time limit. Therefore, in view of irrefutable evidence of service of Order-In-Original from postal authorities, 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.

12. In view of above discussions, Government upholds the impugned Order in Appeal No. GOA-CUSTOM-000-APP-015 to 016-2019-20 dated 31.05.2019 passed by the Appellate Authority, i.e. Commissioner Appeals, CGST & Customs, Goa and dismisses the instant revision applications as being devoid of merit.

13. Accordingly, revision applications are dismissed.

  
( SHRAWAN KUMAR )

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

189-190  
ORDER NO. /2022-CUS (SZ/WZ)/ASRA/MUMBAI DATED 3.06.2022

To,

1. Shri. Parminder Singh Chadha, 1/223A, St. Jerome Wado, Behind St. Jerome's Church, Xelpem, Duler, Mapusa, Goa - 403 507.
2. Smt. Shalu Chadha, 1/223A, St. Jerome Wado, Behind St. Jerome's Church, Xelpem, Duler, Mapusa, Goa - 403 507.
3. The Commissioner of Customs, Customs House, Marmagoa, Goa - 403 803.

Copy to:

1. Advani Sachwani & Heera, Advocates, Nulwala Building, Groud Floor, 41, Mint Road, Opp. G.P.O., Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.