

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. 371/31/B/17-RA / 6922

Date of Issue 19.11.2021

ORDER NO. 297/2021-CUS (SZ)/ASRA/MUMBAI
DATED 23.11.2021 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.

Applicant : Mrs. Rizwana Shabbir Nasruddin Mukadam

Respondent : Commissioner of Customs, CSI Airport, Mumbai Pin : 400
099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTOM-PAX-APP-568/16-17 dated 23.01.2017
[F.No. S/49-438/2015 AP] passed by the Commissioner
of Customs (Appeals-III), Mumbai-III, Mumbai : 400 059.

ORDER

This revision application has been filed by Mrs. Rizwana Shabbir Nasruddin Mukadam (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-568/16-17 dated 23.01.2017 [F.No. S/49-438/2015 AP] passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai : 400 059.

2. Briefly stated the facts of the case are that on 06.05.2014, the applicant who is a Tanzanian National had arrived at CSI Airport, Mumbai from Nairobi via Dubai by Emirates Flight No. EK 504/06.05.2014 alongwith her 5 yr old daughter. The applicant was intercepted by the Customs Officers near the exit gate of the arrival hall after having cleared through the Customs green channel. The applicant was questioned about possession of any dutiable goods to which she had replied in the negative. The personal search of the applicant led to the recovery of 8 gold kadas, totally weighing 895 gms valued at Rs. 22,98,244/- which had been worn under the full sleeve burkha to avoid detection. Since, the applicant had attempted to smuggle the said gold by not declaring it and not possessing any licit document of purchase, the 8 gold kadas were seized for further action under the provisions of the Customs Act, 1962. The applicant informed that the gold kadas belonged to her husband who was an Indian and had been instructed to hand it over to a person in India.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/ML/ADJN/37/2015-16 dated 13.05.2016 issued through F.No. S/14-5-362/2014.Adj, ordered for the absolute confiscation of the seized 8 gold crude kadas, totally weighing 895 gms and valued at Rs. 22,98,244/- under section 111 (d), (l) and (m) of the Customs Act, 1962 and imposed a penalty of Rs. 2,00,000/- (Rupees Two lakhs only) on the applicant under section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals), Mumbai – III, who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-568/16-17 dated 23.01.2017 [F.No. S/49-438/2015 AP] held that the applicant had worn the gold kadas and was not a professional carrier and therefore, allowed the redemption of the impugned 8 gold crude kadas on payment of redemption fine of Rs. 4,00,000/- and allowed for re-export of the redeemed goods considering that applicant was an OCI Card holder and her husband was working abroad. The penalty imposed by the adjudicating authority was upheld.

5. Aggrieved with the aforesaid order dated 23.01.2017 passed by the Commissioner of Customs (Appeals), Mumbai - III, the Applicant, has filed this revision application inter alia on the grounds that;

- 5.1. that the order is based on incorrect, misleading and misconceived facts and incorrect understanding of case laws/judgments and is bad in law.
- 5.2. that she was a NRI holding a Tanzanian Passport and OCI Card and normally residing in Nairobi along with her family and had come to India for her medical treatment and also for the medical checkup of her daughter,
- 5.3. that the gold kadas was her personal jewellery given to her by her in-laws and she had worn the same when she had arrived at Mumbai.
- 5.4. that wearing personal jewellery by a tourist lady passenger was permitted under the Tourist Baggage Rules as personal effects.
- 5.5. that the gold kadas had not been concealed and confiscation of the same is not sustainable in law. The order in appeal to the extent of redemption fine and penalty is liable to be set aside.
- 5.6. that knowledge, carriage and possession of personal belongings by itself did not amount to an offence under any Act; that any tourist who plans to visit different countries, packs his belongings and takes his personal items including jewellery consciously. Therefore, confiscation of the gold kadas found

worn by the Applicant on her wrist cannot be held liable to confiscation on the ground of "Knowledge, Carriage and Possession". The order in appeal to the extent of redemption fine and penalty is liable to be set aside.

- 5.7. that it was not alleged that she was a professional carrier.
- 5.8. that the findings of the Appellate Authority do not support confiscation of goods and the redemption fine and penalty are not sustainable in law.

