

REGISTERED
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. 371/84/B/WZ/2022-RA / 461 : Date of Issue 18.01.2024

ORDER NO. 43/2024-CUS (WZ) /ASRA/MUMBAI DATED 17.01.2024 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. 371/84/B/WZ/2022-RA

Applicant . Shri. Kalluri Srinivas

Respondent : Pr. Commissioner of Customs, Nagpur, 81, GST Bhavan, Telanghedi Road, Nagpur – 440 001.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MKR/117/CUS/NGP/2020-21 dated 18.02.2021 issued through F.No. V(2)271-CUS/NGP/APPL/2020-21 passed by the Commissioner (Appeals), Customs, C. Excise & GST, Nagpur.

ORDER

This revision application has been filed by Shri. Kalluri Srinivas (herein referred to as Applicant) against the Order-in-Appeal No. MKR/117/CUS/NGP/2020-21 dated 18.02.2021 issued through F.No. V(2)271-CUS/NGP/APPL/2020-21 passed by the Commissioner (Appeals), Customs, C.Excise & GST, Nagpur.

2. Brief facts of the case are that on 18.06.2019, the applicant was intercepted by Customs Officers of the Dr. Babasaheb Ambedkar International Airport, Nagpur after he had passed through the green channel at the Customs arrival Hall. The applicant had arrived from Sharjah onboard Air Arabia Flight No. G9-416 and to the query whether he was carrying any gold etc, had replied in the affirmative and disclosed that he was carrying gold in a specially made cavity in the zip line of the trouser and in a zipped pocket in underwear. 6 (six) yellow metal biscuits were recovered from his possession. The Assayer confirmed that the six metal pieces were of gold, of 24 KT purity, totally weighing 392.930 grams and valued at Rs. 11,87,827, tariff value.

3. After due process of investigations and the law, the Original Adjudicating Authority (OAA) i.e. the Jt. Commissioner of Customs, Nagpur, vide Order-In-Original No. ADC/08/HCV/JC/CUS/2019 dated 03.02.2020 ordered for the absolute confiscation of the gold weighing 392.930 grams, valued at Rs. 11,87,827/- under Section 111 (d), (i), (j), (l) and (m) of the Customs Act, 1962. A penalty of Rs. 7,00,000/- was imposed on the applicant under Section 112 (a) and (b) of the Customs Act, 1962. Further, a penalty of Rs. 5,00,000/- was also imposed on the applicant under Section 114AA of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority (AA) i.e. Commissioner (Appeals), Customs, C.Excise & GST, Nagpur, who vide Order-in-Appeal No. MKR/117/CUS/NGP/2020-21 dated 18.02.2021 issued through F.No. V(2)271-CUS/NGP/APPL/2020-21 modified the OIO no. 08/HCV/JC/CUS/2019 dated 03.02.2020 passed by the Jt. Commr. of Customs, Nagpur and (i). granted the applicant an option to redeem the impugned gold weighing 392.930 grams by paying a redemption fine of Rs. 5,00,000/- under Section 125(1) of the Customs Act, 1962 with payment of appropriate Customs duty; (ii). reduced the penalty to Rs. 2,00,000/- imposed under Section 112(a) & (b) of the Customs Act, 1962 and (iii). further reduced the penalty to Rs. 3,00,000/- imposed under Section 114AA of the Customs Act, 1962.

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

- 5.01. that the OIA passed by the OAA was improper and incorrect;
- 5.02. that in the statement of facts they have mentioned a host of case laws; that he was willing to pay the customs duty, fine and penalty;
- 5.03. that the penalty imposed under Section 112(a) and (b) of the Customs Act, 1962 in the OIA was harsh and the same may be reduced;
- 5.04. that imposition of penalty under Section 114AA of the Customs Act, 1962 was incorrect; they rely on the case of Zainuddin vs. Commr. of C.Ex. & Customs & S.T, Hyderabad – II, reported in ELT i.e. 2015-330-ELT-697-Tri-Bang;
- 5.05. that in the OIA, the present value of the seized gold was considered and the seizure value was rejected which is incorrect; that the seizure value of the gold has to be taken into consideration;
- 5.06. that he had brought the gold for the first time and did not understand the nuances of the Customs Act, 1962; that he has requested to condone the mistake of non-declaration of the goods;

Under the aforesaid circumstances of the case, the applicant has prayed to the revisionary authority to set aside the OIA passed by the AA and to reduce the fines and penalties imposed on him which are very high.

