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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/215/B/WZ/2019-RA | 11/23 Date of Issue : 27.02.23

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ORDER No. 250 /2023-CUS (WZ)/ASRA/MUMBAI DATED. 23.02.2023. 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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**F.No. 371/215/B/WZ/2019-RA**

Applicant : Ms. Nazneen Yusuf Shaikh

Respondent : Commissioner of Customs, Pune International Airport,  
Lohegaon, Pune.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-In-Appeal No. PUN-CT-APPII-000-003-19-20 dated 05.04.2019 issued through F.No. V-2 CT(A-II)/184/2018-19 passed by the Commissioner (Appeals-II), Central Tax, Pune.

**ORDER**

This revision application has been filed by the Ms. Nazneen Yusuf Shaikh (herein referred to as Applicant) against the Order-In-Appeal No. PUN-CT-APPII-000-003-19-20 dated 05.04.2019 issued through F.No. V-2 CT(A-II)/184/2018-19 passed by the Commissioner (Appeals-II), Central Tax, Pune.

2. Brief facts of the case are that the applicant who was bound for Dubai by Spice Jet Flight No. SG-051 / 12.09.2018 was intercepted by Customs Officers on 12.09.2018 after she was clearing herself through the departure at Pune International Airport. To query whether she had anything to declare, the applicant had replied in the negative. On examination of her hand baggage nothing incriminating was recovered. A search of her hand baggage led to the recovery of 100 notes of USD in denomination of 100, totalling USD 10,000/-.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Dy. Commissioner of Customs, Pune International Airport, Pune, vide Order-In-Original No. 28/2018 dated 12.09.2018 issued through F.No. AirCus/49-142/Foreign Currency Case-28/2018, ordered for the absolute confiscation of the foreign currency viz, 100 notes of USD in denomination of 100, totalling USD 10,000/- under Section 113 (d) & (e) of the Customs Act, 1962 readwith other laws of FEMA and a penalty of Rs. 20,000/- was imposed on the applicant under Section 114(1) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority viz, Commissioner (Appeals-II), Central Tax, Pune, who vide his Order-In-Appeal No. PUN-CT-APPII-000-003-19-20 dated 05.04.2019 issued through F.No. V-2 CT(A-II)/184/2018-19 rejected the appeal on ground of limitation.

5. Aggrieved with the aforesaid Order passed by the AA, the Applicant has preferred this revision application inter alia on the grounds that;

- 5.01. that the AA had failed to appreciate that the said appeal for condonation of delay along with the appeal was filed on 18.02.2019 after receiving the order in original from the Dy. Commissioner of Customs on 15.02.2019 though the signature was taken on 12.09.2018 of receipt of order in original as on the same day signature on various papers were taken by the custom officer of the appellant without even allowing her to go through the documents on which her signature was being taken and further no document or order in original was handed over to the appellant stating that the same would be sent to her by post.
- 5.02. that the AA failed to appreciate that the signature for receiving the order in original on 17.10.2018 informed by the officer did not show any signature of receipt by the appellant though the signature of 12.09.2018 is there but no order in original handed over to the appellant as signature on many documents was taken by the customs officer
- 5.03. that facts were brought before the Commissioner of Customs Appeals but the same were not appreciated and on the contrary the appeal came to be rejected.
- 5.04. that the AA did not even consider the facts of the appellant that she was eligible to carry US \$ 5000 as per law and non-declaration of balance US \$ 5000 being only a technical offence.
- 5.05. that on writing a letter 06.02.2019 after oral and personal visits to the airport, she was given the copy only on written letter dt. 06.02.2019 for providing all the documents along with the order. The said order therefore came to be received by the appellant on 15.02.2019 only and thereafter immediately on receipt of documents as well as order in original the appeal came to be filed on 18.02.2019.
- 5.06. that considering the seizure of foreign currency of US \$ 10000 being only a technical offence of not declaring the amount will cause great hardship and loss to the appellant as the appellant is a business women running a beauty parlour and was carrying the said amount for purchasing laptop, mobile phone and cosmetics for her business purpose of beauty parlour though the signature were taken but order revived only on 15.02.2019.
- 5.07. that the money was her own money and belong to her and the same was being carried by her for purchasing goods for her own business purpose in India.
- 5.08. that the said order came to be received by the appellant only on 15.02.2019 and accordingly, the appeal was filed on 18.02.2019.

