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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. 371/494/B/2019-RA /6501 : Date of Issue : 28/11/2022

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ORDER NO. 337 /2022-CUS (WZ)/ASRA/MUMBAI DATED 23.11.2022  
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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Applicants : Shri Mehendi Hassan.

Respondent: Commissioner of Customs (Appeals), Mumbai-III Awas  
Corporate Bldg. Marol Naka, Andheri East, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-328/19-20 dated 29.07.2019  
(issued on 13.08.2019) passed by the Commissioner of  
Customs (Appeals), Mumbai-III

**ORDER**

This Revision application has been filed by Shri Mehendi Hassan [herein referred to as the Applicant] against the Order-In-Appeal No. MUM-CUSTM-PAX-APP-328/19-20 dated 29.07.2019 (issued on 13.08.2019) passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that the officers of Air Intelligence Unit (AIU), Customs at CSI Airport Mumbai on 07.02.2018, intercepted the appellant passenger Mr. Mehendi Hassan, holding Indian Passport No. R-7718594 after he had cleared himself through green channel of Customs. The passenger had earlier arrived at CSI Airport, Mumbai from Riyadh by Flight No. 9W 523. Personal search of the appellant and detail examination of his baggage resulted into recovery of 02 gold bars totally weighing 232 from the shoes worn by him. The charges were orally communicated to the applicant by the Uniform Batch Officer and he requested to pass an order without the issuance of written SCN after giving him a chance for the hearing. The case was adjudicated by the Additional Commissioner vide Order in Original No. ADC/AK/ADIN/160/2018-19 dtd. 24.07.2018 wherein he absolutely confiscated the recovered 02 gold bars collectively weighing 232 gms and valued at Rs. 6,47,941/- under Section 111(d), (1) & (m) of Customs Act, 1962 and a penalty of Rs. 65,000/- under section 112(a) & (b) of the Customs Act, 1962 was also imposed on the applicant.

3. After due process of the law, the case was adjudicated by the Additional Commissioner vide Order in Original No. ADC/AK/ADIN/160/2018-19 dtd. 24.07.2018 wherein he absolutely confiscated the recovered 02 gold bars collectively weighing 232 gms and valued at Rs. 6,47,941/- under Section 111(d), (1) & (m) of Customs Act, 1962 and a penalty of Rs. 65,000/- under section 112(a) & (b) of the Customs Act, 1962 was also imposed on the applicant.. Penalty of Rs. 10,00,000/- each was imposed on the applicants under Section 112(a) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicant filed appeal with the Appellate Authority viz Commissioner (Appeals), who vide his order No. MUM-CUSTOM-PAX-APP-328/19-20 dated 29.07.2019 disposed of the appeals on grounds that the same were time barred as the Appeals were filed beyond period of 90 days from the date of communication of the order.

5. Aggrieved with the above order the Applicant has filed this revision Application on the following grounds of appeal;

- 5.1. that the Order passed by Adjudicating Authority and Commissioner Appeals is erroneous and justified without going into the submissions made by the applicant of the case;
- 5.2. that the Gold is neither prohibited goods nor restricted. The prohibited goods are well defined in Yakub Ibrahim Yusuf Vs Cc Mumbai 2011(263) ELT 685 (Tri-Mum).
- 5.3. that there was no delay in filing an appeal, the Order was received around the month of August.
- 5.4. The applicant has relied on the following case laws;
  - (a). Shaikh Jamal Basha Vs GOI 1997(91) ELT, 277 (AP);
  - (b). Shaikh Shahabuddin Vs Commissioner of Customs, Chennai 2001(137)ELT;
  - (c) Kadar Mydin Vs Commissioner of Customs (Prev) west Bengal 2001(136)ELT 754;
  - (d). Dhanak Madhusudan Ramji vs. CC (Airport) Mumbai 2009(237) ELT 280 (Tri-Mumbai) that jewellery and foreign currency were not prohibited items and only charge was non-declaration. Goods allowed to be redeemed on payment of fine and penalty;
  - (e). Vakil Moosa Vs Collector of Customs, Cochin, 1994(72) ELT 473 GOI;
  - (f). Order No. 426/04 issued vide FNo 380/57/B/2004-RA-Cus dated 21.09.2004;

(g). T Elvarasan vs CC (Airport), Chennai 2011 (266) ELT 167(Tri-Madras) Petitioner living abroad for more than 6 months allowed to bring 10 Kgs of gold. Gold not prohibited item. Case pertained to non-declaration. Goods allowed on payment of fine and penalty.

