

SPEED POST

F. No. 373/188/B/2018-RA & others
 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. 02/03/23.

Order No. 86-89 /23-Cus dated 09-03-2023 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(s), as mentioned in Column 'B' of the 'Table-I' below, filed by the Applicant(s), under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No(s). as mentioned in Column 'D' of the 'Table-I' below, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad, on the common grounds of Revision as mentioned in Column "E" of the Table, ibid.

Applicant(s) : As mentioned in Column 'C' of Table-I, below.

Respondent(s) : Pr. Commissioner of Customs, Hyderabad.

Table-I

S. No.	RA No. & Date	Name of the Applicant(s) S/Sh./Ms.	OIA No./ Date	Remarks
A.	B.	C.	D.	E.
1.	373/188/B/2018-RA dated 17.07.2018 05 Gold Pieces (151 gms) 960 nos of Gudang Garam Sticks 01 Sony Play Station	Mohd. Jahangeer, Hyderabad	HYD-CUS-000- APP-128-17-18 16.02.2018	Commissioner (Appeals) upheld OIO No. 45/2017 dated 29.05.2017 of the Assistant Commissioner of Customs

2.	373/189/B/2018-RA dated 17.07.2018 06 Gold Pieces (175 gms) 960 nos of Gudang Garam Sticks 01 Microsoft Xbox One	Mohd. Asim, Delhi	HYD-CUS-000- APP-125-17-18 16.02.2018	Commissioner (Appeals) upheld OIO No. 51/2017-Adjn.Cus(ADC) dated 12.05.2017
3.	373/190/B/2018-RA dated 17.07.2018 06 Gold Bars (175 gms) 960 nos of Gudang Garam Sticks 01 Sony Play Station	Mohd. Mehafooz, Delhi	HYD-CUS-000- APP-127-17-18 16.02.2018	Commissioner (Appeals) upheld OIO No. 50/2017-Adjn.Cus(ADC) dated 12.05.2017
4.	373/191/B/2018-RA dated 17.07.2018 06 Gold Bars (175 gms) 960 nos of Gudang Garam Sticks 01 Sony Play Station	Naseer Ahmed, Delhi	HYD-CUS-000- APP-126-17-18 16.02.2018	Commissioner (Appeals) upheld OIO No. 49/2017-Adjn.Cus(ADC) dated 12.05.2017

ORDER

Revision Application(s), as mentioned in Column '**B**' of the '**Table-I**' above, have been filed by the Applicant(s) whose names are mentioned in Column '**C**' of the '**Table-I**' above, under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No(s). as mentioned in Column '**D**' of the '**Table-I**' above, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) has, vide the respective Orders-in-Appeal, upheld the Orders-in-Original passed by the original authorities as mentioned in Column '**E**' of the Table *ibid*. The original authorities, i.e., the Assistant Commissioner of Customs, RGI Airport, Hyderabad, & the Additional Commissioner of Customs, Hyderabad, vide respective Orders-in-Original, had imposed penalty on the Applicants herein under Section 112(a) of the Customs Act, 1962, in addition to orders of absolute confiscation/confiscation/ redemption of offending goods recovered from them.

2. Brief facts of the cases are that the Applicants herein had been, upon their arrival by same flight from Dubai, on 31.10.2016, apprehended smuggling gold/gold articles of foreign origin, in their rectum, and other goods of foreign origin (as mentioned in Column '**B**' of the table) upon arrival at the Rajiv Gandhi International Airport, Hyderabad. They had attempted to remove these gold/gold articles/Foreign Origin Cigarettes etc. from the Customs Area without filing 'Customs Declaration Form' and upon oral inquiry also denied carrying any dutiable or prohibited goods. The original authorities ordered absolute confiscation/ confiscation/ redemption of offending goods and also imposed penalty under Section 112(a)(i) of the Act, *ibid* on the Applicants. Aggrieved, the Applicants herein filed their respective appeals, which have been rejected by the Commissioner (Appeals).

