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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. 371/35 & 35A/B/2016-RA / 3299 : Date of Issue : 01.08.2022

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ORDER NO. <sup>234-235</sup> /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 28.07.2022  
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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Applicant No. 1. : Shri. Manish Pradeep Bhavnani  
Applicant No. 2. : Shri. Pradeep Bhavnani.

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-165 & 166/15-16 dated  
02.07.2015 [F.No. S/49-21 & 22/2014 AP] passed by the  
Commissioner of Customs (Appeals), Mumbai-III, Mumbai

**ORDER**

These two revision applications have been filed by (i). Shri. Manish Pradeep Bhavnani and (ii). Shri. Pradeep Bhavnani (herein referred to as the Applicants or alternately, as Applicant no. 1 (A1) or Applicant no. 2 (A2) resp.) against the Order-in-Appeal Nos. MUM-CUSTOM-PAX-APP-165 & 166/15-16 dated 02.07.2015 [F.No. S/49-21 & 22/2014 AP] passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai : 400 059.

2(a). Briefly stated the facts of the case are that the applicant no. 1 was intercepted at CSI Airport, Mumbai by Customs Officers on 10.12.2012 after having cleared through the green channel. The Applicant no. 1 had arrived at CSI Airport, Mumbai onboard Bangkok Airways Flight No. PG733/10.12.2012. To the query put forth by the Officers whether he was carrying any dutiable / contraband goods in his baggage or person, Applicant no. 1 had replied in the negative. In the Customs embarkation card / Customs Gate Pass duly filled by applicant no. 1, an amount of Rs. 15,000/- had been shown as the total value of the dutiable goods in his possession. A search of his baggage did not result in anything incriminating. A personal search resulted in the recovery of a Foreign Marked Gold bar of 999.9 purity weighing 1 kg, 3 gold bars of 152 gms bearing Chinese markings, one gold bar weighing 76 gms bearing Chinese marking and one gold coin of 30 gms bearing Chinese markings, which had been kept in the pockets of the jeans worn by him. Thus, five FM gold bars and one gold chain, totally weighing 1562 gms valued at Rs. 48,19,551/- (as per panchanama) were recovered and seized from the Applicant no. 1.

2(b). The applicant no.2 is the father of applicant no. 1, and investigations carried out revealed that he had advised his son to purchase and bring the seized gold bars and coins to the country. The applicant no. 2 had aided and abetted applicant no. 1 in his act of smuggling the impugned gold to India.

3. The Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/ML/ADJN/58/2013-14 dated 31.12.2013 issued through F.No. S/14-5-14/2013-14.Adj, ordered for the confiscation of the seized gold bars weighing 1563.650 gms and valued at Rs. 47,31,176/- (valuation panchanama) and the other goods valued at Rs. 3000/- in excess of free allowance, under Section 111 (d), (l) and (m) of the Customs Act, 1962. However, an option to redeem the impugned goods, in lieu of confiscation, on payment of a fine of Rs. 15 lakhs under Section 125 of the Customs Act, 1962 + applicable duty was granted. A personal penalty of Rs. 7 lakhs under Section 112(a) and (b) of the Customs Act, 1962 was imposed on applicant no. 1 alongwith a penalty of Rs. 10,000/- under Section 114AA of the Customs Act, 1962. Further, a penalty of Rs. 1,00,000/- was imposed on applicant no. 2 under Section 112(a) and (b) of the Customs Act, 1962

4. Aggrieved by the said order, the applicants filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-163 & 164/15-16 dated 02.07.2015 [F.No. S/49-19 & 20/2014 AP] upheld the OIO and dismissed the appeals.

5. Aggrieved with the aforesaid order dated 02.07.2015 passed by the AA viz, Commissioner of Customs (Appeals), Mumbai - III, the Applicants, have filed

this revision application which only contains the statement of facts and prayer. The grounds of appeal have not been made out by the applicants in their Revision Applications.

- 5.1. the applicants have stated that the lower authorities have not provided any reasons for imposing stiff penalties.
- 5.2. the applicant no. 2 had a medical condition which led them to bring the gold and this fact had not been considered
- 5.3. that the applicant no. 1 was not a frequent traveler and had no past history.

6. The applicants have filed an application for condonation of delay and have stated that due to the poor health of applicant no. 2 who had not been keeping good health, the delay had occurred. They have prayed to condone the delay.

7. A personal hearing in the case through the online video conferencing mode was scheduled for 15.09.2021, 22.09.2021, 27.10.2021, 02.11.2021 and on 02.12.2021. No one attended the hearings for the applicants and the department. Sufficient opportunities have been accorded to the applicants and department to put forth their case. The case is taken up for a decision on the basis of evidence on record.

8. At the outset, the Government notes that the applicant has filed for condonation of delay. The Revision Application was filed on 27.06.2016. The date of communication of the Order of the appellate authority as informed by the applicants is 07.07.2015. Accordingly, the applicants were required to file the applications by 05.10.2015 (i.e. taking the first 3 months into consideration) and by 03.01.2016 (i.e. taking into consideration a further

extension period of 3 months). There is an inordinate delay of over 8 months 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 5 ½ months.

9. The applicants in their application for condonation of delay have cited reasons of ill health of applicant no. 2 for this delay.

10. 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.*

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11. 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 the period of three months.

12. 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.

13. 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."*

14. Government however, in the instant case, observes that the applicant by filing an application for condonation of delay has tacitly admitted that there was a delay. Government notes that even after taking into consideration the extended period of 3 months as provided in Section 129DD, there is a delay of nearly 5 ½ months. Having admitted that there was a delay beyond the prescribed limit, the reason for delay becomes immaterial and infructuous. There is no case that the copy of the said Order-In-Appeal was supplied late or was received late. The ill health of one of the applicants which has been cited as the cause for their delay, does not come to their rescue. 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 176 days in filing the Revision Application from the extended period. As already explained at paras 10 & 11 supra, the statutory period for filing Revision Application is 90 days. Government observes that the applicant have filed Revision Application much beyond this threshold. All the Supreme Court Judgments referred to in foregoing paras are binding precedent and does not come to the aid of the applicants.

15. 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 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 period of three months.

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

  
( SHRAWAN KUMAR )

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

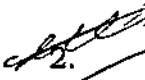
ORDER No ~~23A-23S~~/2022-CUS (WZ/SZ) /ASRA/

DATED ~~28~~ 07.2022.

To,

1. Shri. Manish Pradeep Bhavnani, 602, Topaz, Nirmal Life Style, Mulund (West), Mumbai 400 080.
2. Shri. Pradeep Bhavnani, 602, Topaz, Nirmal Life Style, Mulund (West), Mumbai 400 080.
3. The Commissioner of Customs, Terminal – 2, Level – II, Chhatrapati Shivaji International Airport, Mumbai : 400 059.

Copy to:

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