

REGISTERED  
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

F.No. 373/99/B/17-RA

1629

Date of Issue

18/02/22

ORDER NO. 66/2022-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.

Applicant : Shri. Chembirika Hummer Moideen Mujeeb Rehman

Respondent : Pr. Commissioner of Customs, Kendriya Shulk Bhavan,  
L.B Stadium Road, Baheer Bagh, Hyderabad - 500 004.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
HYD-CUS-000-APP-086-16-17 dated 26.10.2016 [Appeal  
No. 15/2016-Customs] passed by the Commissioner  
of Customs & C.Ex (Appeals), Hyderabad - 500 004.

ORDER

This revision application has been filed by Shri. Chembirika Hummer Moideen Mujeeb Rehman (herein referred to as Applicant) against the Order-in-Appeal No. HYD-CUS-000-APP-086-16-17 dated 26.10.2016 [Appeal No. 15/2016-Customs] passed by the Commissioner of Customs. & C.Ex (Appeals), Hyderabad - 500 004.

2. The applicant who had arrived from Dubai by Air India flight AI-952 at RGI Airport Hyderabad on 20.02.2015 was intercepted on the basis of specific intelligence by DRI Officers while. The applicant had been intercepted at the exit gate and the Customs Declaration Form submitted by him was retrieved in which he had declared that he was not in possession of any dutiable goods. An examination of his baggage led to the discovery of a double sided adhesive tape and one black colour insulation tape. On persistent enquiry by the officers, the applicant divulged that the two tapes had been used by him for sticking two packets containing gold bars concealed in the rear side toilet in the aircraft operating as AI-952. The gold had been handed over to him at Dubai by one person and he was instructed to conceal the same in the toilet located at the rear side of the Aircraft AI-952 using the adhesive tape carried by him and that the concealed gold was supposed to be retrieved later by some other person having access to the aircraft. In quick follow up action, Officers of DRI Vishakhapatnam along with Air India searched the first rear left toilet of the said aircraft after it reached Vishakhapatnam whereupon they found two packets wrapped with black coloured insulation tape which had been pasted to the surface with double sided white colour adhesive tape concealed behind commode. Examination of the two packets led to the recovery of 40 gold biscuits of 24 carat purity, totally weighing 4665.20 grams valued at Rs.1,26,28,696/-.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, Hyderabad vide Order-In-Original No. 113/2015-Adjn.Cus (ADC) dated 23.11.2015 [ O.R. No. 88/2015-Adjn.(Cus) ] ordered for the absolute

confiscation of the seized 40 gold biscuits of 24 carat purity, totally weighing 4665.20 grams valued at Rs.1,26,28,696/- under section 111 (l) of the Customs Act, 1962 and imposed a penalty of Rs. 12,50,000/- (Rupees Twelve lakhs fifty thousand only) on the applicant under section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority viz Commissioner of Customs & C.Ex (Appeals), Hyderabad who vide Order-In-Appeal No. HYD-CUS-000-APP-086-16-17 dated 26.10.2016 [Appeal No. 15/2016-Customs] rejected the appeal.

5. Aggrieved with the aforesaid order dated 26.10.2016 passed by the appellate authority, the Applicant has filed this revision application inter alia on the grounds that;

- 5.1. that to set aside the order passed by the appellate authority and to release the gold on fine and penalty as in similar orders, the Commissionerate has released the gold.the order is based on incorrect, misleading and mis- conceived facts and incorrect understanding of case laws/ judgments and is bad in law.
- 5.2. has filed for condonation of delay.

The Applicant has prayed to the revisionary authority to set aside the absolute confiscation and to reduce the penalty or grant relief as deemed fit and proper.

6. A personal hearing in the case through the online video conferencing mode was scheduled for 20.11.2021 / 09.11.2021. Shri. Prakash Shingrani, Advocate for the applicant appeared on 14.12.2021 for physical hearing and submitted that gold was not a prohibited item, therefore, the same should be released on reasonable RF and penalty.

