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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. 371/28/B/WZ/2021-RA/6564** : **Date of Issue : 06.09.2023**

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ORDER NO. 635/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.08.2023 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.

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Applicant : Mr. Harish Milkiram Shingrani

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-549/2020-21 dated 26.11.2020 [Date of issue: 11.12.2020] [F. No. S/49-1067/2019] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

**ORDER**

The Revision Application has been filed by Mr. Harish Milkiram Shingrani (herein referred to as the 'Applicant') against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-549/2020-21 dated 26.11.2020 [Date of issue: 11.12.2020] [F. No. S/49-1067/2019] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III

2. Brief facts of the case are that on 12.11.2019, the officers of Air Customs, Chhatrapati Shivaji International Airport, Mumbai, intercepted the Applicant, an Indian national, who had arrived by Flight No. OD-215 from Jakarta, after a stay of 03 days abroad, after he had opted to clear himself through the Customs green channel. The personal search of the Applicant led to the recovery of one crude gold chain weighing 100 grams, one crude gold bangle weighing 60 grams and one crude gold ring weighing 20 grams and collectively valued at Rs. 6,22,080/-.

3. The case was adjudicated after waiver of show cause notice and the Original Adjudicating Authority (OAA) i.e. Assistant/Deputy Commissioner of Customs, CSI Airport, Mumbai, vide Order-in-Original No. Air Cus/T2/49/320/2019/UNI-A dated 13.11.2019 ordered the absolute confiscation of the one crude gold chain weighing 100 grams, one crude gold bangle weighing 60 grams and one crude gold ring weighing 20 grams and collectively valued at Rs. 6,22,080/- under Section 111 (d) of the Customs Act, 1962. A penalty of Rs. 30,000/- was imposed on the Applicant under Section 112 of the Customs Act, 1962.

4. Aggrieved by the Order, the Applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai Zone-III who vide Order-in-Appeal No. MUM-CUSTM-PAX-APP-549/2020-21 dated 26.11.2020 [Date of issue: 11.12.2020] [F. No. S/49-1067/2019] rejected the appeal without going into the merits on the grounds that the appeal was not



maintainable as it was filed with payment less than mandatorily required under Section 129E of the Customs Act, 1962 upheld the order passed by the OAA.

5. Aggrieved with the above order of the Appellate Authority, the Applicant has filed this revision application on the following grounds:

5.01. Gold is not 'prohibited goods' but only a 'restricted goods' and is not liable for absolute confiscation. Import of gold is no longer prohibited and therefore it is the duty of the adjudicating authority, if he is of the view that it is liable to confiscation, to permit its redemption on appropriate fine. That if the goods are restricted to import, the Government fixes some sort of barrier to import and the importer has to overcome such procedures which have to be completed. That restriction to import any goods is decided by the government under foreign trade policy amended from time to time.

5.02. That Gold is not a prohibited item for import and Section 125 of the Custom Act, 1962 provides that option of redemption can be given in case the seized goods are not prohibited and therefore absolute confiscation is not warranted in the instant case. Section 125 of the Customs Act, 1962 provides that the goods should be redeemed to the owner of the goods or the person from whose possession the goods were seized if the owner is not known. Further authority has discretion to order release of prohibited goods on payment of fine in lieu of confiscation. The Applicant has relied upon the undermentioned case laws;

- (i) Commr. Of Customs (Prev) vs. India Sales International [2009 (241) E.L.T. 182(Cal)].
- (ii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (iii) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai [2010(53) ELT A 52(SC)]
- (iv) Union of India vs. Dhanak M. Ramji [2003 (248) E.L.T. 128 (Bom.)]

- (v) Horizon Ferro Alloys Pvt Ltd vs. UOI –judgement by the Division Bench of Punjab and Haryana High Court.

5.03. That Section 125 of the Customs Act, 1962 vests the power to grant redemption of confiscated goods and it is seen that Section 125 divides the goods in two categories, one category relates to goods which are prohibited and the second category deals with all other goods. That the distinction between the categories is made on the basis of offences allegedly committed in the matter and in the second category the goods have to be invariably redeemed by giving an option to the person concerned to get the same redeemed by paying the redemption fine and in the case of the first category the adjudicating authority is given discretion to either absolutely confiscate the goods or allow redemption. The Applicant has relied on the following case laws in support of their contention:

- (i) Chellani Mukesh [2012(276) ELT 129 (GOI)]
- (ii) Suresh Kumar Agarwal vs Collector of Customs [1998 (103) ELT 18(AP)]
- (iii) Bhargav Patel vs CC, Mumbai [Appeals NO C/381/10] [2015-TIOL - 1951-CESTAT-Mum] and cases relied upon
- (iv) Sujahi vs. Commr. of Customs, Meenambakkam Airport [Order No 39/14-Cus]

