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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. 371/269/B/WZ/2020-RA / Date of Issue : 13.09.2023

ORDER NO. 658 /2023-CUS (WZ)/ASRA/MUMBAI DATED 13.09.2023
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.

F.NO. 371/269/B/WZ/2020-RA

Applicant : Shri. Sayed Mohammed Kamran Mohammed Ibrahim.

Respondent : Pr. Commissioner of Customs, Custom House,
Navrangpura, Ahmedabad - 380 009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-347 to 348-20-21 dated 19.10.2020
passed by the Commissioner of Customs (Appeals),
Ahmedabad.

ORDER

This revision application has been filed by the Shri. Sayed Mohammed Kamran Mohammed Ibrahim (herein referred to as Applicant) against the Orders-in-Original Nos. AHD-CUSTOM-000-APP-347 to 348-20-21 dated 19.10.2020 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly stated facts of the case are that the Officers of Customs, had intercepted the applicant alongwith another passenger viz, Shri. Shaikh Mudassir Husain at SVPI Airport, Ahmedabad on 12.08.2018 while they were clearing themselves through the green channel. Personal search and examination of the applicant as well as the other said other passenger led to the recovery of the undermentioned goods;

(i). From the applicant.

(a). One kadiwali chain, one key chain, 02 pieces of key and 01 frame of wrist watch all made of 24K pure gold, totally weighing 334.210 grams having a tariff value of Rs. 9,17,308/- and market value of Rs. 10,18,096/-;

(b). 10,500 grams of 'Termes Zibad Saffron' having a total fair market value of Rs. 5.78 Lakhs.

(ii). From the other passenger viz, Shri. Shaikh Mudassir Husain.

(a). One kadiwali chain, one key chain, 03 pieces of key and 01 frame of wrist watch all made of 24K pure gold and coated with rhodium, totally weighing 352.590 grams having a tariff value of Rs. 9,67,669/- and market value of Rs. 10,73,988/-;

(b). 10,250 grams of 'Termes Zibad Saffron' having a total fair market value of Rs. 5.64 Lakhs.

3. After due process of the law, the Original Adjudicating Authority (OAA) viz, Addl. Commr. of Customs, SVPI Airport, Ahmedabad vide his Order-In-

Original No. 09/ADC-MLM/SVPIA/O&A/2019-20 dated 24.05.2019 issued through F.No. VIII/10-134/SVPIA/O&A/2018 ordered for the (i). absolute confiscation of the gold mentioned at paras 2(i)(a) and 2(ii)(a) above; (ii). confiscation of the saffron mentioned at paras 2(i)(b) and 2(ii)(b) above, however, an option to redeem the saffron on payment of a redemption fine of Rs. 1,50,000/ each were granted to the applicant and the other passenger under Section 125(1) of the Customs Act, 1962; (iii), a penalty of Rs. 1,00,000/- each was imposed on the applicant and the other passenger resp., under Section 112(a) and (b)(i) for offence in respect of gold; (iv). a penalty of Rs. 1,00,000/- each was imposed on the applicant and the other passenger resp., under Section 112(a) and (b)(ii) for offence in respect of saffron.

4. Aggrieved by this order, the Applicant and the other passenger viz, Shri. Shaikh Mudassir Husain filed appeals with the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad who vide his Orders-In-Appeal no. AHD-CUSTOM-000-APP-347 to 348-20-21 dated 19.10.2020 *rejected the appeals on the grounds of limitation as provided under Section 128 of the Customs Act, 1962 without going into the merits of the case.*

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

5.01. that the OIO dated 24.05.2019 was received on 05.07.2019; that the 60 days would have been completed on 05.09.2019; that appeal to commissioner had been dispatched on 22.10.2019 vide RM30376302219 and the delay was due to technical nature and the delay was condonable;

5.02. that AA had erred in dismissing the appeal on grounds of limitation;

5.03. that AA had wrongly mentioned the date of the emails sent by the Counsel at para 4 as 09.10.2010;

5.04. that applicant denies all the allegations leveled by OAA; that all material belonged to the applicant who had purchased it at Duabi;

5.05. that some details mentioned by applicant appear to pertain to some other case and obviously, appears to be a mistake on account of hurried 'cut & paste' job.

5.06. that the OAA had erred in holding that restricted goods is a type of prohibited goods.

5.07. that OAA had erred in holding that discretion exercised by competent authority to deny release was in accordance with law.

5.08. that the applicant claimed ownership of the seized gold and prays for its redemption.