7. At the outset, the Government notes that the applicant has filed for condonation of delay. The applicant has filed the Revision Application on

24.07.2017. The date of order / communication of the order of the appellate authority is 26.10.2016. The applicant in the revision application filed with the revisionary authority has not stated the date when the appellate order was received by him. The applicant has attributed the delay to his Advocate who had stated that appeal lies before CESTAT and so he had not pursued the same.

8. The Government notes that applicant was required to file the revision by 24.01.2017 i.e. on taking the first 3 months into consideration and by 24.04.2017 i.e. taking into consideration a further period of 3 months. However, Government notes that the revision application has been filed by the applicant on 24.07.2017 i.e. after a lapse of over 271 days from the date of the order. In other words, there is an inordinate delay of over 3 months from the designated last date of filing the a revision application (i.e. after 180 days from 26.10.2016 which was 24.04.2017). The applicant in his application for condonation of delay has attributed the reason to his Advocate who had stated to him that appeal lies before CESTAT and so the filing of revision application had not been pursued. Government notes that even after considering the extended period i.e 180 days in total, there is a further delay of nearly 3 months. The applicant has not stated the date of receipt of the Order in the revision application filed by him. This is mischievous on the part of the applicant and an attempt to somehow inveigle an order by misguiding the revisionary authority. The Government notes that in the OIA furnished as a part of the revision application, the received date scribbled thereon is 08.11.2016. Unwittingly, the date of receipt by the applicant has got disclosed in the copy of the OIA furnished to the revisionary authority.

9. For understanding the relevant legal provisions on condonation of delay in filing an application before the revisionary authority, the relevant section is reproduced below :

**SECTION 129DD. Revision by Central Government.-**

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.*

.....

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.....  
(2) *An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :*

*Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.*

.....

10. From above, it is clear that the applicant was required to file revision application within 3 months. The delay thereafter, upto 3 months can be condoned. Since, the revision application is filed even beyond the condonation period of three months, the same has clearly become time barred and Government notes that there is no provision under Section 129DD to condone the delay beyond the condonable period of three months.

11. Further, it has been held by the Hon'ble Supreme Court in the case of *Collector Land Acquisition Anantnag & Others v. Mst. Katji & Others* reported in 1987 (28) E.L.T. 185 (S.C.) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

12. 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, 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."*

13. Government however, in the instant case, observes that the applicant in their application for condonation of delay has consciously and deliberately not admitted the date on which the applicant had received the OIA. Government notes that even after taking into consideration the extended period of 3 months as provided in Section 129DD, there is a delay of nearly 3 months. Having admitted that there was a delay beyond the prescribed limit, the reason for delay becomes immaterial and infructuous. There is no case that the copy of the said Order-In-Appeal was supplied late or was received late. The applicant should have filed the revision application by the prescribed time and should have made adequate and timely arrangement to plead his case. The law does not come to the aid of the indolent, tardy litigant. It is the bounden duty of the one seeking relief to satisfy the authority about the reason for the delay on their part. All the Supreme Court Judgments referred to in

foregoing paras are binding precedent and does not come to the aid of the applicant.

14. In view of the aforesaid discussions, Government holds that the Revisionary Authority, Government of India can condone the delay in filing application only upto extended condonable period of three months and not beyond that. Since, in the present case, the revision application is filed even beyond the condonation period of three months, Government is constrained to hold that the revision application filed by the applicant has clearly become time barred and there is no provision under Section 129DD of the Customs Act, 1962 to condone the delay beyond the condonable period of three months.

15. Without going into the merits of the case, the revision application thus stands dismissed as time barred in terms of the above.

*Shrawan*  
16/2/22

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

ORDER No. 66/2022-CUS (SZ) /ASRA/ DATED 16-02-2022

To,

1. Shri. Chembirika Hummer Moideen Mujeeb Rehman, S/o. Shri. Moideen Kunhi Chembirika Abdul Rahiman, 13/385-A, Chembirika, PO Chandragiri, Via - Kalanad, Kasargod Dist, Kerala - 671 317.
2. Pr. Commissioner of Customs, Kendriya Shulk Bhavan, L.B Stadium Road, Baheer Bagh, Hyderabad - 500 004.

Copy to:

1. Shri. Prakash K. Shingrani, Advocate, 12 / 334, New MIG Colony, Bandra East, Mumbai 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.