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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. 373/358/B/SZ/2019-RA | 634 Date of Issue 18/02/22

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ORDER NO. 65 /2022-CUS (SZ)/ASRA/MUMBAI DATED 16.02.2022 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.

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Applicant : Shri. Thameem Ansari S/o. Mustafa

Respondent : Pr. Commissioner of Customs, Commissionerate - I,  
Chennai Airport, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Airport.C.Cus.I.No. 140/2019 dated 22.08.2019 [F.No. C4-I/22/O/2019-Airport] passed by Commissioner of Customs (Appeals-I), Chennai - 600 001.

ORDER

This revision application has been filed by Shri. Thameem Ansari S/o. Mustafa (herein referred to as Applicant) against the Order-in-Appeal No. Airport. C. Cus. I. No. 140/2019 dated 22.08.2019 [F.No. C4-I/22/O/2019-Airport] passed by Commissioner of Customs (Appeals-I), Chennai – 600 001. The passport no. of the applicant / address as per the details recorded in Order-in-Original are K1053072 dated 15.02.2013 issued at Chennai [Old No. A8771932] and (residential address) is No. 60, Pachiyappan Street, 3<sup>rd</sup> Floor, Triplicane, Chennai – 600 005.

2. Brief facts of the case are that the applicant had arrived at Anna International Airport, Chennai on 30.07.2017 from Abu Dhabi by Etihad Airways Flight No.EY 0270 dated 30.07.2017. Applicant was intercepted by Customs Officers when he had walked out through the exit of the arrival hall. On examination of his checked-in baggage, 4 Nos. of Canon EOS 5D Mark III cameras along with 4 nos. of lenses and other accessories were found. As the same were unusually heavy, the same were scrutinized and 4 nos of packets covered with black adhesive were found concealed inside its battery compartment. On cutting open these 4 packets, four nos. of foreign marked gold bars of 24 Karat purity, totally weighing 466 grams and of value at Rs.13,38,818/- were recovered. As the applicant had concealed the gold and had neither declared the gold nor was in possession of any valid document/permit/license for the legal import of impugned gold into India, the same were seized. The applicant revealed that he had been handed over the 4 cameras by Shri. Mohamed Riyaz of Abu Dhabi and had been instructed to hand over the same to an unidentified person outside Chennai Airport. He revealed that he had carried the gold and cameras for a monetary consideration of Rs. 10,000/- and that the goods did not belong to him. The applicant had retracted his statement vide his letter dt. 2.8.2017 and the same had been rebutted by the department. Applicant waived the issuance of show cause notice and had attended the personal hearing on 12.10.2027.

3. The Original Adjudicating Authority viz, Jt. Commissioner of Customs (Adjudication – AIR), Chennai Airport and Air Cargo Complex, Chennai vide Order-in-Original No. 138/2017-18-AIRPORT dated 27.10.2017 [OS. No. 413/2017-AIR] ordered for the absolute confiscation of (i). the 4 nos of gold bars of 24 ct purity, totally weighing 466 gms and valued at Rs. 13,38,818/- under section 111 (d) and (1) of the Customs Act, 1962 read with Sec.3(3) of the Foreign Trade (Development and Regulation) Act, 1992. and (ii). 4 nos of Canon EOS 5D Mark III cameras alongwith 4 nos of lenses and other accessories valued at Rs. 1,60,000/- a piece and totally valued at Rs. 6,40,000/- under section 111 (d) and (1) of the Customs Act, 1962 read with Sec.3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and under Section 119 of the Customs Act, 1962. A penalty of Rs. 1,30,000/- under Section 112 (a) of the Customs Act, 1962 alongwith a penalty of Rs. 30,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the applicant. In the OIO it is observed that the applicant had stated that he had purchased the gold and would try to produce the invoice. However, he did not produce the same and owing to his failure to furnish the evidence, the applicant claim of ownership was rejected. Also, the applicant had not stayed abroad for the required nos of days as specified in Notification no. 12/2012-Cus. dt. 17.03.2012 as amended.

