



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No.373/216/B/16-RA / 217 Date of Issue 28.11.2018

ORDER NO. 867 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED  
29.10.2018 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.

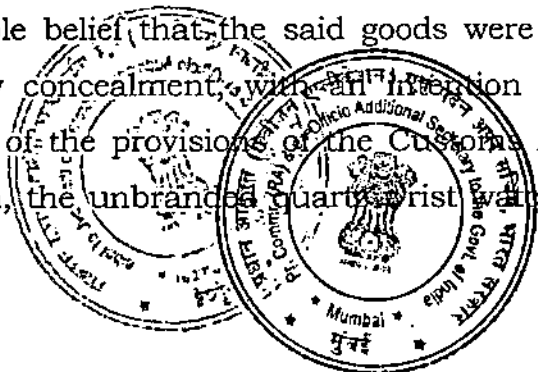
Applicant : Shri Pandaraparambu Jainy Nishad.  
Respondent : Commissioner of Customs, Central Excise  
& Service Tax, Coimbatore.  
Subject : Revision Application filed, under Section  
129DD of the Customs Act, 1962 against  
the Order-in-Appeal No. CMB-CEX-000-  
APP-131-15 dated 30.09.2015 passed by  
the Commissioner of Customs (Appeals-I)  
Coimbatore.



ORDER

This revision application has been filed by Shri Pandaraparambu Jainy Nishad (herein after referred to as the "Applicant") against the Order in Appeal No. CMB-CEX-000-APP-131-15 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I) Coimbatore.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Coimbatore Airport on 21.11.2013 from Sharjah. The applicant was intercepted by the officers of the Directorate of Revenue Intelligence (DRI) and his baggage was opened in presence of witnesses. The officers scanned the two baggages and identified an unusual rod fitted behind the beading of one of the suitcases. Then the officers tore the said suitcase and separated two short length and two long length rods from the beading. The four rods appeared to be of aluminum but with unusual weight. On suspicion the officers weighed the said four rods and found they weighed 1047 gms., a spring which appeared to be made of Aluminum weighing 118 gms found from the inside of a measuring tape found in appellant's baggage, a solid yellow colour metal in horse shoe shape weighing 120 grams concealed in the watch worn by the appellant and metal buckle appearing to be of Aluminum weighing 108 gms of the leather belt worn by the appellant. All the weighments had shown unusual for aluminum articles. In order to clear the doubts, the officers called two assayers who after testing and weighing the said metal items issued a certificate that these items were all 24 carat gold totally weighing 1420 gms. They have also certified that these items have a market value of Rs. 43,65,080/- (Rupees Forty Three Lakhs Sixty Five Thousand and Eighty Only). The gold items were seized on the reasonable belief that the said goods were attempted to be smuggled into India, by concealment, with an intention of evading payment of duty in violation of the provisions of the Customs Act, 1962. The Suitcase in torn condition, the unbranded quartet wrist watch case with black cover bearing



marks "UMAX, Water Resistant, Stainless Steel, Japan Quartz, 2916", body of measuring tape used for concealing the gold and waist belt to which the gold buckle was attached, were also seized as material evidence.

3. The Original Adjudicating Authority, vide its Order in Original No. 03/2015-ADC in C. No. VIII/10/03/2014 Cus Adjn dated 27.01.2015 ordered absolute confiscation of 1420 gms. of gold and other articles valued at Rs.43,65,080/- (Rupees Forty Three Thousand Sixty Five Thousand Eighty Only) under Section 111 (d), (l), (o) and (m) of the Customs Act,1962. A penalty of Rs. 10,00,000/- each under Section 112 as well as Section 114AA of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals-I), Coimbatore. The Appellate Authority, vide its Order-in-Appeal No.CMB-CEX-000-APP-131-15 dated 30.09.2015 rejected the appeal of the Applicant and upheld the Order in Original.

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

5.1 The Orders are not legal or proper and bad in the eyes of natural justice.

5.2 The adjudicating authority failed to appreciate that applicant has not concealed any dutiable or prohibited items.

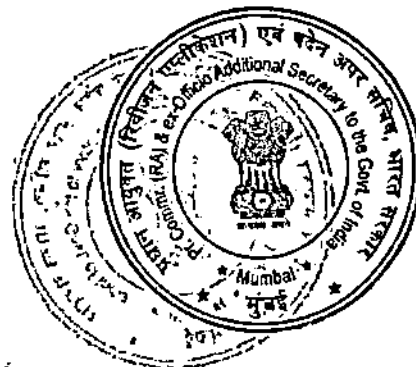
5.3 the adjudicating authority failed to appreciate that the applicant was detained by the respondent before making any declaration.

