

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. 371/202/B/2021-RA

Date of Issue 05.10.23

ORDER NO. 695/2023-CUS (WZ)/ASRA/MUMBAI DATED 28.9.23 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 : Mr. Mohammed Nasir

Respondent : Pr. Commissioner of Customs, CSI, Sahar, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-113/19-20 dated 24.05.2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Mr. Mohammed Nasir (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-113/19-20 dated 24.05.2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that on 19.01.2018, the officers of Air Intelligence Unit, CSI Airport, Mumbai intercepted the applicant who had arrived from Dubai by Flight No. AI-984/18.01.2018 while he was attempting to clear himself through the green channel. The applicant had not declared any dutiable goods in his possession. Personal search of the passenger and detailed search of his baggage resulted into the recovery of two cut pieces of gold collectively weighing 92 grams and valued at Rs. 2,47,788/- and Proteins(Assorted), Perfumes(Assorted) and PS 4 Playstation collectively valued at Rs. 42,000/-.

3. The adjudicating authority vide his OIO no. Air Cus/T2/49/2008/2018 B dated 19.01.2018 had ordered the confiscation of the goods ie. Proteins(Assorted), Perfumes(Assorted) and PS 4 Playstation under Section 111 (d) of the Customs Act, 1962 but allowed redemption of the same on payment of Rs. 15000/- (Rupees Fifteen Thousand) and absolutely confiscated the gold and imposed a penalty of Rs.50,000/- (Rupees Fifty thousand) under Section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-113/19-20 dated 24.05.2019 modified the Order-in-Original by allowing redemption of impugned goods on payment of fine of Rs. 75,000/-(Rupees Seventy Five Thousand) and upheld the penalty of Rs. 50,000/-(Rupees Fifty Thousand) imposed on the applicant.

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

5.1. That the impugned order passed by the Respondent is bad in law and unjust.

5.2. That the impugned order has been passed without giving due consideration to the documents on record and facts of the case.

5.3. That the Ld. Appellant authority ought to have appreciated that dutiable goods brought in by the Appellant are neither restricted nor prohibited.

5.4. That the goods brought in by the Appellant were not concealed in any manner.

5.5. That this is the first time that the Appellant has brought this type of goods and there is no previous case registered against him.

5.6. That u/s 125 the Redemption fine has to be imposed by Adjudication authority to the extent of difference between CIF and Market value to wipe out Margin of profit.

5.7. That the Department had not given any local market value and in the absence of the same the Margin of profit cannot be ascertained & in this case there is no margin of Profit left; therefore the heavy fine imposed is totally unjustified.

Applicant has prayed that the Order of Adjudicating Authority may kindly be Set Aside as far as Redemption Fine is concerned, Personal penalty also may kindly be reduced substantially & any other order as your kind self may deem fit and proper.

6. Personal hearings in the case was held on 18.08.2023. Shri N.J.Heera, Advocate appeared on behalf of the applicant and submitted that applicant brought very small quantity of gold which has been allowed redemption by Appellate Authority. He requested to reduce redemption fine and penalty as it is a genuine case.

7. At the outset, the Government notes that the applicant has filed the Revision Application on 21.06.2021. The date of the Order of the appellate authority was communicated on 21.06.2019. The applicant was informed vide letter F.No. 371/202/B/2021-RA dated 06.09.2021 that they are required to file application for condonation of delay, failing which the same shall be dismissed as non-maintainable without any further reference. The applicant was required to file the application by 21.09.2019 (i.e. taking the first 3 months into consideration) and by 21.12.2019 (i.e. taking into consideration a further period of 3 months). There is an inordinate delay of over one and half years from the normal period. The applicant has failed to file application for condonation of delay.

8. For understanding the relevant legal provisions, 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.

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9. 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.

10. Government observes that the applicant having been informed that they are required to file application for condonation of delay, failing which the same shall be dismissed as non-maintainable without any further reference, chose to ignore the same. The applicant has not made a case that the copy of the said Order-In-Appeal was supplied late or was received late for condonation of delay

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. In the present case there is a delay of one and half years in filing the Revision Application from the extended period. As already explained at paras 8 & 9 supra, the statutory period for filing Revision Application is 90 days. Government observes that the applicant have filed Revision Application much beyond this threshold.

11. 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.

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


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

ORDER No. 695/2023-CUS (WZ) /ASRA/

DATED 28.9.23

To,

1. Mr. Mohammed Nasir, H. No. 102, Villa & P.O. Akbarpur, Bulandshahar (U.P.) – 203 001.
2. Pr. Commissioner of Customs, CSI, Sahar, Mumbai.

Copy To,

1. Sr. P.S. to AS (RA), Mumbai.
2. Spare Copy.