5.04. That there are no specific guidelines demarcating the cases where absolute confiscation should be ordered in similar cases and in such situation the judicial precedence alongwith the overall circumstances of the case are taken into account for adjudging the matter and that in the instant case there are no enough grounds for absolute confiscation of the gold. Reliance has been placed on the following cases:

- (i) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (ii) Dhanak Ramji vs. CC (Airport), Mumbai [2009(237) (E.L.T 280 (Tri-Mm)]
- (iii) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].
- (iv) Mohd Zia Ul Haque vs. Addl. Commissioner of Customs, Hyderabad [2014(214) E.L.T 849 (GOI)]
- (v) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.LT. 487 (Mad.)]
- (vi) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.LT. 685 (Tri-Mumbai)]



- (vii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (viii) Mohamed Ahmed Manu vs Commr. of Customs Chennai [2006(205) ELT) 383 (Tri-Chennai)]

5.05. That the intention behind the provisions of Section 125 of CA, 1962 is clear that import of goods such as arms, ammunition, addictive substances viz, drugs which would cause danger to healthy, welfare, morals of people as a whole cannot be allowed under any circumstances and such goods have to be confiscated absolutely but gold is no of that kind.

5.06 That the settled legal position with regards to vesting of discretion is as per the following cases:

- (i) Commr of Cus, Delhi IV vs. Achiever International [2012(286) ELT 180(Del)]
- (ii) Shri Rama Sugar Industries Ltd vs. State of AP [(1974) 1SCC 534]
- (iii) Rajaram Bohr vs, UOI [2015(322) ELT 337 (Cal)]

5.07. That there are a series of judgements where redemption of absolutely confiscated goods are allowed and what transpires from the various judgements is that gold brought by a passenger and not declared to avoid payment of duty, the option of redemption under Section 125 of the CA, 1962 can be exercised to secure ends of justice

- (i) Hargovind Das K. Joshi vs. Collector of customs [1992 (61) ELT 172(SC)]
- (ii) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (SC)]
- (iii) Gauri Enterprises vs. CC, Pune [2002 (145) ELT (705) (Tri Bangalore)]
- (iv) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (v) VP Hameed vs. Collector of Customs Mumbai 1994(73) ELT 425 (Tri)
- (vi) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (vii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (viii) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]

- (ix) Kadar Mydin vs. Comnmissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (x) Vatakkal Moosa vs. Collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xi) Halithu Ibrahim vs. CC [2002-TIOL 195 CESTAT-MAD]
- (xii) Krishnakumari vs. CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xiii) S.Rajagopal vs. CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xiv) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]

5.08. That under the doctrine of stare decisis, a lower court should honour findings of law made by the higher court that is within the appeals path of case the court hears and precedent is a legal principle or rule that is created by a court decision. This decision becomes an example, or authority for judges deciding similar issues later. That while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind;

5.09. That the Applicant is the owner of the gold jewellery under absolute confiscation and gold is not a prohibited item but is a restricted item and consequently the person from whom it is recovered or the owner of the goods is entitled for release of the seized material under Section 125 of the Customs Act, 1962 and import of gold is subject to conditions. The Applicant has relied on the following case laws:

- (i) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (ii) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (iii) Hargovind Das K. Joshi vs. Collector of customs [1992 (61) ELT 172(SC)]
- (iv) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (SC)]
- (v) Gauri Enterprises vs. CC, Pune [2002 (145) ELT (705) (Tri Bangalore)]
- (vi) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (vii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]



- (viii) V.P. Hameed vs. Collector of Customs Mumbai 1994(73) ELT 425 (Tri)
- (ix) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (x) Kadar Mydin vs. Comnmissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (xi) Sapna Sanjeeva Kolhi vs. Commissioner of Customs, Airport, Mumbai
- (xii) Vatakkal Moosa vs. Collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xiii) Halithu Ibrahim vs. CC [2002-TIOL 195 CESTAT-MAD]
- (xiv) Krishnakumari vs. CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xv) S.Rajagopal vs. CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xvi) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]
- (xvii) Union of India vs. Dhanak M. Ramji [2009 (248) E.L.T. 127 (Bom.)]
- (xviii) Peringatil Hamza vs. CC (Airport), Mumbai [2014 (309) ELT 259 (Tri Mumbai)]
- (xix) R. Mohandas vs. CC, Cochin [2016 (336) ELT 399 (Ker)]
- (xx) A Rajkumari vs. Commr. of Customs (Airport-Air cargo) Chennai [2015(321) E.L.T. 540].
- (xxi) Shaik Mastani Bi vs. CC, Chennai [2017(345) E.L.T 201( Mad)]
- (xxii) Bhargav Patel vs. CC, Mumbai [Appeals NO C/381/10]
- (xxiii) Gauri Enterprises vs. CC, Pune [2002(145) E.L.T 705 (Tri-Bang)]
- (xxiv) Om Prakash Bhatia vs. Commr. Of Customs Delhi [2003(155) E.L.T.423(SC)]
- (xxv) Etc

