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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. 373/218/B/2016-RA / 641: Date of Issue 18/02/22

ORDER NO. 71 /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. Mohammad Ashraf Hasainar

Respondent : Commissioner of Customs, Kempe Gowda International Airport, Bengaluru.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. NJL - "Letter Nos. (i). C.No. VIII/48/09/2013 Cus.(App)/233/2014 dated 29.04.2014, (ii). Letter no. C.No. VIII/48/09/2013 Cus.(App)/378/2014 dated 27.06.2014 and (iii). C. No. VIII/48/09/2013 Cus.(App)/420/2014 dated 17.07.2014 all issued by the Office of the Commissioner of Customs (Appeals), Bangalore - 560 001 in r/o Order-in-Original No. 01/2014 dated 08.01.2014".

ORDER

This revision application has been filed by Shri. Mohammad Ashraf Hasainar (herein referred to as Applicant) against the Order-in-Appeal No. NIL - Letter nos.; "(i). C.No. VIII/48/09/2013 Cus.(App)/233/2014 dated 29.04.2014, (ii). C.No. VIII/48/09/2013 Cus.(App)/378/2014 dated 27.06.2014 and (iii). C. No. VIII/48/09/2013 Cus.(App)/420/2014 dated 17.07.2014 all issued by the Office of the Commissioner of Customs (Appeals), Bangalore - 560 001 in r/o Order-in-Original No. 01/2014 dated 08.01.2014 passed by Asst. Commr. Of Customs, Bangalore International Airport, Bangalore"

2. Brief facts of the case are that the applicant had arrived at the Kempegowda International Airport, Bengaluru on 07.01.2013 from Dubai by Emirates EK566. Applicant was intercepted by Customs Officers when he had exited through the green channel of the Customs Area. The applicant had submitted a nil Customs declaration form and to the query whether he had any dutiable goods in his possession had replied in the negative. A personal search led to the recovery of a crude gold chain weighing 116.63 gms, valued at Rs. 3,49,890/- worn by the applicant around his neck. Applicant admitted that he had exited from the green channel without declaring the crude gold chain to the Customs with an intention to evade payment of Customs Duty. Also, since the applicant did not possess any valid documents for the licit possession and purchase of the gold, the crude gold chain had been detained.

3. The applicant had waived the show cause notice and the Original Adjudicating Authority viz, Asstt. Commissioner of Customs Bangalore International Airport vide Order-in-Original No. 01/2014 dated 08.01.2014 ordered for the confiscation of the crude gold chain weighing 116.63 gms valued at Rs. 3,49,890/- under Section 111 of the Customs Act, 1962 and held that the same was not eligible for free allowance under Section 79 of the Customs Act, 1962 as it was non bonafide baggage. Also, a personal penalty of Rs. 40,000/- under Section 112 of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by this Order, it appears that the applicant filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals), Bengaluru - 560 001. It appears that the office of the appellate authority vide their letter (i). C.No. VIII/48/09/2013 Cus.(App)/233/2014 dated 29.04.2014 addressed to the applicant, had informed that the appeal filed had not been accompanied by a certified copy of the Order-in-Original and the same had not been submitted in duplicate as required under the provisions of Section 128 of the Customs Act, 1962 read with Customs (Appeals) Rules, 1982. Also, it was brought to the notice of the applicant that appeal cannot be admitted as

the time limit for filing the appeal had expired / exhausted on 08.04.2014 (60 days from the date of communication of the order i.e. 08.01.2014 + further 30 days of condonable period) after considering that the appeal had been received in their office (i.e. of the appellate authority) on 25.04.2014.

(ii). Letter no. C.No. VIII/48/09/2013 Cus.(App)/378/2014 dated 27.06.2014 addressed to the applicant reiterating that the appeal filed by the applicant had been delayed inordinately by 101 days which was beyond the condonable period and that the same could not be admitted as it was not maintainable.

(iii). C. No. VIII/48/09/2013 Cus.(App)/420/2014 dated 17.07.2014 addressed to the advocate of the applicant forwarding the appeal papers which had been returned as undelivered as the applicant was not available at the given address.

5. It appears that the applicant, aggrieved with the above order of the Appellate authority has filed this revision application inter alia on the grounds that;

5.1. that the appellate authority had not assigned any reasons for the non-consideration of the appeal filed by the applicant. Reasons for rejection had not been recorded in writing. No speaking order was issued and the procedure followed was bad in law.

5.2. that the original adjudicating authority had not extended the benefit of redemption under Section 125 of the Customs Act, 1962 since the gold was not a prohibited item but was only a restricted item.

Under the circumstances, the applicant has prayed that the communication dated 27.06.2014 of the appellate order be set aside grant consequential relief to the applicant in the interest of justice.

6. Personal hearings in the case was scheduled on 12.11.2018. Thereafter, upon the change of the revisionary authority, personal hearings through the the video conferencing mode was scheduled 20.08.2021 / 27.08.2021, 21.10.2021 / 28.10.2021, 02.12.2021. Shri. Kiran Javali, Advocate appeared online and reiterated his submissions. He submitted that the appeal was not decided by the Commissioner (Appeals) and the applicant was not given an opportunity to explain full facts to the appellate authority. He requested to allow redemption of goods on reasonable fine and penalty.


7. The Government has gone through the facts of the case and the records placed before it. Government observes that the referred 3 communication letters had been sent to the applicant by the office of the appellate authority i.e. Office of the Commissioner of Customs (Appeals), Bengaluru, informing

him (i.e. applicant) that the appeal filed was not maintainable as the same was time barred.

8. Government observes that the appellate authority had not passed a speaking order and a communication from the Office of the Appellate Authority was sent to the applicant informing him that the appeal was not maintainable. Government notes that in terms of principles of natural justice an opportunity was required to be extended to the applicant to present their case. Government observes that in this case, the proper process of natural justice had not been followed and a mere communication was sent to the applicant informing him that the time limit for filing the appeal had expired on 08.04.2014 and the appeal cannot be admitted. Since, the principles of natural justice had not been followed in this case, the Government is inclined to remand the case back to the appellate authority for passing appropriate orders as deemed fit after hearing the applicant.

9. Accordingly, the case is remanded back to the appellate authority for passing appropriate orders after hearing the applicant.

10. The revision application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 71 /2022-CUS (SZ) /ASRA/

DATED 16.02.2022

To,

1. Shri. Mohammad Ashraf Hasainarm No. 997, Vijayanagara – I Stage, 7th Main Road, 10th “A” Cross, Near Corporation Bank, Mysore – 570 017.
2. Shri. Mohammad Ashraf Hasainar, Kanthila, Uppinangady, South Canara, Karnataka – 574 241.
3. Commissioner of Customs (Appeals), C.R Building, P.B. No. 5400, Queen’s Road, Bangalore – 560001.
4. Commissioner of Customs, Kempegowda International Airport, Bengaluru – 560 300.

Copy to:

1. Shri. Kiran Javali, Advocate, #37, 11th Main, Vasanthnagar, Bengaluru – 560 052..
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.