The Applicant has prayed that the impugned Order-in-Appeal No. MUM-CUSTOM-PAX-APP-568/16-17 dated 23.01.2017 [F.No. S/49-438/2015 AP] passed by the appellate authority be set aside to the extent of redemption fine and penalty with consequential relief or pass any other order granting relief.

6. A personal hearing in the case was scheduled for 05.12.2019 / 12.12.2019. Departmental Officers viz Regina P Mangalati and Sunendra G Pathrube had attended on 05.12.2019. However, the applicant had failed to attend. After the change in the revisionary authority, personal hearing through the online video conferencing mode was scheduled on 10.12.2020 / 17.12.2020 / 24.12.2020 and on 28.01.2021 / 18.03.2021 / 25.03.2021 / 22.10.2021 / 29.10.2021. Shri. Ashwani K. Prabhakar, Advocate attended online on 22.10.2021 and requested that the applicant is a Tanzanian national who carried jewellery in person without concealing the same and she was not a habitual offender and therefore requested for reducing the R.F and penalty.

7. At the outset, the Government notes that the applicant has filed for condonation of delay. The Revision Application was filed on 18.12.2017. The date of communication of the Order of the appellate authority is 24.01.2017. The applicant was required to file the application by 24.04.2017 (i.e. taking the first 3 months into consideration) and by 23.07.2017 (i.e. taking into consideration a further period of 3 months). There is an inordinate delay of over 7 ½ months from the normal period. The applicant in her application for condonation of delay has

accepted a delay of 7 ½ months. Government notes that even after considering the extended period i.e 180 days in total, there is a delay of nearly 5 months.

8. The applicant has attributed the delay to her not being an Indian Citizen and that when she came to India on 03.12.2015, she was banned by the Immigration authorities from entering India and was deported. Also, her husband Shri. Mukadam Shabbir Nasruddin who is an Indian national works at Dar-es-Salam and was busy with office work.

9. Government, from the records placed, notes that the applicant through her husband (duly authorized) had redeemed the impugned gold on 20.02.2017 for re-export. Vide Challan D.No. 791627 dated 20.02.2017, a total amount of Rs. 5,85,780/- had been paid {i.e. RF of Rs. 4,00,000/- + Penalty of Rs. 1,85,000/- (pre-deposit of Rs. 15,000/- was adjusted) and WH of Rs. 780/-}.

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.

....

11. From above, it is clear that the applicant was required to file revision application within 3 months. 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 Government notes that there is no provision under Section 129DD to condone the delay beyond the condonable period of three months.

12. Further, it has been held by 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.) 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. 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 in their application for condonation of delay has admitted that there was a delay of 7 ½ months. 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 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 applicant was aware that she was not in India and in the brief period after the Order-In-Appeal, her husband was in India as evidenced from the payment of the redemption fine. The applicant should have made adequate and timely arrangement to plead her case. The law does not come to the aid of the indolent, tardy litigant. It is the bounden duty of the one seeking relief to satisfy the authority about the reason for the delay on their part. In the present case there is a delay of 147 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 applicant.

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 extended condonable period of three months and not beyond that. Since, in the present case, the revision application is filed even beyond the condonation period of three months, Government is constrained to hold that the revision application filed by the applicant has clearly become time barred and there is no provision under Section 129DD of the Customs Act, 1962 to condone the delay beyond the condonable period of three months.

16. Without going into the merits of the case, the revision application thus stands dismissed as time barred in terms of the above.


23/11/21
(SHRAWAN KUMAR)

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

ORDER No. ²⁹⁷/2021-CUS (SZ) /ASRA/

DATED 23.11.2021

To,

1. Mrs. Rizwana Shabbir Nasruddin Mukadam, At Post – Mahapral, Tal : Mandangad, Dist : Ratnagiri, Maharashtra.
2. The Commissioner of Customs, Terminal – 2, Level – II, Chhatrapati Shivaji International Airport, Mumbai : 400 059.

Copy to:

1. Shri. Ashwani Kumar Pabhakar, Advocate, 5th Floor, Hitkari House, 284, Shahid Bhagat Singh Road, Fort, Mumbai : 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.