5.05. that the applicant has relied upon the following case laws for redemption of the gold;

(a). Shaik Jamal Basha vs. GOI, 1997-91-ELT-277(A.P);

(b). Gauri Enterprises vs. Commr. of Customs;

(c). Yaqub Ibrahim Yusuf vs. Commr. of Customs, Mumbai, 2011-263-ELT-685-Tri.-Mum;

(d). Sheikh Mohammed Omer vs. Coll. Of Customs, Calcutta, 1970-2-SCC-728;

(e). V.P Hamid vs. CC 1994(73) ELT 425;

(f). Khader Mydeen vs. CC(Prev), W.Bengal, 2001(136)ELT 758;

(g). Sapna Sanjeeva Kohli vs. CC Airport, Mum 2008 (230) ELT 305;

(h). Vatakkal Moosa v. Collector of Customs, Cochin 1994 (72) ELT. 473 (G.O.I.

(j). Order no. 426/04 issued vide F.No. 380/27/8/2004-RA-CUS dated 21.09.2004;

(k). K.Kuttiyandi vs. C.C Chennai [Appeal No. C/29/2009), CESTAT Bench;

(l). Mohd. Zia Ul Haque, 2014-314-849-GOI.

Under the circumstance, the applicant has prayed to the revision authority to set aside the OIA and to redemption of the goods on payment of duty and fine and drop further proceedings or pass any other order as deemed fit.

6. Personal hearings in the case was 11.05.2023, 18.05.2023, 07.07.2023, 14.07.2023. 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.

7. Government has gone through the facts of the case, submitted by the applicant. At paras 5 & 6 of the Order-in-Appeal no AHD-CUSTOM-000-APP-347 to 348-20-21 dated 19.10.2020. Government notes the following observations of the appellate authority;

“5. I have gone through the case including the appeal memorandum. I find that as per the appeal memorandum of the appellant, date of receipt of the impugned order by the appellant is 05.07.2019. The appellant has filed an appeal on 01.11.2019. It is observed that appeal has been filed beyond the stipulated 60 days, the time limit specified under Section 128(1) of the Customs Act, 1962. Relevant extracts of Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

Section 128. Appeal 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 [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [(Commissioner (Appeal))] [within sixty days] from the date of communication to him of such decision or order.

[Provided that the Commissioner (Appeal) 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]

Table-1

Sr. No.	Appeal No.	Date of communication of order appealed against as per CA-1.	Date of filing appeal.	Delay in filing appeal beyond 60 days.
1.	387/19-20 & 428/19-20.	05.07.2019	01.11.2019	59 days.

Before delving on the issue, it is observed that there is delay in filing this appeal beyond 60 days. I also find that although the application for condonation of delay has been filed in respect of this appeal, yet the delay in filing this appeal is more than thirty days after the

prescribed time limit of sixty days as provided under the law. As such I am not empowered to condone the delay in filing of this appeal, as the appeal was filed after 90 days from the date of communication of order.

6. *In the light of the aforesaid facts and circumstance, I reject the matters paertaining to appeal no. 387/19-20 & 428/19-20 on the grounds of limitation as provided under Section 128 of Customs Act, 1962 without going into the merits of the case.”*

8.1 Government notes that the AA had observed that the applicant had claimed that the OIO dated 24.05.2019 was received by them on 05.07.2019, while the appeal against the same had been filed before the AA on 01.11.2019 This indicates that the appeal had been filed after a lapse of 29 days, over the condonable period of 30 days. The condonable period of 30 days follows after the prescribed / statutory period of 60 days available for filing appeals. In other words, 90 days are available to an appellant to file an appeal before the AA. In this case, the applicant had filed the appeal 29 days after the statutory period of 60 days and condonable period of 30 days. i.e. the appeal had been delayed by 29 days over the 90 days available to the applicant.

8.2. Government observes from impugned OIA dated 19.10.2020, 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.

8.3. 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.”

8.4. 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.”

8.5. 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.

9. In view of above discussions, Government finds that impugned Order-in-Appeal No. AHD-CUSTOM-000-APP-347 to 348-20-21 dated 19.10.2020 passed by A.A i.e. Commissioner of Customs (Appeals), Ahmedabad is proper and legal and upholds the same.

10. For the aforesaid reason, the revision application filed by the applicant fails.

11. Government also observes that the applicant while filing this revision application has not paid the requisite fees as stipulated under Section 129DD(3) of the Customs Act, 1962. Reminders to remit the fees have been dispatched to the applicant which has gone unheeded. Therefore, on this count too, it is found that the revision application filed by the applicant fails as the same is non-maintainable.

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


13/9/23
(SHRAWAN KUMAR)

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

ORDER No. 658/2023-CUS (WZ)/ASRA/MUMBAI DATED: 13.09.2023

To,

1. Shri. Sayed Mohammed Kamran Mohammed Ibrahim, B-106, Kuber Building, AMS Nagar, Alkapuri Road, Nalasopara East, Thane, Mumbai - 401 209.

2. The Pr. Commissioner of Customs, 'CUSTOM HOUSE', Navrangpura, Ahmedabad - 380 009.

Copy to:

1. Shri. Wasim Saikh, Advocate, Flat No. 112, 4th Floor, Naaz Palace, Lane No. 6, Mitha Nagar, Kondhwakhurd, Pune - 411048.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy,
4. Notice Board.