3. The Revision Applications, as mentioned in **Column 'B' of the Table-I**, have been filed by the Applicants, mainly, on the grounds that the impugned orders are not correct and justified as these were passed without giving an option to redeem the offending goods; that gold is not a prohibited item and as such option to redeem should have been granted; and that the penalties imposed under Section 112(a)(i) be reduced as they are too harsh.

4. As these revision applications involve identical issues, they are being disposed of by this common order.

5. Personal hearings were fixed on 06.03.2023. In the personal hearings held, in virtual mode, Sh. Ramesh Babu, Advocate appeared for the Applicants and reiterated the contents of the respective RAs. No one appeared for the department nor any request for

adjournment has been received. As such, it is presumed that the department has nothing to add in the matter.

6.1 The Government has carefully examined the matter. The Government observes that, in terms of sub-section (2) of Section 129DD of the Customs Act, 1962, 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. Further, as per proviso to 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.

6.2 In the present cases, as per respective RAs, the Orders-in-Appeal impugned herein were communicated to the respective Applicants on 22.02.2018 whereas the revision applications have been filed on 17.07.2018. As the normal period of limitation of 03 months ended on 22.05.2018, the RAs have been filed with a delay of 1 month 26 days. In the condonation of delay applications filed by the respective Applicants identical averments have made, as under:

"3. The subsection condonation petition is filed as there is delay in filing subject application. The applicant could not file the appeal within the stipulated period of three months as he was sick and undergoing private treatment. The applicant is supposed to file the subject appeal within three months i.e. on or before 05.07.2018, but it could not be filed due to health problems. The application is being filed on 17.07.2018. Thus there is a delay of 12 days. Since the delay in filing the Revision Application is not intentional the delay may kindly be condoned."

Thus, even though in all of these cases, delay is of one month and 26 days the condonation has been sought for only 12 days. Further, identically worded averments, as above, have been made in each of the COD applications and same grounds for the condonation have been raised. It is, thus, evident that condonation of delay has been sought in a mechanical and casual manner without any consideration for facts.

6.3 In the case of Balwant Singh vs. Jagdish Singh the Hon'ble Supreme Court {2010 (262) ELT 50 (SC)} has held as under:

"13.----- We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of

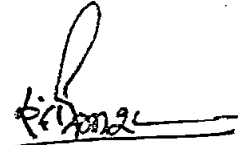
reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its right and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behavior or a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.-----"

Thus for delay to be condoned, the party concerned should not be negligent and the reasons advanced for delay should be bona fide. In the present case, the Applicants have been negligent and casual in seeking condonation for delay of only 12 days when delay involved is of 01 month and 26 days. Further, identically worded applications claiming that filing was delayed in all four cases for the identical period and for identical reasons (i.e. ill health of the respective Applicants) make it apparent that the averments made are not correct and ex-facie lack bonfide. It is noted that claim of ill health/sickness of each of the Applicants apparently for identical length of time is also not supported by any medical certificate.

6.4 Further, in the case of *Bharat Sanchar Nigam Ltd. vs. CESTAT* {2016 (342) ELT 34 (P & H)}, the Hon'ble Punjab & Haryana High Court has upheld the decision of the Tribunal wherein the condonation of delay application was blank as the number of days of delay in

filing the appeal had not been mentioned therein. In the present case, though delay involved is of one month & 26 days, all Applicants have sought condonation for only 12 days.

7. In view of the above, the requests for condonation of delay are rejected and the revision applications are dismissed as time barred.



(Sandeep Prakash),
Additional Secretary to the Government of India

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4. Sh. Naseer Ahmed
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Order No. 86-89/23-Cus dated 09-03-2023

Copy to:

1. The Principal Commissioner of Customs, Kendriya Shulk Bhawan, L.B Stadium Road, Basheer Bagh, Hyderabad-500004.
2. The Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, Kendriya Shulk Bhawan, L.B Stadium Road, Basheerbagh, Hyderabad-500004.
3. Shri M. Ramesh Babu, Advocate, Opposite RGIA Police Station Ground, Kothwalguda Road, Post-Shamshabad, Ranga Reddy District, Telangana.
4. PPS to AS(RA)
5. Guard file.

6. Notice board.

17. Spare copy.

ATTESTED
20/2/2018
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