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SPEED POST



F.Nos. 37/102/B/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 28/4/14

ORDER NO. 94/14-Cus DATED 21.04.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Subject : Revision application filed, under Section 129 DD of the Customs Act 1962 against the order-in-appeal No.MUM-CUSTOM-PAX-APP-172&173/13-14 dated 24.09.13 passed by the Commissioner of Customs (Appeals), Mumbai-III

Applicant : Mr.Girnari Mohammed Shoeb Noor Mohammed c/o Mr.O.M.Rohira, Advocate, 148/5 Uphaar, 10th Road Khar (W), Mumbai

Respondent : Commissioner of Customs, Mumbai

ORDER

This revision application is filed by Mr.Girnari Mohammed Shoeb Noor Mohammed c/o Mr.O.M.Rohira, Advocate, 148/5 Uphaar, 10th Road Khar (W), Mumbai against the order-in-appeal No.MUM-CUSTM-PAX-APP-172&173/13-14 dated 24.09.13 passed by the Commissioner of Customs (Appeals), Mumbai-III with respect to order-in-original No.ADC/AS/Adjn/42/12-13 dated 12.12.13 passed by the Additional Commissioner of Customs, CSI Airport, Mumbai.

2. Brief facts of the case are that on 20.06.2011, the applicant, who had arrived from Hong Kong on board Kingfisher Airlines flight IT-0072 and cleared himself through the 'Green Channel', was intercepted on suspicion by the Officers of customs at CSI Airport. Search of his person resulted in the recovery of Iridium powder weighing 1 kg., valued at Rs.18,00,000/-, contained in two packets wrapped in carbon papers and concealed in the socks worn by him. The said goods were seized under Panchanama dated 21.06.2011. Further investigations were carried out and the applicant was arrested and produced before the Addl. Chief Metropolitan Magistrate who granted him bail subsequently. SCN was issued and the Advocate for the applicant was also heard. The case was adjudicated by the Additional Commissioner of Customs (Airport) who ordered absolute confiscation of the impugned goods valued at Rs.18,00,000/- under section 111(d), (l) and (m) of the Customs Act, 1962. Penalties of Rs.14,50,000/- under Section 112(a) and (b) of the ibid Act and Rs.50,000/- under Section 114AA were imposed on the applicant.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal as the same was filed after a delay of more than 34 days.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129DD of Customs Act, 1962 before Central Government on various grounds on merit. He further submitted he had received the order in Kerala on 21/12/2012. As he is uneducated person and had remained sick from 15/02/2013 to till date (the medical cert. is enclosed), was advised by the

doctor to take bad rest and hence could not contact his advocate in Mumbai. Furthermore no order was sent to the advocate by the Addl. Commissioner. Hence the applicant prays that the delay to nearly 34 days in filing this appeal may kindly be condoned as per the proviso to Section 128 of Customs Act 1962, as the circumstances were beyond his control.

5. Personal hearing scheduled in this case on 11.04.14 at Mumbai was attended by Mr. O.M.Rohira, Advocate on behalf of the applicant who reiterated the grounds of revision application and requested to condone the delay of 34 days in filing appeal before Commissioner (Appeals).

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. Government notes that in this case, Commissioner (Appeals) has rejected the appeal of applicant on the ground of time limitation. So, before considering the merits of the case, it has to be first examined whether appeal was rightly rejected as time barred or not. Commissioner (Appeals) has recorded in his findings that impugned order-in-original dated 14.12.12 was received by applicant on 29.12.12 and appeal was filed before Commissioner (Appeals) on 2.4.13. As such appeal was filed after a delay of 34 days. The above said factual details are not in dispute. As such the appeal filed after a delay of 34 days is clearly time barred in terms of Section 128 of Customs Act 1962.

7.1 The relevant statutory provisions of filing appeal as contained in sub-section (1) of section 128 of Customs Act are reproduced below :-

"(1) Any person aggrieved by any decision or order passed under this Act by a Customs Officer, lower in rank than a Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) hereafter in this Chapter referred to as the [Commissioner (Appeals)] within sixty days from the date of communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the applicant was prevented by sufficient cause from presenting the appeal within the

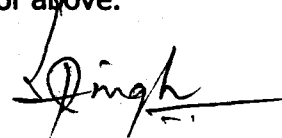
aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

From above provision, it is quite clear that Commissioner (Appeals) has the power to condone delay upto 30 days, whereas delay involved in this case is 34 days. Government notes that Hon'ble Allahabad High Court in the case of M/s India Rolling Mills (P) Ltd. 2004 (169) ELT 258 (AL) has held that Commissioner (Appeals) cannot condone delay in filing appeal beyond 30 days. Similar view is taken by Hon'ble Delhi High Court in the case of M.R. Tobacco vs. UOI 2004 (178) ELT 137(Del HC-DB) and in the case of M/s Delta Impex vs. CC 2004 (173) ELT 285 (Del.HC). Now Supreme Court has finally held in the case of Singh Enterprises vs. CCE Jamshedpur 2008 (221) ELT 163(SC) that Commissioner (Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond the delay of 30 days. In view of above position, Government holds that Commissioner (Appeals) has rightly rejected the said appeal as time barred.

8. Government notes that revision application cannot be accepted in a case where appeal was rejected by Commissioner (Appeals) as time barred since Government has no power to condone such delay exceeding 30 days. As such this revision application being not maintainable is rejected without going into merits of the case.

9. The revision application thus stands rejected in terms of above.

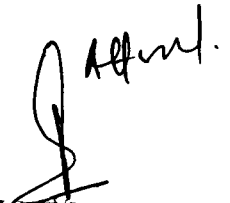
10. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

Mr.Girnari Mohammed Shoeb Noor Mohammed
C/o Mr.O.M.Rohira, Advocate,
148/5 Uphaar, 10th Road,
Khar (W), Mumbai



(शाश्वत शर्मा/Shashwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Revenue Deptt.)
New Delhi

Order No. 94/14-Cus Dated 21.04.2014

Copy to:

1. The Commissioner of Customs, Chhatrapati Shivaji International Airport, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East) Mumbai – 400059.
2. The Commissioner of Customs (Appeals), Chhatrapati Shivaji International Airport, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East) Mumbai – 400059.
3. The Additional Commissioner of Customs, Chhatrapati Shivaji International Airport, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East) Mumbai – 400059.
4. Mr.O.M.Rohira, Advocate, 148/5 Uphaar, 10th Road Khar (W), Mumbai
- ✓ 5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED



(B.P.Sharma)

OSD (Revision Application)