5.10. That finally the Applicant submitted that it was a single and solitary incident of an alleged act of smuggling of goods which can never be justifiable ground for absolute confiscation invoking the provisions of Section 111 of the Customs Act, 1962 and the act of the Applicant cannot be termed as organized crime or manifesting of an organized smuggling activity and the test in such a case is to see whether the act is such that it gives rise to any inference that the Applicant was a habitual offender. That the Applicant did not commit any

act of omission or commission which can be termed as a crime and the case fails the test.

5.11. That the Applicant is from a respectable family and law abiding citizen and has never come under any adverse remarks

Under the circumstances, the Applicant prayed that the gold jewellery under absolute confiscation may be ordered to be released on payment of a reasonable fine and penalty and drop further proceedings.

6. The Respondent-department, vide letter dated 28.04.2021 filed their written submissions to the revision application. The Respondent-department prayed that the appeal filed by the Applicant be rejected and the OIA passed by the Appellate Authority be upheld, on the following grounds:

6.01. That the Applicant did not declare the gold on his own and the gold was detected only after he had cleared himself through the Customs green channel and was intercepted by the officers of Customs;

6.02. That had the Applicant had not filed any declaration and had he not been intercepted, he would have made good with the gold;

6.03. That the offence was committed in a premeditated manner which clearly indicates mensrea and the Applicant had deliberately not declared the gold to Customs in order to evade customs duty;

6.04. That the Applicant admitted to possession, non-declaration, carriage and recovery of seized gold and was attempted to be cleared without having been declared before customs, and when offending goods are seized along with inculpatory statement, the statement has to be relied upon as decided in *Surjeet Singh Chhabra vs. UOI* [1997(89) ELT 646(SC)] and *K. I. Pavunny vs. Asstt. Collector (HQ), C.Ex, Cochin* [1997(90) ELT 241 SC]

6.05. The Respondent-department relied upon the following case laws and circulars in support of their contention:

- (i) *Abdul Razak vs UOI* [2012(275) E.L.T 300(Ker) (DB)]



- (ii) Decision of the Hon'ble Madras High Court in the case of CC (Air) vs. P Sinnasamy.
- (iii) Om Prakash Bhatia vs. CC, Delhi [(2003)6 SC 161]
- (iv) Baburaya Narayan Nayak vs. CC, Bangalore [2018(364) E.L.T 811 (Tri-Bang)]
- (v) Board's Circular No 495/5/92-Cus.VI dated 10.05.1993

7. Personal hearing in the case was scheduled for 11.07.2023. Shri Prakash Shingrani, Advocate appeared for the personal hearing on the scheduled date on behalf of the Applicant. He submitted that since the gold was absolutely confiscated therefore there was no need for pre-deposit for filing appeal. He further submitted that still the Applicant deposited certain amount though it was not 7.5%. He requested 15 days to pay the balance amount.

7.1. The Advocate for the Applicant, vide letter dated 26.07.2023, submitted that on directions to pay the balance amount of pre-deposit, the same was paid and enclosed the copy of the challan as proof of payment.

8. Government has gone through the facts of the case. At the outset, Government observes that the AA had rejected the appeal filed by the Applicant on grounds of non-maintainability as they had partially deposited the 7.5% of the penalty amount imposed by the OAA.

8.1. At para 2 of the OIA, the AA has observed as follows,

*"2. I have carefully gone through the facts of the case and appeal filed by the appellant. I find that the appellant has paid only Rs.1000/- vide Challan No. 138/D on 19.11.2019 whereas the penalty imposed vide impugned order was Rs. 30,000/- and thus appellant was suppose to pay/ deposit {7.5% of penalty imposed (Rs, 30,000/-) =} Rs. 2250/- in terms of section 129E of the Customs Act, 1962. Thus he has paid pre-deposit less by Rs. 1250/- in terms of section 129 E ibid and thus failed to deposit 7.5% of the amount demanded/penalty imposed while filing the appeal against the impugned order-in-original which is mandatory in terms of the provisions of the Section 129E of the Customs Act, 1962. Before going into the merits of the case, I reproduce the said Section for clarity which is as under:*

