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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. 373/58/B/2017-RA/3088 : Date of Issue : 22.08.2022

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ORDER NO. 211/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED | 9.07.2022  
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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**(i). F.No. 373/58/B/2017-RA**

Applicant : Jawath Ali Mohamed Aharib

Respondent : Pr. Commissioner of Customs, Commissionerate - I,  
Chennai Airport and Aircargo Complex, New Custom  
House, Meenambakkam, Chennai - 600 016.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus. I  
No. 173/2017 dated 20.09.2017 [C4/I/142/O/2017-AIR]  
passed by the Commissioner of Customs (Appeals-I),  
Chennai 600 001.

**ORDER**

This revision application has been filed by the Jawath Ali Mohamed Aharib (herein referred to as Applicant ) against the Order-In-Appeal C. Cus. I No. 173/2017 dated 20.09.2017 [C4/I/142/O/2017-AIR] passed by the Commissioner of Customs (Appeals-I), Chennai 600 001.

2. Briefly stated facts of the case are that the applicant who had arrived at Chennai Airport on 11.10.2016 from Singapore onboard Jet Airway Flight No. 9W 0015/11.10.2016 was intercepted by the Customs Officers. Personal search of the applicant led to the recovery of two nos. of FM gold bars bearing serial nos, of 24 carats purity, total weight of both the bars being 200 gms and assorted gold jewellery i.e. 12 nos of chains, 4 pairs of earrings, a pendant, all of 22 carat purity, together weighing 140.700 grams. The total weight of the gold bars and the assorted jewellery was 340.700 gms, totally valued at Rs. 10,02,359. The applicant was not an eligible passenger to bring gold into India and had passed through the green channel without declaring the gold in his possession and did not possess any valid document / permit / license for the legal import of the impugned gold and also was not in possession of any foreign currency to pay the Customs duty.

3. After due process of the law, the Original Adjudicating Authority viz, Addl. Commissioner of Customs (Adjudication-AIR), Commissionerate - I, Chennai vide Order-In-Original No. 301/2016-17-Airport dated 27.03.2017 issued through F.No. O.S. No. 736/2016-AIR ordered for the absolute confiscation of the two nos of FM gold bars of 24 carats purity, weighing 200 gms and the assorted gold jewellery of 22 carats, weighing 140.700 grams, totally valued at Rs. 10,02,359/- under Section 111(d) and (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992.

Penalties of Rs. 1,00,000/- under Section 112(a) and Rs. 5,000/- under Section 114AA of the Customs Act, 1962 were imposed on the applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Appellate Authority viz, Commissioner of Customs (Appeals-I), Chennai 600 001 who vide Order-In-Appeal C. Cus. I No. 173/2017 dated 20.09.2017 [C4/I/142/O/2017-AIR] dismissed the Appeal as time barred as the Appeal had been filed after 90 days from the date of communication of the order.

5. Aggrieved with the above order, the Applicant has filed this Revision Application and among other grounds relating to the seizure of the gold and the OIO and on the issue of the appeal being time barred by the appellate authority, has interalia stated the undermentioned grounds;

- 5.01. that the appellate authority had dismissed the appeal as time barred without giving an opportunity for submitting the proof of delay;
- 5.02. that the applicant had not received the OIO before 16.08.2017;
- 5.03. that in the appellate order, the appellate authority has zeroxed the copy of the speed post receipt wherein the applicant's address is stated as Jawath Ali Mohamed Aharib, Ramanathapuram with pincode and full address with door no. and village name and post alongwith the taluk is not mentioned. So, it is alleged that the impugned order would not have reached within a week.
- 5.04. that the appellate authority has erred in his findings that the impugned order had reached the applicant within a week's time without taking note of the fact that the door no, village name, post and taluk had not been mentioned.
- 5.05. that the applicant had not received the OIO dated 27.03.2017 till 16.08.2017 and it was not correct to say that they had received it prior to this date.

The applicant has prayed to the Revision Authority to set aside (i). the appellate order and (ii). to set aside the OIO and permit to re-export the impugned gold without any fine and penalty or pass any order as deemed fit.