4. Aggrieved by this Order, the applicant filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals-I), Chennai – 600 001 who vide Order-in-Appeal No. Airport. C.Cus.I.No. 140/2019 dated 22.08.2019 [F.No. C4-I/22/O/2019-Airport] rejected the appeal on grounds that the appeal was time barred and did not discuss the merits of the case.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application inter alia on the grounds that;

5.01. that the order of the respondent is against the law, weight of evidence and circumstances and probabilities of the case and the order is liable to be set aside.

5.02. that the appellate authority had not considered their submission that as they had not received any communication from the department that they had made a representation on 19.02.2018 requesting for the status of their case. The department vide their reply dated 21.01.2019 informed them that their case had been

adjudicated on 27.10.2017 and the Order had been despatched on 30.10.2017 and that the Order-in-Original had been received back undelivered with postal remarks not in Triplicane and a copy of the OIO had been enclosed in the letter dated 21.01.2019 they immediately filed an appeal before the appellate authority on 31.01.2019. The applicant has alleged that the fact that the departmental communication itself reveals that the OIO had been received back undelivered had not been considered by the appellate authority.

- 5.03. that the applicant vide letter dated 02.08.2017 had retracted his statement.
- 5.04. that the department had not taken any efforts to locate the person who was to receive the gold outside the airport after the interception / seizure.
- 5.05. that gold was a restricted item and prohibited.
- 5.06. that as per C.BE &C vide letter F. NO. 495/3/94-Cus VI dated 2.3.1994, ownership of the gold was not a criteria for import of the gold.
- 5.07. that the value of the electronic goods keeps depreciating with every passing day.
- 5.08. that they may be allowed to re-export the goods.
- 5.09. that the applicant vide his letter dated 30.07.2017 had requested that the case may be adjudicated without the issue of the show cause notice and accordingly was granted personal hearing on 12.10.2017 for which he appeared and submitted the gold belongs to him and that the gold had not been concealed.
- 5.10. that penalty under Section 114AA was not applicable which pertains to export of goods.
- 5.11. that the applicant has relied on some case laws to buttress their case.

Under the circumstances, the applicant has prayed that the appellate order be set aside and permit to re-export or release the gold and electronic goods and also to reduce the penalty.

6. Personal hearings in the case was scheduled through the video conferencing mode for 03.12.2021 / 09.12.2021. Smt. Kamalamalar Palanikumar, Advocate requested to prepone the personal hearing to 07.12.2021 as she would be coming to Mumbai. Accordingly, the advocate attended the hearing on 07.12.2021. She submitted a written submission and requested to release the gold on reasonable RF and penalty.

6.1. In the written submission, few more case laws have been furnished to buttress their case for release of the impugned gold and electronic goods.

7. The Government has gone through the facts of the case and the records placed before it. Government observes that the appellate authority had rejected the appeal filed by the applicant on the grounds that the appeal was time barred.

8. The Government notes that the appellate authority has at para 6 of the order-in-appeal recorded that *'The appellant stated in his appeal papers that since he had not received any communication from the department, he made a representation to the Commissioner on 19.2.18, for which the department vide letter dt. 21.1.19, informed him that the case had been adjudicated on 27.10.17 and the O-in-O which was despatched on 30.10.17, was returned undelivered with the postal remarks, "not in Triplicane". Subsequently, the impugned O-in-O was received only on 25.01.2019'*.

9. The Government has noted that at para (b) of the grounds of appeal filed in FORM CA. 8 and furnished by the applicant to the Revisionary Authority, is as follows;

*b. The appellant further submits that, since he has not received any communication from the department, he made a representation to the Commissioner of Customs, Customs House, Meenambakkam, Chennai 600027 on 19.02.2018, to know the status of the case for which the department has given reply dated 21.01.2019 informed that Para 2 order in original No. 138/2017 18 Airport has been issued by the joint commissioner of customs (adjudication -air) on 27.10.2017 that same was dispatched on 30.10.2017 and also order in original returned undelivered with postal remarks not in Triplicane. The order in original no. 138/2017 issued on 27.10.2017 is enclosed herewith. The above said post was received on 25.01.2019. Hence, the appellant is filing this appeal today.*

10. However, a scrutiny of the records received reveals that the applicant had on **19.12.2018** filed an application to the department seeking for details of their case and the department vide their letter no. S.Misc.63/2014/C-353-RTI (Airport Admin) dated 21.01.2019 sent a communication that the O-in-O no. 138/2017-18-Airport had been dispatched 30.10.2017 and also that the O-in-O returned undelivered with postal remarks "not in Triplicane".

