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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.NO. 371/160/B/WZ/2022-RA | ³⁷⁵ : Date of Issue : 13.12.22

ORDER NO. 375/2022-CUS (WZ)/ASRA/MUMBAI DATED 12.12.2022
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.

F.NO. 371/160/B/WZ/2022-RA

Applicant : Smt. MATKAWALA MUNIRA

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

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-1301/2021-22 dated 20.12.2021 passed
by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by the Smt. MATKAWALA MUNIRA (herein referred to as Applicant) against the Orders-in-Original Nos. (i). MUM-CUSTM-PAX-APP-1044/2021-22 dated 17.11.2021 issued through F.No. S/49-360/2021 and (ii). MUM-CUSTM-PAX-APP-1301/2021-22 dated 20.12.2021 issued through F.No. S/49-746/2021 both passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs, had intercepted the applicant at CSMI Airport, Mumbai on 10.05.2015 while she was clearing herself through the green channel. As suspicious images were seen in her baggage while screening it in the baggage screening machine, the same were examined which led to the recovery of 3 pieces of yellow coloured chain purported to be gold which had been wrapped in zip locks. Government Approved Valuer assayed these 3 pieces of yellow coloured chains and certified it to be gold of 24 karats, totally weighing 375 grams, having value of Rs. 10,75,781/-. Earlier, the applicant had arrived from Singapore onboard Jet Airways Flight No. 9W-0009 / 10.05.2018.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Addl. Commr. of Customs, CSMI Airport, Mumbai vide his Order-In-Original No. ADC/AK/ADJN/63/2019-20 dated 17.06.2019 ordered for the confiscation of the 3 pieces of gold chain, totally weighing 375 grams and valued at Rs. 10,75,781/-. However, option to redeem the same on payment of a redemption fine of Rs. 1,75,000/- under Section 125(1) of the Customs Act, 1962 was granted to the applicant alongwith applicable Customs Duty at the baggage rate and other charges as per Section 125(2) of the Customs Act, 1962.

Further, a personal penalty of Rs. 1,20,000/- under Section 112(a) and (b) of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide his Order-In-Appeal no. (i). MUM-CUSTOM-PAX-APP-1044/2021-22 dated 17.11.2021 issued through F.No. S/49-360/2021 dismissed the Appeal as not maintainable since it had been filed beyond the period of limitation prescribed under the provisions of the Customs Act, 1962.

5. It is gathered that the applicant vide their letters dated 19.08.2020 and 10.11.2020 had requested the respondents to release the gold as per the terms of the adjudication order. Thereafter, the applicant had on 09.02.2021 vide DDR Nos. DDR1013721 and DDR1013722 deposited the Customs duty, redemption fine and personal penalty. The Respondent vide their letter F.No. SD/INT/AIU/UNI/214/2018-AP'B' dated 26.02.2021 informed that since the applicant had not paid the redemption fine within 120 days of the option having been granted, the seized goods could not be released as option to redeem the goods had become void. The applicant was advised to file refund appeal for the amounts paid by them.

6. Aggrieved with this order, the applicant filed an appeal with the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide his Order-In-Appeal no. (ii). MUM-CUSTOM-PAX-APP-1301/2021-22 dated 20.12.2021 issued through F.No. S/49-746/2021, rejected the appeal as the RF had been paid by the applicant beyond the period of 180 days as stipulated in Section 125(3) of the Customs Act, 1962 observing that no appeal was pending at the relevant time.

7. Aggrieved with this order, the applicant has filed a revision application on the following grounds;

- 7.01. that the decision of the respondent was unlawful and unjust.
- 7.02. that the OAA vide his OIO no. ADC/AK/ADJN/63/2019-20 dated 17.06.2019 had allowed the release of the gold upon payment of redemption fine under Section 125(1) of the Customs Act, 1962.
- 7.03. that the OIO was silent on Section 125 (3) the Customs Act, 1962 and nowhere in the OIO, the option of redemption is required to be exercised with 120 days was ever mentioned.
- 7.04. that the redemption fine had been paid as per provisions of Section 125 (1) the Customs Act, 1962 and Customs and other charges as per the provision of Section 125 (2) of the Customs Act, 1962
- 7.05. that the Applicant was an old uneducated lady and was unaware of the Customs rules and regulations.
- 7.06. that all government dues had been paid on 09/2/2021 and after payment of all dues, the respondent had issued letter stating that the seized goods cannot be released.

Under the circumstance, the applicant has prayed to the revision authority to set aside the decision of the respondent and the gold may be released or to pass any other order as deemed fit.

8. Personal hearings in the case through the online video conference module was scheduled for 25.05.2022. Shri. N.J Heera, Advocate appeared for personal hearing and submitted that applicant has paid duty, fine, penalty and warehousing charges as per the OIO, however, goods have not been released on the grounds of Section 125(3) of the Customs Act, 1962. He further submitted that neither OIO nor any other communication informed them about such requirement. He pleaded that it is grossly unfair to applicant to not release the goods once OIO has been fully complied with. He requested to uphold OIO and render justice.