5.4 the adjudicating authority failed to appreciate that this is not a case calling for confiscation and penalty.

5.5 the gold is freely importable goods and no law prohibits import of gold.

5.6 the applicant has not imported any prohibited goods for imposing heavy penalty.

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5.7 The Revision Applicant prayed for setting aside the Orders with consequential benefit. The applicant also prayed to allow redeem the gold on payment of fine in lieu of confiscation.

6. The applicant has also submitted petition for condonation of delay of 380 days in filing the Revision Application.

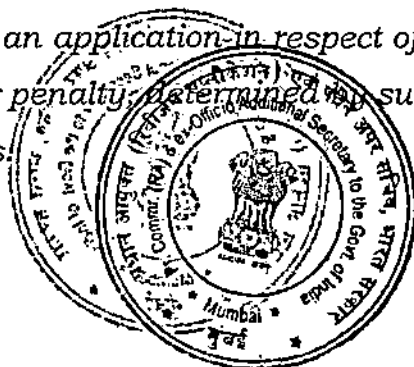
7. A personal hearing in the case was held on 26.10.2018, the Advocate for the respondent Shri Augustian P.A., Advocate attended the hearing he reiterated the submissions filed in Revision Application and petition for condonation of delay.

8. The Government has gone through the facts of the case. The impugned order in appeal was communicated to the applicant on 12.10.2015. On request of the applicant's counsel to issue order, the Department vide letter dated 03.05.2016 informed the applicant that the order was communicated to them on 12.10.2015. The applicant has admitted in the application that the order has been collected by one of his relative on behalf of him and did not inform the same to him.

8. The provisions of Section 129DD of the Customs Act, 1962 which provides for appeal to Revision Authority read as under :

*"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.*

*Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty determined by such order does not exceed five thousand rupees.*



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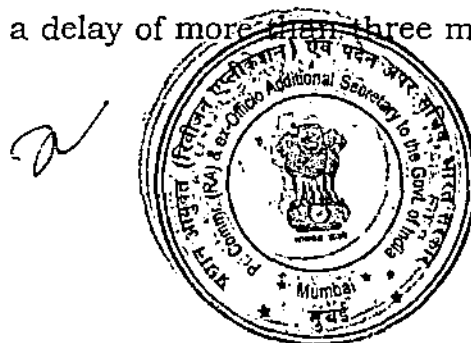
*Explanation. - For the purposes of this sub-section, "order passed under section 128A" includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984\*\*, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.*

*(1A) The 70[Principal Commissioner of Customs or Commissioner of Customs] may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.*

*(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 :*

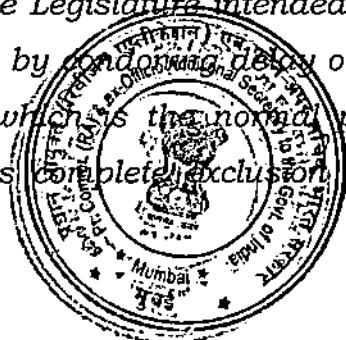
*Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."*

9. From the plain reading of the provisions of Section 129DD of the Customs Act, it is clear that an appeal should be filed within three months from the date of communication of the decision or order that is sought to be challenged. However, in view of the proviso thereto, the Revision Authority is empowered to allow the appeal to be presented within a further period of three months if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months. Thus, the Revision Authority is empowered to extend the period for filing an appeal for a further period of three months and no more. Therefore, once there is a delay of more than three months in filing



the appeal, the Revision Authority 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."*

10. 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 *vides* written submissions dated 19.01.2018 is out of place.

11. In view of above discussions, Government upholds the impugned Order in Appeal No. CMB-CEX-000-APP-131-15 dated 30.09.2015 and dismisses the instant revision application as being devoid of merit.

12. So, ordered.

*Ashok Kumar Mehta*  
29/10/18

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

ORDER No. 867/2018-CUS (SZ) /ASRA/Mumbai

DATED 29.10.2018

To,

Shri Pandaraparambu Jainy Nishad  
R.No. 7/938, Pandarapparambu Panyappily,  
Kochi- 682 002.

**ATTESTED**

*S.R. Hirulkar*  
29/10/18

**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Airport, Coimbatore.
2. The Commissioner of Customs (Appeals-I), Coimbatore.
3. Shri P.A. Augustian, Advocate, Faizel Chambers, Pullepady Cross Road, Cochin- 682 018.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.