(h). etc.

5.7. The applicant has prayed that the OIO and OIA may be set aside; that the redemption fine be granted and opportunity be given to take the possession of gold; that to grant any other reliefs as deemed fit.

6.1. Personal hearings in the case were scheduled on 10.08.2022, 24.08.2022, 15.09.2022 and 22.09.2022. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records

6.2 Government has carefully gone through the relevant records available in the case files & written submissions and perused the impugned Order-in-Original and Order-in-Appeal and the Revision Application.

7.1. Government observes from impugned Order-In-Appeal 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 period of sixty days and also beyond the condonable period of 30 days thereafter i.e. actual date of filing appeals were after the expiry of 90 days from the date of communication of the OIO. Without going into the merits of the case, the Commissioner (Appeals) has held that he has no powers to entertain an appeal filed beyond the period of 90 days and rejected the appeal as time barred.

8.1. On the issue of time bar and the number of days available to file an appeal with the Appellate Authority and the powers vested with him, Government observes that it is imperative to understand the provisions of Section 128 of the Customs Act, 1962.

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

8.2. Appellate Authority has discussed the issue under para 5 of his Order. For the sake of clarity, the same is reproduced here,

*“I find from the Form C.A. 1 the date of communication of the order is mentioned as 24.07.2018 and the appeal has been filed on 16.11.2018. I find Section 128 provides that the appeal should be filed within 60 days from the date of communication of the Order. Section 128 further states 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. The Allahabad High Court in the matter of M/s Doaba Rolling Mills (P) Ltd -2004 (169) E.L.T. 258 (All.) has held that if the statute provides for a period of limitation, and further maximum period for which the delay can be condoned, the authority cannot extend the same. If the Legislature in its wisdom has fixed a maximum period for doing a particular thing, the authority is not competent to prescribe period beyond it. The power of the Appellate Authority has been restricted to condone the delay up to 30 days and any appeal preferred after this period, the delay is rightly not condonable. From the above it is clear that Commissioner (Appeals) has power to condone delay of only 30 days and appeals filed beyond the expiry of 30 days of condonable period, Commissioner (Appeals) is not empowered to condone delay in filing appeal. I find that the appeal has filed even beyond the condonable period of 30 days ie, beyond 90 days from the date of communication of order and hence not condonable under Section 128 of the Customs Act, 1962. As the impugned appeal is not maintainable on the time period prescribed for appeal, I have not gone into the merits of the appeals”.*

8.3. The Applicant has not controverted the fact of service of Order-In-Original and not produced any evidence of any other date. Government finds that they have merely submitted in their grounds of appeal that there is no delay in filing the appeal and that they had received in the Order **around the month of August** without giving any date. Even if they had received the Order in the month of August, the applicant had crossed the statutory time limit for filing appeal.

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.).

11. In the present case, by rejecting the appeals on the grounds of being time barred, Government notes that the appellate authority has passed a judicious and legal order. Government does not find sufficient ground to interfere in the same.

12. In view of above discussions, Government upholds the impugned Order in Appeal No. MUM-CUSTOM-PAX-APP-328/19-20 dated 29.07.2019 passed by the Appellate Authority, i.e. Commissioner Appeals, Mumbai-III and dismisses the instant revision application as being devoid of merit.

13. Accordingly, revision application is dismissed.

*Shrawan*  
23/11/22  
( SHRAWAN KUMAR )

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

ORDER NO. <sup>337</sup> /2022-CUS (SZ/WZ)/ASRA/MUMBAI DATED <sup>23</sup> .11.2022

To,

1. Shri. Mehendi Hassan, Niyajpura, Nai Mandi, Muzzafarnagar-400003.
2. The Commissioner of Customs, (Appeals), Mumbai-III, Awas Corporate Point, (5<sup>th</sup> Floor), Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai-400059

Copy to:

1. Ms. Shabana Pathan Advocate, Ekta Niwas, R.No.9, gala Nagar, Achole road, Nalasopara (E )401209.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.