



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/132/B/WZ/2018-RA / 6168 : Date of Issue : 01/11/2022

ORDER NO. 310 /2022-CUS (WZ) /ASRA/MUMBAI DATED 31.10.2022
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.

Applicant : Shri. Anil Kumar Rijhwani

Respondent : Pr. Commissioner of Customs (Airport), CSMI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-953/2017-18 dated 18.01.2018
issued on 23.01.2018 through F.No. S/49-912/2015/AP
passed by the Commissioner of Customs (Appeals),
Mumbai – III.

ORDER

This revision application has been filed by Shri. Anil Kumar Rijhwani (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-953/2017-18 dated 18.01.2018 issued on 23.01.2018 through F.No. S/49-912/2015/AP passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that on 07.02.2014, the Officers of Customs had intercepted the Applicant at CSMI Airport where he had arrived from Jalarta via Kuala Lumpur onboard Malaysia Airlines Flight No. MH-174/07.02.2014. The Applicant had been intercepted near the exit gate after he had cleared himself through the green channel of Customs. To the query put forth to him regarding possession of any dutiable goods / gold / contraband, he had replied in the negative. Examination of the checked-in baggage of the applicant led to the recovery of 4 birds. These birds had been kept in two netted cages and two birds in each cage were found. Out of the 4 birds, two birds were found dead. The birds having market value of Rs. 2,00,000/- (illicit market value) were seized under the reasonable belief that the same were liable for confiscation under the provisions of the Customs Act, 1962 read with the Wildlife Protection Act, 1972 and the Animal Quarantine & Certification Service [W.R] and other allied Acts and in contravention of the provisions of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

2(b). The Animal Quarantine Officer had examined the birds and a certificate bearing no. 5-2/2013/AQCS/249 dated 07.02.2014 was issued for the deportation of the said birds which were immediately deported back to the country of origin i.e. Malaysia by Malaysian Airlines Flight no. MH-195 / 07.02.2014.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Deputy Commissioner of Customs, CSMI Airport, Mumbai, vide Order-In-Original No. Aircus/49/T-2/9529/2015-'A'-Batch dated 30.05.2015 issued on 02.06.2015 through F.No. SD/INT/AIU/102/2014-AP-'D' ordered for

the absolute confiscation of the birds valued at Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 111(m) and (o) of the Customs Act, 1962 and imposed a penalty of Rs. 2,00,000/- on the applicant under Section 112(a) read with 112(i) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeal), Mumbai – III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-953/2017-18 dated 18.01.2018 issued on 23.01.2018 through F.No. S/49-912/2015/AP rejected (i) the plea of condonation of delay as being devoid of any merits and (ii) the appeal on the grounds of merits also. The penalty of Rs. 2,00,000/- imposed on the applicant by the OAA was found to be appropriate.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

- 5.01. that the order impugned order passed by the appellate authority was bad in law and unjust and has been passed without application of mind.
- 5.02. that the appeal had been filed before the AA on 06.11.2015; that there had been a delay of a mere 9 days over the 60 days statutorily provided under Section 128 of the Customs Act, 1962; that as per the proviso to Section 128(1) of the Customs Act, 1962, the applicant was entitled to file the appeal within 90 days i.e. on or before 27.11.2015; that the appeal had been filed within the extended period of 30 days had not been considered by the AA.
- 5.03. that the applicant had checked the facts from the records available with the department and through an RTI application it had been ascertained that the OIO had been despatched on 26.08.2015.
- 5.04. that the AA did not independently investigate this delay and had merely gone by the facts presented by OAA and had rejected their appeal.
- 5.05. that the AA failed to appreciate that the quantum of personal penalty was harsh and unwarranted,
- 5.06. that the AA failed to appreciate that the valuation of the birds was taken in an arbitrary manner without following the Valuation Rules.

The applicant has prayed to the Revision Authority to set aside the impugned OIA passed by AA and also the OIO passed by the OAA; that the penalty of Rs. 2,00,000/- be set aside or reduced substantially; or to pass any order as deemed fit.

6. Personal hearing in the case was scheduled through the online video conferencing mode for 02.08.2022. Shri. N.J Heera, Advocate for the applicant appeared in the office on 02.08.2022 for hearing. He submitted that appeal before the Commissioner (Appeals) was filed within 90 days and submitted the date of dispatch of OIO from Customs. He requested to substantially reduce penalty as the applicant had brought birds for his family.

7. The Government has gone through the facts of the case. The applicant was carrying birds from Malaysia. The import of birds are prohibited as per the various allied acts and the conventions of which India is a signatory. Furthermore, the Government notes that the Animal Quarantine Officer had been called who upon examinations of the birds had issued an order to deport the same immediately to the country of its origin. This indicates the gravity and nature of offence committed by the applicant. The action committed by the applicant was pre-meditated, conscious and being a frequent traveller he was aware of the gravity of the offence.

8. The applicant has taken a plea that his appeal had been rejected by the AA without considering the facts that the same had been filed within the extended period available. Government notes that the AA at para 7 of the OIA has passed the following;

7. On merits also I find that the appellant was continuously engaged in travelling abroad and his tickets were admittedly arrange by one Shri. Vicky Rodrigues who was residing at Jakarta. He admitted that he brought the 4 birds to be handed over to the man of Vicky outside airport and in return he was to get Rs. 15,000/- The statement of appellant further suggest that he was part of a racket indulged in

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smuggling of birds from abroad. The passenger has contravened the provisions of the Customs Act, 1962 read with relevant Policy provisions and other Acts including CITES.

8. *Keeping in view the gravity of offence, I find that the penalty imposed is not excessive.*

9. Government finds that the AA has considered the averments made by the applicant and had rejected the same. Government finds that the OIA passed by the AA is legal and proper and therefore, is not inclined to interfere in the same.

10. Government finds that the penalty imposed on the applicant considering the nature of the offence and the fact that two of the birds had died during the illicit importation, is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

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

Shrawan
31/10/22
(SHRAWAN KUMAR)

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

ORDER No. 310/2022-CUS (WZ) /ASRA/ DATED 31.10.2022

To,

1. Shri. Anil Kumar Rijhwani, B-1, Asian Bldg, Manmala Tank Road, Nr. Starcity Cinema, Mahim, Mumbai - 400 016.
2. Pr. Commissioner of Customs, Level - 2, Terminal - 2, CSMI Airport, Mumbai : 400 099.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.