

SPEED POST



F. No. 373/512/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..23/01/23

Order No. 22/23-Cus dated 23-01-2023 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. 91/2019-TRY(CUS) dated 05.11.2019, passed by the Commissioner of GST & Central Excise (Appeals), Tiruchirappalli.

Applicants : Sh. Sathik Ali, Perambalur

Respondent : Commissioner of Customs, Tiruchirappalli

* * *

ORDER

A Revision Application No. 373/512/B/2019-RA dated 25.11.2019 has been filed by Sh. Sathik Ali, Perambalur (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. 91/2019-TRY(CUS) dated 05.11.2019, passed by the Commissioner of GST & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 54/2019 dated 21.03.2019, passed by the Assistant Commissioner of Customs (Preventive), Tiruchirappalli, as time barred.

2. Briefly stated, the Applicant herein, who had arrived from Kuala Lumpur, was intercepted at Tiruchirappalli airport, on 02.12.2018, by the Customs officers while he was crossing the Green Channel in a suspicious manner. The officers verified from the Customs Baggage officers that the Applicant had not submitted Indian Customs Declaration Slip and had not declared any dutiable item to them orally. Upon being questioned by the Customs officers whether he wanted to declare any valuables or gold to Customs or whether he was in possession of any gold in his person, the Applicant replied in negative. After examination of his person, 04 nos of unfinished gold coins wrapped with black colour insulation tape were recovered from his pant ticket pocket and 01 no. of unfinished gold ring chain wrapped with black colour insulation tape was recovered from him which was concealed in his rectum. Thereafter, the Government Approved Assayer tested and appraised the aforesaid gold items of having 24 Karat purity, totally weighing 160.00 gms and collectively valued at Rs. 4,88,000/-. On being asked as to why he did not declare the gold items in his Customs Declaration Form, the Applicant herein replied that the above said gold items do not belong to him. He further added that two unknown person approached him to carry the said gold items and to clear the same without knowledge of customs officers and without payment of customs duty and to hand over the same to their accomplice, who would be waiting outside the Trichy Airport and that he would be given Rs. 10,000/- as a monetary benefit. The Applicant further added that the unknown persons took his photo in their mobile phone and informed him that they would send it to their accomplice in order to identify him once he comes out of Trichy Airport. Upon being asked as to whether he had any convertible foreign currency to pay Customs Duty, he replied that the gold did not belong to him, he did not

bring any money and he had planned to clear the same without declaration and without payment of duty and unknown persons also had not given him any amount to pay customs duty. In his statement recorded on 02.12.2018, under Section 108 of the Customs Act, 1962, the Applicant, inter-alia, confirmed the position brought out in the Mahazar proceedings. The Original Authority, vide the Order-in-Original dated 05.11.2019, ordered absolute confiscation of the of the gold items as mentioned above under Sections 111(d), (i), (l) & (m) of the Customs Act, 1962 and imposed a penalty of Rs. 50,000/- on the Applicant, under Section 112(a) and (b) of the Act, *ibid*. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that the order passed by the Adjudicating authority is wrong, contrary to law and facts of the case; that import of gold and gold bullion is dutiable and gold items kept safely inside pant pockets can not be treated as concealment; that statement of Applicant was forcefully recorded and is non-voluntary; that there is no prohibition in importing gold coins and gold ornaments; that the Applicant orally declared the possession of gold coins and gold ornaments to the Customs officers but was not heard nor heeded to by the officers; that he is the owner of gold coins and gold ornaments. Accordingly, it is prayed that order of absolute confiscation be set aside and the gold items may be released to the Applicant on payment of appropriate duty, fine and reduced penalty or alternatively, the gold items may be allowed to be redeemed for re-export on payment of fine under Section 80 of the Customs Act, 1962 read with Section 125 of the Act, *ibid*.

4. Personal hearing in the matter was fixed on 20.01.2023, in virtual mode. No one appeared for either side nor any request for adjournment has been received. However written submissions have been received by email on 17.01.2023 wherein the Consultant for the Applicant has, inter-alia, requested for the matter to be decided on merits.

5. The Government has carefully examined the matter. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein on the grounds of limitation. It is not denied by the Applicant herein that the appeal was

indeed filed with a delay as recorded by the Commissioner (Appeals). However, vide email dated 17.01.2023 the Advocate of Applicant has cited The Limitation Act, 1963 and prayed that delay in filing appeal be condoned. The Government observes that, in terms of sub-section (1) of Section 128 of the Customs Act, 1962, an appeal may be preferred before the Commissioner (Appeals) within a period of 60 days from the date of communication of the order appealed against. Further, as per proviso to said sub-section (1), 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 60 days, allow it to be presented within a further period of 30 days. Therefore, in terms of Section 128, an appeal can be filed before the Commissioner (Appeals) within a total period of 90 days, including the condonable period of 30 days. As brought out by the Commissioner (Appeals), the appeal was filed before him on 29.08.2019 when the order of the original authority had been received by the Applicant herein on 30.03.2019 itself. Thus, it is evident that the appeal was filed much beyond the condonable period of 30 days. 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 the Commissioner (Appeals) does not have powers to condone the delay beyond the statutorily prescribed condonable period. In the case of Singh Enterprises (supra), the Hon'ble Supreme Court has also held that "there is complete exclusion of Section 5 of the Limitation Act" in such cases. Therefore, the Government does not find any infirmity in the Order-in-Appeal impugned herein.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Sathik Ali
S/o Sh. Mohamed Ali
No. 5, Hussain Ali St.,
Labbaikudikadu P.O,
Kunnam T.K, Perambalur-621108

Order No. 22/23-Cus dated 23-01-2023

Copy to:

1. The Commissioner of Customs, No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Shri A. Selvaraj, Superintendent of Customs (Retd.), 68, Krishnamurthynagar, Tiruchirappalli-620021.
4. PS to AS(RA).
5. Guard File.
- ~~6. Spare copy~~
7. Notice Board.

ATTESTED