9. Government notes that in their revision application, the applicant had appended a copy of the Refund Order Mo. AC/REFUND/136-R/2021-22 dated 31.01.2022 issued on 03.02.2022 through AirCus/39-R/Misc-91/2021-22 passed by the Asstt. Commr. of Customs (Refunds), CRC, CSMIA, Mumbai

wherein an amount of Rs. 6,14,719/- has been refunded back to the applicant on a refund application made by them. An amount of Rs. 1,20,000/- towards personal penalty in terms of the OIO no. ADC/AK/ADJN/63/2019-20 dated 17.06.2019 had been retained by the respondent.

10. Government has gone through the facts of the case, submitted by the applicant. In the revision application in FORM no. CA-8, the applicant has referred to the above mentioned two OIAs dated 17.11.2021 and 20.12.2021 resp. However, the Government notes that only Rs. 1000/- under Section 129E of the Customs Act, 1962 has been tendered by the applicant. Nevertheless, in the interest of natural justice, the revision authority is taking up this application for a common decision.

11. Pertaining to Order-In-Appeal no. (i). MUM-CUSTOM-PAX-APP-1044 /2021-22 dated 17.11.2021 issued through F.No. S/49-360/2021 passed by A.A, Government notes that following ;

11.01. The AA has observed that applicant claimed that the OIO dated 17.06.2019 was received by them on 27.06.2019, while the appeal against the same had been filed on 23.02.2021 i.e. after a lapse of 607 days.(nearly 1 year + 8 months).

11.02. Government observes from impugned OIA dated 17.11.2021 that the Commissioner (Appeals) has taken into consideration the provisions of Section 128 of the Customs Act, 1962 and 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. 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.

11.03. In this regard, it is pertinent to mention the provisions of Section 128 of the Customs Act, 1962 which provides for appeal to Commissioner (Appeals) and 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.”

11.04. 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 and settled 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.”

11.05. 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.

11.06. In view of above discussions, Government upholds the impugned Order in Appeal No. (i). MUM-CUSTOM-PAX-APP-1044 /2021-22 dated 17.11.2021 issued through F.No. S/49-360/2021 passed by A.A i.e. Commissioner of Customs (Appeals), Mumbai-III.

12. Pertaining to Order-In-Appeal no. ii). MUM-CUSTOM-PAX-APP-1301/2021-22 dated 20.12.2021 issued through F.No. S/49-746/2021 passed by A.A, Government notes the following;

12.01. The Section 125 of the Customs Act, 1962 is reproduced below;

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods ¹ [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

² [Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed]:

Provided further that] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

⁴ [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section

(1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

⁵[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation .-*For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]*

11.02. A plain perusal of the provision of Section 125(3) of the Customs Act, 1962 indicates that the same comes into effect in tandem with sub-section (1). i.e when sub-section (1) is allowed, it goes without saying that the payment of the redemption fine is required to be availed within a period of 120 days from the option having been granted. Section 125(3) is a subset of Section 125 and the option to pay fine in lieu of confiscation is available under Section 125 of the Customs Act, 1962.

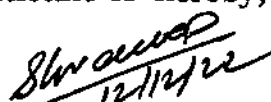
11.03. Besides, it is seen that the appeal had been filed much later i.e. after a lapse of nearly 1 year and 8 months whereas, the applicant was required to pay the redemption fine within 120 days.

11.04. The applicant should have made adequate and timely arrangement to avail the redemption of the seized gold. The law does not come to the aid of the indolent, tardy litigant. It is the bounden duty of the one seeking relief to avail the relief granted under the law within the specified time limit. The applicant has himself to blame. The statutory requirement to avail the redemption is 120 days and the respondent has rightly rejected the claim made

by the applicant. The refund of the amount paid too has been granted to the applicant. Government notes that the applicant had approached the respondent for redemption of the gold in terms of the OIO dated 17.06.2019 much beyond the period of 120 days and had exceeded the threshold period stipulated in the law. Government finds that the respondent has rightly denied the applicant to redeem the seized gold.

13. For the aforesaid reason, the revision application fails on both the issues.

14. Accordingly, the revision application filed by the applicant is hereby, dismissed.


(SHRAWAN KUMAR)

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

ORDER No. 375/2022-CUS (WZ)/ASRA/MUMBAI DATED: 12.12.2022

To,

1. Smt. MATKAWALA MUNIRA, 54, Sneh Vihar Colony, Khatiwal Tank, Malak Hall, Indore, M.P-452 014.
2. The Pr. Commissioner of Customs, CSMI Airport, T-2, Level-II, Sahar, Andheri (East), Mumbai 400 099.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwala Building, Groud Floor, 41, Mint Road, Opp. G.P.O., Fort, Mumbai – 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy,
4. Notice Board.