

371/04/B/15-RA

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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 371/04/B/15-RA/5495

Date of Issue 27/11/19

ORDER NO. 13/2019-CUS (SZ)/ASRA/MUMBAI DATED .10.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Saeed Ahmed Mohammed Ali

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

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-531-532/13-14 dated 20.01.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Saeed Ahmed Mohammed Ali (herein referred to as Applicant) against the order No. MUM- CUSTM-PAX-APP-531-532/13-14 dated 20.01.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the applicant, was intercepted at the CSI Airport, Mumbai on 14.06.2012. Examination of his baggage and person resulted in the recovery of Rs. 2,50,000/- Indian currency (Rupees Two lakhs).

3. After due process of the law vide Order-In-Original No. AirCus/49/MII/ETC/7037/2012 dated 14.06.2012 the Original Adjudicating Authority ordered absolute confiscation under Section 113 (d) of the Customs Act, 1962 read with Foreign Exchange Management ( Export and Import of currency ) Regulations, 2015 and imposed a penalty of Rs. 25,000/- ( Rupees Twenty Five thousand) under Section 114 of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM- CUSTM-PAX-APP-531-532/13-14 dated 20.01.2014 set aside the absolute confiscation of the currency allowed redemption of the currency on payment of Rs. 80,000/- as redemption fine and allowed the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application alongwith an application for the condonation of delay of interalia on the grounds that;

5.1 The Applicant has submitted that they filed an appeal before CESTAT under the belief that the issue involved is of imposition of penalty and they were made aware only on 17.12.2014 at the time of hearing that a Revision Application should have been filed before the Government Of India; After receiving the Appellate order dated 20.01.2014 an appeal was filed before CESTAT on

26.03.2014. After orders of CESTAT a Revision Application has been filed on 22.12.2014.

5.2 The order of the Commissioner (Appeals) is non-speaking and deserves to be set aside; The redemption fine is excessive looking to the circumstances of the case; The act of not taking permission of RBI is a procedural infraction and there was no intention of defraud the revenue; The Applicant was visiting a foreign place and was not aware of the rules; For the imposition of penalty mensrea is mandatory and in its absence imposition of penalty is unjustified; In the instant proceedings none of the acts were backed up with any ulterior motive.

5.3 The Revision Applicant cited assorted judgments in support of his case.

6. A personal hearing in the case was scheduled on 28.08.2019, 17.09.2019 and 04.10.2019. The department respondents attended the hearing on 28.08.2019 reiterated their submissions that the passengers are not allowed to carry more than Rs. 7,500/- whereas the Applicant was carrying Rs. 2,50,000/- Nobody attended the hearing on behalf of the Applicant.

7. Before going into the merits of the case, the government observes that the Revision Application has been filed after a delay of 336 days. The Applicant in his application for condonation of delay dated 17.07.2014 has submitted that they had mistakenly filed an Appeal before the Hon'ble CESTAT well within time, and on the date of their hearing on date 17.12.2014 he was informed that they had approached the wrong forum and was directed to file a Revision Application by CESTAT. Accordingly he has filed this Revision Application, submitting that he will submit the CESTAT order at the time of hearing. However it is noted that he has not attended any of the scheduled hearings till date and has not furnished any such order. Under the circumstances, the law does not permit the Government to condone the delay beyond 90 days.

8. A similar 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 Hon'ble Court has interalia held that the period up to which the prayer for condonation can be accepted is statutorily provided, and there was no power to condone the delay after the

expiry of the said period. The delay in filing the instant Revision Application by 336 days, therefore cannot be condoned on any grounds.

9. The Application for Condonation of delay is therefore dismissed and instant Revision Application is also dismissed on same grounds.

10. So, ordered.

  
( SEEMA ARORA )

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

ORDER No. 43/2019-CUS (SZ) /ASRA/

DATED 15.11.2019

To,

Shri Saeed Ahmed Mohammed Ali, 130/04, Sideshwar Peth,  
Solapur - 413 003.

Copy to:

1. The Commissioner of Customs, C.S. International Airport, Mumbai.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.