*"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal:*

- (i) *under sub-section (1) of Section 128, unless the appellant has deposited seven and half percent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of decision or an order passed by an officer of Customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs.*

*In view of the position stated above, I find that as the appellant has failed to deposit 7.5% of the amount of penalty imposed vide impugned order, the present appeal is liable for rejection.*

*3. As impugned appeal was found to be defective ab-initio, appellant and his advocate, vide Defective Appeals- Notice dated 03.11.2020, was requested to submit proof of mandatory deposit of 7.5% of duty/penalty within 15 days. However, they failed to submit any reply to the said Defective Appeal- Notice, till date."*

8.2. Government notes that the A.A had issued the defective appeal notice (dated 03.11.2020) to the Applicant, but the Applicant had neither replied to the defective appeal notice nor paid the requisite amount of pre-deposit in full. Thereafter, the matter was taken up by the Appellate Authority and having found out that the pre-deposit amount had not been paid in full, the appeal was rejected without going into the merits of the appeal as the same was non maintainable on account of failure of the Applicant to pay the pre-deposit amount prescribed for appeal under Section 129E of the customs Act, 1962.

8.3 Government notes that while rejecting the appeal filed by the Applicant, the AA has applied the ratio of the judgement in the case of State of Jharkand vs. Ambay Cements [2004(178) ELT 55(SC) and Eagle Flask Industries Ltd vs. CCE, Pune [2004(171) ELT 296(SC).

9.1. Government notes that the Hon'ble Gujarat High Court in the case of Ramesh Bhojani vs. U.O.I reported in 2017-TIOL-990-HC-AHM-CUS, has at Para 14 of the judgement, discussed the issue of dealing with appeals filed without making the mandatory pre-deposit. Para 14 of the case law is reproduced as under:



*“14. From the language employed in section 129E of the Act, it is evident that the same mandates that the appeal shall not be entertained unless the pre-deposit is made. Filing of an appeal and entertaining of an appeal are not synonymous. A party may file an appeal within the prescribed period of limitation though it may not be in a position to make the pre-deposit within such time. Considering the fact that the Commissioner (Appeals) has no power to condone the delay beyond a period of thirty days, an appeal, even when there is a delay, has to be filed within a period of ninety days from the date of receipt of the order-in-original, it may be that a party may not be in a position to arrange for the amount of pre-deposit within such period. However, that by itself, should not be a ground to totally non-suit such party, more so, when what the statute provides is that the appeal shall not be entertained unless such pre-deposit is made. As held by the Supreme Court in the above referred decision, a condition to entertain an appeal does not mean that the memorandum of appeal shall be returned because of such non-compliance pertaining to predeposit and that the only consequence is that the appeal shall not be entertained, which means the appeal shall not be considered on merits and eventually has to be dismissed on that ground. Therefore, while the Commissioner (Appeals) cannot entertain an appeal, namely, hear and decide it unless the pre-deposit is made, he cannot insist upon payment of predeposit as a condition precedent for filing an appeal.”*

9.2. Government notes that the AA had not returned back the memorandum of appeal for non-compliance but in fact had pointed out the deficiency and had sent a communication to the Applicant that the amount paid towards pre-deposit was less than the pre-deposit @ 7.5% of the quantum of penalty and to comply with the provisions of Section 129E of the Customs Act, 1962.

9.3. In this regard, para 5 of the judgement of the Hon’ble Apex Court dated 03.09.2013 in the Civil Appeal No 7809 of 2013 ( Arising out of SLP (C)No. 27073/2011) in Ranjit Impex vs. Appellate Dy. Commissioner and Anr pertaining is reproduced below:

*“5. As far as the first issue is concerned, it is needless to say that the conclusion arrived at by the Division Bench is absolutely justified, for a condition to entertain an appeal does not mean that the Memorandum of Appeal shall be returned because of such non-compliance pertaining to pre-deposit. The only consequences that the appeal shall not be entertained which*



*means the appeal shall not be considered on merits and eventually has to be dismissed on that ground.”*

9.4. On the issue of ‘when the payment of the pre-deposit is required to be made’, para 12 and 13 of the Order of the Apex Court in the case of M/s. S.E. Graphites Pvt. Ltd. Vs. State of Telangana & Ors. [Civil Appeal No.7574 of 2014] is reproduced below:

*“12. In addition, the appellant-assessee has rightly placed reliance on the decision of this Court in Ranjit Impex (supra). In that case, the Court considered almost similar stipulation in Section 51 of the Tamil Nadu VAT Act, 2006. Indeed, the second proviso therein uses the expression no appeal shall be “entertained,” unlike the expression used in the provisions under consideration that the appeal so preferred “shall not be admitted”. We are conscious of the fact that the first proviso pertaining to maximum period of delay to be condoned by the Appellate Authority, also uses the expression “admit the appeal.” That expression “admit”, however, must be read to mean filing, institution or presentation of the appeal in the office of the Appellate Authority. Whereas, the expression “admitted” used in the second proviso will have to be construed as analogous to expression “entertained.” We are inclined to take this view as the setting in which the provisions under consideration appear leaves no manner of doubt that it is ascribable to the event of taking up the appeal for consideration, for the first time, to admit it on merits or otherwise and/or for condonation of delay in filing the appeal, as the case maybe. Before that event occurs, it is open to the appellant to deposit the tax dues in respect of which the appeal is preferred and produce proof of such deposit before the Appellate Authority.*

*13. This view is reinforced from the exposition of this Court in Ranjit Impex (supra), wherein the view taken by the Division Bench of the High Court of Madras that the proof of deposit of tax has to be produced at the time when the appeal is taken up for consideration, but not at the time of filing or presentation of the appeal, has been upheld.”*

9.5. Further, at para 17 of the aforesaid case i.e. M/s. S.E Graphites Pvt. Ltd, the Apex Court, the following observation has been made:

*“17. While parting, we may observe that taking advantage of the interpretation given by us, it is possible that some unscrupulous litigant (assessee) may file an appeal within the limitation period but keep it under defect so that the same does not proceed for consideration before the Appellate Authority. To obviate such a*



*mischief, we hold and direct that the Appellate Authority shall be obliged to take up every singular appeal for consideration for admission on merits and/or for condonation of delay in filing the appeal for the first time, no later than thirty days from the date of its filing, institution or presentation in the office of the Appellate Authority. This direction shall be complied with by all concerned meticulously, without any exception. That is the only way to secure the interests of the Revenue and at the same time to effectuate the purpose underlying the proviso regarding the deposit of specified amount of tax dues."*

10. Government notes that while filing the appeal before the AA, the Applicant had mis-represented by stating that the pre-deposit had been paid and had not produced credible evidence showing payment of the pre-deposit. Government notes that the AA had issued the defective appeal notice on 03.11.2020 but the Applicant had not rectified the defect/deficiency pertaining to the pre-deposit amount not being deposited to the extent of the entire 7.5% of the penalty imposed.

11. Government notes that it is settled law, that payment of pre-deposit as mandated in the statute, is mandatory and the AA cannot sidestep the same. The AA has no power to waive off the payment of pre-deposit amount. Government also notes that the Applicant has paid the balance amount of Rs. 1,250/- towards pre-deposit on 13.07.2023 much after the issue of the Order-in-Appeal and also after the filing of the Revision Application, which does not support his cause.

12. Moreover, Government notes that in the extant Revision Application and at the time of the personal hearing the Applicant has not made averment of the payment of the balance pre-deposit amount by then but the balance amount has been paid after the date of the personal hearing before this Authority. The Applicant in the Revision Application has also stated that the defective appeal notice dated 03.11.2020 was not received by him and he came to know about the

short payment of deposit only after he received the Order-in Appeal dated 26.11.2020.

13. Government avers that in view of the claims of the Applicant about the non-receipt of the defective claim notice being the reason for non-payment of balance amount of pre-deposit and the subsequent rectification of the inadvertent error, albeit on 13.07.2023, after the personal hearing of the Revision Application, it would be in the interest of justice that the Applicant is given an opportunity to clarify the same before the Appellate Authority.

14. In view of the above, Government modifies the Order-in-Appeal No MUM-CUSTM-PAX-APP-549/2020-21 dated 26.11.2020 [Date of issue: 11.12.2020] [F. No. S/49-1067/2019] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, by way of remanding the same for verification of the claims of the Applicant before deciding on the same.

15. The Revision Application is disposed of in terms of the above.

  
( SHRAWAN KUMAR )

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

ORDER NO. 635/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.08.2023

To,

1. Mr. Harish Milkiram Shingrani, Mathura Apartments, Evershine Nagar, Near Ryan School, Malad (West), Mumbai 400 064
2. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati Shivaji International Airport, Mumbai 400 099.



Copy to:

1. The Commissioner of Customs (Appeals), Mumbai Zone-III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai – 400 059.
2. Shri Prakash K. Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai-400 051
3. Sr. P.S. to AS (RA), Mumbai.
4. File copy.
5. Notice Board.

