SPEED POST

F. No. 373/65/B/2019-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 17/01/23

Order No. 16 /23-Cus dated 17-01-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional 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. 124/2018-TRY(Cus) dated 31.07.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Trichy.

Applicants : Smt. R. Najeema Begam, Madurai

Respondent : Commissioner of Customs, Tiruchirappalli

* * *

ORDER

A Revision Application No. 373/65/B/2019-RA dated 01.04.2019 has been filed by Smt. R. Najeema Begam, Madurai (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. 124/2018-TRY(CUS) dated 31.07.2018, passed by the Commissioner of Customs and Central Excise (Appeals), Trichy. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the applicant herein against the Order-in-Original dated 15.11.2017, passed by the Assistant Commissioner of Customs (Airport), Madurai in O.S. No. 189/2017-Batch A.

2. Briefly stated, the Applicant herein arrived at Madurai Airport from Dubai, on 15.11.2017. The Applicant brought one raw gold chain, weighing 116 gms valued at Rs. 3,43,824/-, which was not declared. The goods appeared to be, therefore, liable to absolute confiscation under Section 111 (d), (e), (l), (m) and (o) of the Customs Act, 1962. The Applicant herein waived the issue of show-cause notice but was heard by the Original Authority at her request. The Original Authority, vide the Order-in-Original dated 15.11.2017, ordered absolute confiscation of the gold chain valued at Rs. 3,43,824/- and imposed a penalty of Rs. 10,000/- on the Applicant herein, under Section 112. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals).

3. The Revision Application, along with the condonation of delay application, has been filed on 01.04.2019. It has been, mainly, submitted that the order of Commissioner (Appeals) is contrary to law and probabilities of the case; that Applicant had not attempted to import any of the goods into India in contravention of any rules and regulations; that the Commissioner (Appeals) relied upon extraneous considerations which have no nexus with the goods brought in the instant case; that the submissions made before the Commissioner (Appeals) at the time of personal hearing were not recorded in the manner known to law; that the gold chain was not concealed and it should be released; that the Applicant had declared the gold chain brought by her and there is no mis-declaration or non-declaration; that the goods are not prohibited and the Customs Authorities do not have any other option but to allow redemption to the Applicant; and that the penalty of Rs. 10,000/- imposed on the Applicant is purely arbitrary and unreasonable. Several case laws have also been cited in supported of various contentions of the Applicant herein. In the condonation of delay application, it has been submitted that the Applicant became ill in September, 2018 due to which she could not contact her counsel for briefing the case and could not file the Revision Application on time. Hence, the Revision Application is being filed with a delay of 135 days, which may be condoned.

4. While the revision application was pending consideration, the Applicant herein approached the Madurai Bench of Hon'ble Madras High Court in WP (MD) No. 25498 of 2022 and W.M.P (MD) No. 19587 of 2022. Vide Order dated 10.11.2022, the Hon'ble High Court

disposed off the matter with the directions that the revision application may be disposed off within a period of 4 months from the date of receipt of copy of its Order. A copy of the Hon'ble High Court's Order dated 10.11.2022 was received in this office on 19.12.2022.

5. Personal hearing in the matter was held on 09.01.2023, in virtual mode. Shri A.K. Jayaraj, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that the gold chain was not concealed and the Applicant is not a repeat offender. Further, gold is not a prohibited item and hence the gold chain may be allowed to be redeemed for re-export. In respect of condonation of delay, when it was pointed out to the Ld. Advocate that the OIA impugned herein was received on 13.08.2018 whereas the RA has been filed on 01.04.2019, i.e., much beyond the condonable period as per Section 129DD, the Ld. Advocate requested one weeks' time to make written submissions in this regard. Accordingly, time upto 16.01.2023 was allowed to file written submissions by email making it clear that no further time shall be allowed since the matter has to be decided in a time bound manner as per the orders of the Hon'ble High Court. No one appeared for the Respondent department, nor any request for adjournment has been received. Therefore, it is presumed that the Respondent department has nothing to add in the matter. Further, the Applicant, who had been allowed time upto 16.01.2023 to file written submissions by email in respect of condonation of delay, did not file any submissions by due date. Therefore, after informing the Ld. Advocate for the Applicant, by email dated 17.01.2023, the matter is taken up for disposal.

6.1 The Government has carefully examined the matter. The Hon'ble High Court has directed that the matter may be decided on merits and in accordance with law. Therefore, at the outset, it has to be decided whether delay in filing of this revision application can be condoned, in accordance with law.

6.2 It is observed that, as per sub-section (2) of section 129 DD of the Customs Act, 1962, a revision application is required to be made within three months from the date of the communication to the Applicant of the order against which the application is being made. Further, as per proviso to the said sub-section (2), 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. Therefore, in terms of sub-section (2) of Section 129DD, read with the proviso thereof, a revision application can be made within a period of three months and the Central Government may, if it is satisfied that the Applicant was prevented by sufficient cause from presenting the revision application within the normal period of limitation of three months, condone the delay upto a further period of three months. In the present case, the Order-in-Appeal impugned herein has been communicated to the Applicant on 13.08.2018, as indicated in the revision application itself, whereas the revision application has been filed on 01.04.2019. Therefore, the instant revision application has not only not

been filed within the normal period of limitation of three months, but it has been filed beyond the condonable period of further three months also. It is settled by the judgments of Hon'ble Supreme Court in the cases of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)} and Amchong Tea Estate vs Union of India {2010 (257) ELT 3 (SC)} that a statutory authority does not have powers to condone the delay beyond the statutorily prescribed condonable period. A Division Bench of Hon'ble Madras High Court (i.e. the Hon'ble jurisdictional High Court) has, in the case of Gopinath & Sharma {2013 (32) STR 172 (Mad)}, relied upon the decision in Singh Enterprises (supra) to hold that "a statutory authority is not vested with power to exercise any discretion beyond the period stipulated by law". In the case of Saradha Travels {2015 (37) STR 433 (Mad.)} also, the Hon'ble Madras High Court has taken an identical view. Therefore, Government, acting as a revisionary authority in terms of the provisions of Section 129DD ibid, cannot condone the delay beyond the condonable period stipulated in the proviso to said sub-section (2) of Section 129DD.

7. The revision application is, accordingly, rejected as time barred.

(Sandeep Prakash)
Additional Secretary to the Government of India

Smt. R. Najeema Begam
W/o Shri Late Iqbal,
136F, 2nd Street, Lake Area,
Melur Road,
Madurai-625 107.

Order No. 16 /23-Cus dated 17-01-2023

Copy to:

1. The Commissioner of Customs, Trichy, No. 1, Williams Road, Cantonment, Trichy – 620 001.
2. The Commissioner of Customs & Central Excise (Appeals), Trichy, No. 1, Williams Road, Cantonment, Trichy – 620 001.
3. Shri A.K. Jayaraj, Advocate, No. 3, Thambusamy Road, Kilpauk, Chennai – 600 010.
4. PS to AS(RA).
5. Guard File.
6. Spare copy
7. Notice Board.

17/01/2023
ATTESTED
प्रवीण नेगी / Praveen Negi
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066