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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. 371/140/B/2018-RA/215 Date of Issue 29/11/2018

ORDER NO. 840 /2018-CUS (SZ)/ASRA/MUMBAI DATED 23.10.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Syed Ummer Farooque Lanka.

Respondent : Additional Commissioner of Customs, Goa.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Goa-Custm-000-APP-118-2017-18 dated 22.11.2017 passed by the Commissioner (Appeals), Goa.



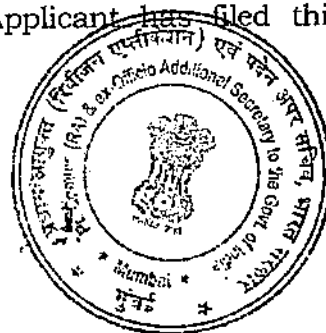
ORDER

This Revision Application has been filed by Shri Syed Ummer Farooque Lanka (herein referred to as Applicant) against the order Order-in-Appeal No. Goa-Custm-000-APP-118-2017-18 dated 22.11.2017 passed by the Addl. Commissioner of Customs , Goa.

2. Briefly stated facts of the case are that the Officers of Air Intelligence Unit, Dabolim, Goa on the basis of suspicion intercepted the applicant, at the Dabolim International Airport, Goa on 09.08.2016. The Applicant had not declared the goods and had opted for the green channel. Examination of his baggage resulted in recovery of foreign currencies i.e. UAE Dirhams totaling to 40,000 UAE Dirhams. The total CIF value of the goods was Rs. 7,06,000/- (Rupees Seven Lakhs and Six Thousand only). The seized foreign currency was deposited in the State Bank of India, Mormagao, Harbour Branch vide TR 6 Challan No. 383 dated 16.08.2016 and the total amount realized was Rs. 6,68,000/- (Rupees Six Lakhs and Sixty Eighty Thousand Only).

3. After due process of the law vide Order-in-Original No. 5/2017-18-ADC(CUS) dated 16.08.2017, the Original Adjudicating Authority ordered absolute confiscation of the currency under Section 113 (d) of the Customs Act.1962 read with Section 9 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations notified vide Notification No. FEMA 11(R)2015-RB dated 29.12.2015 and imposed a penalty of Rs. 2,00,000/- was imposed under Section 114(i) of the Customs Act,1962. Aggrieved by the said Order-in-Original, the applicant filed appeal before the Commissioner (Appeals) who vide his Order-in-Appeal No. Goa-Custm-000-APP-118-2017-18 dated 22.11.2017 rejected the Appeal of the Applicant on the grounds of limitation.

4. Aggrieved with the above order, the Applicant has filed this revision application interalia on the grounds that;



4.1 The rejection of appeal was illegal and unfair. The applicant submitted that he could not approach the appellate authority within the prescribed time on account of his serious ill, certain family problems and financial hardships hence he filed a condonation delay application on 22.11.2017. The actual delay in filing of appeal was only 4 days beyond the permissible limit which could have been condoned by the Commissioner(Appeals).

4.2 Foreign currencies are not prohibited goods. It is only a restricted item. Admittedly, import/ export of foreign currency is permitted subject to law and rules and regulations issued by a competent authority. Foreign currency is not notified as 'prohibited' under Customs Act, 1962 and FEMA and the currencies were not concealed by adopting any ingenious method as he was carrying the currencies only in his handbag. He procured the currencies from employer for the purpose of buying merchandise from Mumbai and claims ownership of the assorted currency under absolute confiscated. Hence the foreign currencies carried by him cannot be considered as prohibited and therefore the confiscated currencies should be allowed to be redeemed to the applicant. It is a restricted item and consequently the person from whom it was recovered or the owner of the goods is entitled for release of the seized goods under Section 125 of the Customs Act. The benefit of the same was not extended to the applicant.

4.3 The Revision Applicant cited various other assorted judgments in support of his case and prayed for quashing the unreasoned and non-speaking impugned Order in Original by set aside and for a reasonable order for redemption of the currency under absolute confiscated and drop further proceedings.

5. A personal hearing in the case was held on 10.10.2018, the Advocate for the applicant Shri Prakash K Shingrani attended the hearing. The Applicant stated that the delay in filing of condonation of 12 days may be considered in the interest of justice. The applicant reiterated the submissions filed in Revision



Application and pleaded that absolute confiscated currency be allowed to redeemed for re-export as reasonable redemption fine and personal penalty.

6. Government observes from impugned order dated 22.11.2017 that the Commissioner (Appeals) has taken into consideration the provisions of Section 128 of the Customs Act, 1962 and has observed that the appeal had been filed beyond the extended period of thirty days of actual date of filing of appeal in as much as, the appeal has been preferred after 94 days from the date of receipt of the Order-in-Original i.e. (60+30) 4 days beyond the further period of one month permitted as per Statute.. 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.

7. The provisions of Section 128 of the Customs Act, 1962 which provides for appeal to Commissioner (Appeals) read 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. 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 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."

9. 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 written submissions dated 19.01.2018 is out of place.

10. In view of above discussions, Government upholds the impugned Order-in-Appeal No. GOA-CUSTOM-000-APP-118-2017-18 dated 22.11.2017 and dismisses the instant revision application as being devoid of merit.

11. So, ordered.


22 X 14

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

ORDER No. 840 2018-CUS (SZ)/ASRA/MUMBAI DATED 23. 10.2018

To,

Shri Syed Ummer Farooque Lanka
C/o Prakash k Shingrani, Advocate,
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Bandra (E), Mumbai 400 051.

Copy to:

1. The Commissioner of Customs, Goa
2. The Commissioner of Customs (Appeals), Goa
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED


29/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

