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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. 371/431/B/WZ/2019-RA / 1683 Date of Issue : 21.03.2023

ORDER NO. 367/2023-CUS (WZ)/ASRA/MUMBAI DATED 17.03.2023
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.

Applicant : Shri. Abdul Khaleel Shaikh

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-1161/18-19 dated 28.02.2019
issued on 06.03.2019 through F.No. S/49-28/2017
passed by the Commissioner of Customs (Appeals),
Mumbai-III, Mumbai

ORDER

This revision application has been filed by Shri. Abdul Khaleel Shaikh (herein referred to as the Applicant) against the Order-in-Appeal Nos. MUM-CUSTOM-PAX-APP-1161/18-19 dated 28.02.2019 issued on 06.03.2019 through F.No. S/49-28/2017 passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai : 400 059.

2. Briefly stated, the facts of the case are that the applicant was intercepted at CSMI Airport, Mumbai by Customs Officers on 28.05.2015 after having cleared himself through the green channel. The Applicant had arrived at CSMI Airport, Mumbai onboard Saudi Airlines Flight No. SV 740. To the query put forth by the Officers whether he was carrying any dutiable / contraband goods in his baggage or person, Applicant had replied in the negative. Detailed search of his baggage resulted in the recovery of 20 FM gold bars of 10 tolas each which had been concealed inside the motor of 2 nos of wall fans and 1 vacuum cleaner of 'Geepas' brand found in his baggage. The said 20 FM gold bars of 10 tolas each collectively weighed 2320 grams and was valued at Rs. 59,37,205/-.

3. The Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/RR/ADJN/338/2016-17 dated 14.10.2016 issued through F.No. S/14-5-318/2015-16.ADJ (SD/INT/AIU/229/2015-AP'B) ordered for the absolute confiscation of the seized of the 20 (twenty) FM gold bars of 10 tolas each, totally weighing 2320 gms and valued at Rs. 59,37,205/- under Section 111 (d), (l) and (m) of the Customs Act, 1962. A personal penalty of

Rs. 6 lakhs under Section 112(a) and (b) of the Customs Act, 1962 was imposed on the applicant.

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-1161/18-19 dated 28.02.2019 issued on 06.03.2019 through F.No. S/49-28/2017 disposed of the appeal holding that he did not find any reason to interfere in the impugned OIO.

5. Aggrieved with the aforesaid order of the appellate authority, the applicant has 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 Application and have prayed for relief as under;.

- 5.1. the absolute confiscation be set aside,
- 5.2. the goods be released on duty, fine and penalty,
- 5.3. any other reliefs as deemed fit.

6. The applicants vide their application received on 10.09.2020 have filed an application for condonation of delay and have stated that the delay was due to COVID situation prevailing in the country. They have prayed that the delay be condoned and that they have an excellent case on merits.

7. A personal hearing in the case was scheduled for 10.08.2022, 24.08.2022, 12.12.2022. Shri. Prakash Shingrani, Advocate appeared on 12.12.2022 and submitted that gold is not a prohibited item. He further

submitted that in non-prohibited goods, redemption is mandatorily to be given under Section 125 of the Customs Act, 1962.

8. At the outset, the Government notes that the applicant has filed for condonation of delay. The Revision Application was filed on 22.10.2019. The date of communication of the Order of the appellate authority as informed by the applicant in the FORM CA-8 is 06.03.2019. Accordingly, the applicant was required to file the application by 04.06.2019 (i.e. taking the first 3 months into consideration) and by 02.09.2019 (i.e. taking into consideration a further extension period of 3 months available to an applicant). The revision application was filed on 22.10.2019 which is beyond the condonable period. There is an inordinate delay of over 7 months from the normal period. Government notes that even after considering the total period of 180 days (i.e. 3 months + 3 months), there is a delay of nearly of a further 50 days i.e. over 1 ½ months.

9. The applicant in his application for condonation of delay filed on 10.09.2020 has cited reasons due to the COVID situation prevailing in the country. Government notes that this is a mis-representation of facts. The restrictions due to COVID was imposed in the country only subsequent to 25.03.2020 and not prior to this date. Considering the extended period of 3 months, the last date available to the applicant for filing of the revision application was 02.09.2019. However, the revision application was filed on 22.10.2019 which was the last date available to the applicant and this date was much earlier to the COVID situation. The applicant has misrepresented facts, deliberately to somehow get a favourable order.

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 applicant was 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 notes that even after taking into consideration the extended period of 3 months as provided in Section 129DD, there is a delay of nearly 1 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. Further, the reason cited by the applicant for the delay is found to be false and a mis-representation of facts does not come to his rescue. The applicant should have made adequate and timely arrangement to plead his case. The law does not come to the aid of the tardy litigant. In the present case there is a delay of nearly 50 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 the extended condonable period of three months and not beyond that. Since, in the present case, the revision application has

been 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 period of three months.

16. Thus, without going into the merits of the case, the said revision application filed by the applicant stands dismissed as time barred.

Shrawan
17/3/23
(SHRAWAN KUMAR)

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

ORDER No. 367/2023-CUS (WZ/SZ) /ASRA/MUMBAI DATED

17. 03.2023.

To,

1. Shri. Abdul Khaleel Shaikh, Sheikh Ali House, Dhakani Mohalla, Manaki, Honavar, Karnataka, Pin : 581-348.
2. The Commissioner of Customs, Terminal - 2, Level - II, Chhatrapati Shivaji International Airport, Mumbai : 400 099.

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.