6. Applicant has filed an application for condonation of delay. The delay has been attributed to Covid-19 pandemic since he resides at Telagana.

7. Personal hearing in the case was scheduled for 10.08.2023, 24.08.2023, 04.10.2023, 11.10.2023. None turned up on behalf of the Applicant / Respondent for the personal hearing. Sufficient opportunities have been given to the applicant / respondent Therefore, the case is being taken up for a decision, ex-parte, on the basis of evidence available on the records.

8. On the issue of condonation of delay, Government notes that the OIA is dated 18.02.2021. In the FORM CA-8, the column pertaining to "date of communication of the order appealed against" has been left 'blank' by the applicant. In any case, Government notes that during the appealable period, due to the Covid pandemic, the Apex Court had granted a moratorium for filing appeals etc. This moratorium was from 15.03.2020 to 28.02.2022 [Misc. Appln. No. 21/2022]. The applicant has filed the Revision Application on 22.02.2022. Government notes that the impugned OIA and the revision application were during the period when the moratorium was in effect. Government finds that there is no delay in filing the revision application and the same has been filed within time.

9. At the outset, Government notes that the applicant while filing the revision application had not supplied (i) copy of OIO and (ii). the copy of the TR-6 challan evidencing that he had paid the fee of Rs. 1,000/- to the O/o. Revisionary Authority. Accordingly, the office of the revision authority had issued a letter of even no. dated 10.03.2022, calling upon the applicant to furnish the documentary evidence that the fees of Rs. 1000/- was paid by him in terms of Section 129DD of the Customs Act, 1962. This said letter, was copied to the applicant as well as his Advocate on record. However, the applicant failed to respond and submit the TR-6 challan and show that he had paid the fee or not. Later, in the personal hearing intimation letter dated 21.09.2023 also, at para 4(ii), the applicant was requested to submit the TR-6 challan as evidence of payment of the fees. However, the applicant has not furnished the TR-6 challan evidencing that he has paid the fees.

10. The Government has examined the matter and at the outset, itself, it is observed that the revision application dated 22.02.2022 was not accompanied by a fee of Rs. 1000/- which was required to be paid in the case in terms of Section 129DD(3) of the Customs Act, 1962. As per this Section, a fee of Rs. 1000/- is mandatorily to be paid while filing the revision application in those cases where the amount of duty and interest demanded, fine or penalty imposed by an Officer of Customs exceeds Rs. 1,00,000/-. Since in this case the amount of penalty is undisputedly above Rs. 1,00,000/-, a fee of Rs. 1000/- was required to be paid alongwith the filing of the revision application. But as no fee has been paid, as a consequence, this revision application filed by the applicant cannot be considered to have been filed properly. The payment of the fees of Rs.

1000/- has been mandated in the statute itself, and no such power to condone this fee has been vested with the authority. In the said situation, the instant revision application filed by the applicant cannot be considered and deserves to be rejected

11. Accordingly, for the above given reason, the revision application is rejected as non-maintainable.

Shrawan Kumar
17/11/24
(SHRAWAN KUMAR)

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

ORDER No. 43/2024-CUS (WZ) /ASRA/ **DATED 17.01.2024**

To,

1. Shri. Kalluri Srinivas, H. No. 1-60, Chittapur, Mallapur, Jagityal, Telangana - 506 331.
2. Pr. Commissioner of Customs, Nagpur, 81, GST Bhavan, Telangkhedi Road, Nagpur - 440 001.

Copy to:

1. Shri. M Ramesh Babu, Advocate, Opp. RGIA Police Station Ground, Kothwalguda Road, Post Shamshabad, Village & Mandal Ranga Reddy Dist., Telangana - 501 218.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.