6(a). Personal hearings in the case through the online video conferencing mode were scheduled for 11.11.2021 / 24.11.2021, 11.01.2022 / 03.02.202. None attended the hearing on behalf of the Respondent. Shri. A.K Jayaraj, Advocate for the Applicant appeared online on 11.01.2022 and reiterated earlier submissions. He submitted that passenger brought gold jewellery, produced bill and is not a habitual offender. He submitted that Commissioner (Appeals) presumed service of OIO without giving evidence. He promised to submit additional submissions on High Court judgements supporting his application.

6(b). As submitted, the Advocate in his written submission dated 11.01.2022 has contended that under Section 153 of the Customs Act, the service of the impugned order in the present case is not complete. At para 6 of the impugned order dated 20.09.2017. it is stated that *'the OIO had been dispatched on 31.03.2017 and was not returned undelivered'*. The Advocate contended that department had not placed on record any proof of receipt like acknowledgement of the impugned order to have been sent by Speed Post; that they have been served with the order cannot be accepted unless there is sufficient proof to establish that the same has been served and communicated; that by merely sending a copy of the OIO by Speed Post, the department cannot wash of their hands and they are duty bound to serve the same on the applicant; that tracking report of the consignment showing that the OIO had been delivered was not furnished;

6(c). The applicant has placed reliance on the Hon'ble High Court of Madras in the order dated 21.06.2021 passed in W.P.No.154 of 2021 in the case of M/s. Schiller Healthcare India Pvt., Ltd., vs Asstt. Commr. Of Cus. (Drawback-Air), Chennai VII Commissionerate, reported in 2021 (378) E.L.T.742 (Mad.) where it is held as follows:

*"Though service by affixture is one of the modes prescribed, is the method last preferred and must be taken recourse to, only if service by registered post or by other conventional modes, such as by tendering directly to the assessee, importer or exporter, are not successful"*.

6(d). that the respondent had not placed on record any proof for receipt of acknowledgement of the show cause notice alleged to have been sent via

Registered Post Acknowledgement Due (RPAD) and hence, the respondent had not exhausted the direct methods of service. Service by indirect methods, such as publication affixture [S.153 (1) (d) and (e) must be only after service by direct means set out in Section 153(1) (a), (b) and (c) ] have been attempted and established to have failed.

6(e). Applicant has also placed reliance on the final order 22.03.2021 passed by the Tribunal in the case of of M/s. M.T. & N International Corporation vs Commr. Of Cus., Chennai -VII Commissionerate reported in 2021 (378) E.L.T. 800 (Tri. - Chennai) where in an identical issue with regard to service of the order had held as follows:

*"The issue is whether the appeal filed by the appellant is time-barred or not. The Ld. Counsel has explained that the appellant has not been served with the Order-in-Original and has received the copy only after making a request. The letter issued in February, 2020 by the Revenue Recovery Unit shows that the Order-in-Original was served upon the appellant only in February, 2020. The contention of the department that since the Order-in-Original is issued by speed post, the appellant has been served with the Order-in-Original cannot be accepted unless there is sufficient proof to establish that the same has been served and communicated to the respondent/appellant. The word used in Section 128 as well as 153 is communication of the decision, summons and notices. By merely sending copy of the Order-in-Original by speed post, the department cannot wash of their hands when they are duty bound to serve the same on the appellant. The department ought to have tracked the consignment and made sure that it has been delivered to the addressee. They can obtain a copy of the same from the website after tracking the consignment and keep the same in the file so that it would be useful to prove that the Order-in-Original is served upon the addressee'.*

6(f). The applicant has placed reliance on the Hon'ble High Court of Madras' order dated 29.11.2021 in the case of M/s. Unik Traders in W.P.No.24062 of 2021 and has pleaded for option to re-export the goods.

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

8. Government observes from impugned order dated 20.09.2017 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 extended period of sixty days and beyond the condonable period of 30 days after the expiry of 60 days from the receipt of the order-in-original. The Commissioner (Appeals) after considering the details of the case ,since there was a delay beyond the permissible time limit, has held that he has no powers to entertain an appeal beyond the period of 90 days and rejected the appeal as time barred.