Under the circumstance, the applicant has prayed to the revision authority to set aside the OIO and OIA and allow the application for condonation of delay and order for the release of the foreign currency on nominal redemption fine and penalty.

6. Personal hearing through the online video conferencing mode was scheduled for 12.08.2022, 25.08.2022, 16.09.2022 and 28.09.2022. Smt. Shivangi Kherajani, Advocate for the applicant appeared for personal hearing on 29.09.2022 and submitted that applicant was carrying USD 10,000/-. She further submitted that applicant is a small business person and absolute confiscation is very harsh. She requested for release of currency on nominal fine and penalty.

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

8. Government observes from impugned OIA dated 05.04.2019 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 extended period of sixty days and beyond the condonable period of 30 days after the expiry of 60 days of actual date of filing of appeal i.e. beyond 90 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 and has relied on the Apex Court's Order in the case of Singh Enterprises vs. CCE [2008 (221) ELT 163 (SC)].

9. In the impugned OIA dated 05.04.2019, at paras 4, 6.1 and 6.2, the appellate authority has observed as follows;

*"4. Copy of the appeal was sent to the Respondent for submission of cross objections, if any. Ms. Sudha Iyer, Superintendent (AIU), Customs International Airport, visited Appeals-II office on 26.03.2019 and informed that the OIO was served upon the appellant on 12.09.2018 itself as is evident from the signature of the appellant on the body of the*

OIO. She stated that on the appellant's request, it was given to her again on 17.10.2018. A copy of the same is taken record."

.....

**6.1.** I find that as per the CA-1, filed by the Appellant, the impugned OIO No. 18/2018 dated 12.09.2018 was received by the Appellant on 12.09.2018 itself. However, as stated in grounds of appeal above, the Appellant had received the OIO in first week of October. However, they had received the documents late and hence did not file an appeal. I find that to file an appeal, they need to file the same against the OIO which they had received on 12.09.2018 which is evident from the receipt date on the body of the OIO. The documents could have been submitted later or at the time of the hearing. The appeal has been filed on 18.02.19 i.e. beyond the period of 60 days allowed under the provisions of Section 128(1) of the Customs Act, 1962. The Appellant was required to file the appeal within 60 days, which means before the completion of 60 days and not thereafter. Further, if sufficient reason is given by the Appellant for not being able to file 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. In this case, the appeal has been filed even after this period of 30 days.

**6.2.** Considering the date of receipt of the said impugned Order-in-Original on 12.09.2018, as intimated by the AIU officer, Pune International Airport, and also seen from the body of the OIO, the Appellant was required to file the said Appeal on or before 12.11.2018, which will be within the normal period of 60 days and in exceptional circumstances, with sufficient cause to be shown to the satisfaction of the Appellate Authority, the said Appeal would have been filed before 12.12.2018 i.e. within a further period of 30 days, as per the provisions of Section 128(1) of the Customs Act, 1962, with a request to condone the delay. However, in this present case, I find that the appeal has been filed only on 18.02.2019, which is beyond the condonable period. ....".

8. The provisions of Section 128 of 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."*

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 applicant vide their written submissions is out of place.

11. In view of above discussions, Government finds that the AA has gone into the facts and passed a legal and proper order. Government upholds the impugned Order in Appeal No. PUN-CT-APPII-000-003-19-20 dated 05.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III and dismisses the instant revision application as being devoid of merit.

12. Accordingly, Revision Application filed by the applicant is dismissed.

  
(SHRAWAN KUMAR)

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

ORDER No. 250 /2023-CUS (WZ)/ASRA/MUMBAI DATED. 20.02.2023.

To,

1. Ms. Nazneen Yusuf Shaikh, 806, Near Kamgar Putala, Shivaji Nagar, Pune - 411 005.
2. Commissioner of Customs, ICE House, 41/A, Sasson Road, Pune : 411 001.
3. Dy. Commissioner of Customs, Airport Civil Enclave, Pune International Airport, Lohegaon, Pune.

Copy to:

4. Smt. Shivangi Kherajani / Mrs. Kiran Kanal, Advocates, Satyam, 2/5, R.C. Marg, Opp. Vijaya Bank, Chembur, Mumbai - 400 071.
5. Sr. P.S. to AS (RA), Mumbai.
6. File Copy.
7. Noticeboard.