11. Government notes that the date **19.2.18** was inadvertently mentioned by Appellate Authority instead of **19.12.2018**. But the applicant instead of giving the actual date of their letter, too repeated the same date as **19.02.2018**.

12. Government notes that the applicant had voluntarily opted for waiver of the Show Cause Notice and had attended the hearing on 12.10.2017. This fact is recorded in the O-in-O and also submitted by the applicant in the grounds of appeal filed with the revisionary authority. Having done so, Government notes that it was incumbent and in the interest of the applicant to follow up with the department on the status of their case which was adjudicated within a fortnight of the date of personal hearing. The applicant failed to do so.

13. Government notes that the appellate authority at para 7 and 8 of the O-in-A held as follows;

*7. In this regard, I am unable to accept the version of the appellant regarding late receipt of the O-in-O for the following reasons. The O-in-O sent to the appellant was returned undelivered by the postal authorities, with the remarks, "Not in Triplicane". It is the appellant's responsibility to furnish correct and complete address to the department and to inform of any change in his address. In this regard, I rely on the Hon'ble High Court of Madras judgement in the matter of ETA General Pvt. Ltd. vs Commissioner of Customs, Chennai as reported in 2013 (291) E.L.T. 27 (Mad.):*

*"12. In such view of the matter, the department is bound to send notice only to the address as per the record and they are not entitled to change the address. The department cannot unilaterally change the address unless there is a specific request from the party that their address has been changed. Therefore, service on the address shown as per the record is a service of the order in terms of Section 153 of the Customs Act."*

*8. The O-in- O in the instant case has thus been served in accordance with the provisions of Section 153 of the Customs Act. The department has thus discharged its responsibility and is not responsible for the fact that the appellant had not furnished the correct/ changed address. This act of the appellant, of bypassing the time limit to file appeal and showing that he received the order only on 25.01.19 is not acceptable and it is a clever ploy on the part of the appellant to hoodwink this Appellate forum. The appellant has filed this appeal after a lapse of nearly 15 months from the date of despatch of the order. An appeal has to be filed against the adjudicating authority's order within 60 days as per Section 128(1) of the Customs Act, 1962, which can be condoned by another 30 days. Whereas, I find that this appeal has been filed after 455 days from the date of the order. This is obviously beyond the maximum condonable period of 30 days. As held in the Apex Court judgment in the case of Singh Enterprises Vs Commissioner of Central Excise, Jamshedpur reported in [2008(221) ELT 163 (SC)], Commissioner (Appeals) has no powers to condone delay beyond condonable period. Hence, the present appeal which has been filed beyond the maximum condonable period, merits dismissal as time barred.*

14. The Government is in agreement with the aforesaid observations of the appellate authority and finds that the Order of the appellate authority is proper

and judicious. The law does not come to the aid of the indolent, tardy litigant. It is the bounden duty of the applicant to keep a tab on his case and follow up with the department. The Government for the aforesaid reasons is inclined to uphold the O-in-A passed by the appellate authority and does not find it necessary to interfere in the same.

15. In view of above discussions, Government upholds the impugned Order-In-Appeal No. Airport. C.Cus.I.No. 140/2019 dated 22.08.2019 [F.No. C4-I/22/O/2019-Airport] passed by Commissioner of Customs (Appeals-I), Chennai – 600 001

16. Accordingly, the revision application is rejected.

  
16/2/22

( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 65 /2022-CUS (SZ) /ASRA/ DATED 16.02.2022

To,

1. Shri. Thameem Ansari S/o. Mustafa, No. 60, Pachiyappan Street, 3<sup>rd</sup> Floor, Triplicane, Chennai – 600 005.
2. Pr. Commissioner of Customs, Commissionerate – I, Chennai Airport an Air Cargo Complex, New Custom House, Meenambakkam, Chennai – 600 027.

Copy to:

1. Shri. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai – 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.