9. Government observes that the appellate authority after going through the original file of the OAA and the records therein, has noted that the impugned order was dispatched on 31.03.2017 and had not been returned back as undelivered. The speed post was registered by postal authorities on 31.03.2017. The appellate authority has observed further that as per the ALL India Delivery (Transit) Norms for speed post the specific norms on city-to-city basis is shown as 2 to 4 days from the date of the booking to the date of the delivery of the speed post article, if it was within the same state. Therefore, appellate authority has held the impugned order would have reached the applicant within a week's time. The appellate authority has observed that had the applicant not received the impugned order by speed post, he would have mentioned in the appeal how he had received it on a subsequent date after nearly 4 ½ months from the date of the original dispatch. The applicant had not done so in their appeal.

10. The applicant in his averment has stated that the complete /full address is not mentioned in the receipt issued by speed post. In this regard, Government notes that the receipt issued by the postal authorities contains only the bare details of the address. The applicant has claimed that he had received the OIO on 16.08.2017. However, to prove his case, the applicant was unable to submit authentic proof that he had received the appellate order on 16.08.2017. Also, as per the speedpost norms, the re-delivery is attempted for two more times, thereafter, the parcel is delivered back to sender. In this case the respondents had stated that they had not received back the OIO from speedpost. The applicant was unable to prove otherwise. In the absence of any proof by the

applicant that the delivery of the speed-post document, dispatched on 31.03.2017 by the respondent was received by them on 16.08.2017, Government finds that the same is not plausible and plea that address mentioned in the receipt issued by the speed-post was incomplete, cannot be accepted.

11. Government finds that the case laws relied upon by the applicant does not come to his rescue. In Section 153(b), delivery by speed post is a specified mode of delivery. Government notes that the applicant had not made a request to the respondent for a copy of the OIO. While filing an appeal with the appellate authority, they stated that the OIO was received by them on 16.08.2017. Reason for delayed receipt was not provided. The appellate authority had examined the concerned file of the respondent and had satisfied himself that the OIO dated 27.03.2017 had been dispatched to the applicant on 31.03.2017. In the case law cited by the applicant at para 6(e) above, a request had been made for a copy of the order. In the present case, no such request had been made and the applicant had merely stated that the OIO dated 27.03.2017 was received by them on 16.08.2017. No reason for this delay of nearly 4 ½ months has been provided by the applicant. Government rejects this plea made by the applicant as devoid of any merits.

10. The provisions of Section 128 the Customs Act, 1962 which provides for appeal to Commissioner (Appeals) read 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."*

11. 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."*

12. 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 vide their written submissions is out of place.

13. In view of above discussions, Government upholds the impugned Order-In-Appeal C. Cus. I No. 173/2017 dated 20.09.2017 [C4/I/142/O/2017-AIR]

passed by the Commissioner of Customs (Appeals-I), Chennai 600 001 and dismisses the instant revision application as being devoid of merits.

14. In view of the above, Government dismisses the Revision Application filed by the applicant on the grounds of delay in filing an appeal before the appellate authority and does not find it necessary to go into the merits raised in their application.

15. The Revision Application is accordingly, dismissed.

*Shrawan*  
19/7/22  
( SHRAWAN KUMAR )

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

ORDER No. 211 /2022-CUS (WZ/SZ)/ASRA/MUMBAI: DATED: 07.07.2022

To,

1. Shri. Jawath Ali Mohamed Aharib, S/o. Shri. Mohamed Aharib, No. 2/89A, Oppilan Village & Post, Kadaladi Taluk, Ramnad District, Tamil Nadu – 623 703.
2. Pr. Commissioner of Customs, Commissionerate – I, Chennai Airport and Aircargo Complex, New Custom House, Meenambakkam, Chennai – 600 016.

Copy to:

1. Shri. A.K Jayaraj, Advocate, No. 3, Thambusamy Road, Kilpauk, Chennai – 600 010.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Noticeboard.