

SPEED POST



F. No. 373/83/B/SZ/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...10/01/24

Order No. 10/24-Cus dated 10-01-2024 of the Government of India passed by Smt. Shubhagata Kumar, 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. CAL-EXCUS-000-APP-831-2018 dated 22.10.2018, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin.

Applicant : Sh. Kochu @ Ahammed P.P, Malappuram

Respondent : The Commissioner of Customs (P), Cochin

ORDER

A Revision Application No. 373/83/B/SZ/2019-RA dated 15.03.2019 has been filed by Sh. Kochu @ Muhammed P.P @ Ahammed P.P, Malappuram (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CAL-EXCUS-000-APP-831-2018 dated 22.10.2018, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 41/2014-15 dated 30.03.2015, passed by the Joint Commissioner of Customs, Calicut International Airport by imposing penalty of Rs. 22,20,000/- on the Applicant under Section 112(a) of the Customs Act, 1962.

2. Brief facts of the case are that the officers of Air Intelligence Unit (AIU), based on specific information, intercepted one Shameem who worked as Wireman Assistant, M/s. Chennai Engineering, on contract with Airport Authority of India, while he was coming from the Duty-Free Shop at the Airport on 13.01.2014. Upon enquiry as to whether he was carrying any gold item on his person, he replied in the negative. Upon his personal search two yellow metal bars weighing one Kg each covered in polythene covers kept in the lower abdomen area inside his pants/trousers, two bundles of US dollars 8300 kept in his rear pocket, a sum of Rs. 600 and a Samsung Galaxy Phone were recovered. Upon enquiry Shameem admitted that the said yellow metal bars and the US dollars were collected by him from a passenger who had arrived by flight from Dubai, near the duty free shop near the immigration hall. Thereafter, upon being identified by Shameem, a passenger named Araveetil Nabeel Ansari, Kozhikode was intercepted as the passenger who gave the gold bars and US dollars to him. Upon enquiry, Araveetil Nabeel Ansari informed that he was in possession of a gold bar weighing 1 Kg for which he had already paid appropriate Customs duty. On further enquiry, the passenger had admitted that when he had completed his check-in formalities at Dubai Airport, one person named Baputty who was known to him in Dubai handed over three gold bars weighing one Kg each and foreign currency in US dollars amounting to \$ 12450 required for payment of customs duty on the gold. He

further deposed that the said Baputty instructed him to give two gold bars weighing one Kg. each to a person who would contact him over mobile phone on his arrival at Calicut International Airport and as per Baputty's instructions he had handed over the two 1 Kg gold bars to a person who had contacted him over mobile phone when he was standing in the duty-free shop near Immigration Hall. To the query as to whom he had handed over the gold bars, the passenger identified Shameem who was present there as the person to whom he had handed over two gold bars each weighing 1 Kg. No foreign or Indian currency was recovered either from his person or from his baggage. The said three gold bars were examined and certified by Sh. N.V Unnikrishnan, Goldsmith as of 24 carat purity, each weighing one Kg. The market value of the said gold bars was ascertained to be Rs. 88,74,000/-.

Shameem in his statement dated 13.01.2014, recorded under Section 108 of the Customs Act, 1962, stated interalia that he had been working in Calicut International Airport as operator/wireman assistant on contract basis for M/s. Chennai Engineering Services from 26.06.2013; that he was entrusted with the work of checking water leakage of pipes, valves, tanks etc.; that in the morning of 13.01.2014, one Kochu also known as Muhammed (Applicant) called him and gave him a mobile no. 9605586666 and asked him to call at that number as soon as flight arrived from Dubai and to collect two Kgs of gold and US Dollar from a passenger who is the holder of the said mobile with number 9605586666 and to deliver the same to the Applicant for which Rs. 20,000/- per Kg. was offered to him; that he had accordingly contacted the passenger on the above number when the flight landed and asked him to come to Flemingo Duty Free Shop located at the arrival hall of the Calicut International Airport; that the passenger came to the duty-free shop and he recognized him and handed over two gold bars totally weighing two Kgs and 8300 US dollars; and that he had kept the gold bars and US Dollar in the inner pocket of his pants and had come to the Customs hall.

Araveettil Nabeel Ansari in his statement dated 13.01.2014, recorded under Section 108 of the Customs Act, 1962, stated interalia that he had been working in a

company in Dubai for the past six years as representative; that his family was staying with him in Dubai; that when he planned to visit his native place, many of his friends approached him for carrying gold to Kerala and offered Rs. 50,000/-* per Kg.; that he and his family agreed to carry three Kg. i.e. three gold bars of one Kg each; that on 09.01.2014, the said Baputty had collected from him and his family, copies of their passports and air tickets; that on 12.01.2014 at around 20:00 hrs, he along with his family reached Dubai airport, and obtained Boarding Pass; that Sh. Baputty too had reached the airport and he took photo copies of their Boarding Passes and the copies of their passports and kept the same along with invoices of gold bars, and the certificates meant for the clearance of Dubai Police and asked him to get the clearance of the Dubai Police; that accordingly he obtained the necessary clearance of the Dubai Police; that Baputty thereafter handed over to him three gold bars weighing one Kg. each and three bundles of currencies of 4150 dollars each; that after completing all formalities, Baputty gave him a Samsung mobile phone for contacting local persons after arriving at Calicut Airport and also told him to hand over two Kg. of gold out of the total quantity of three Kg. to a person who would contact him over phone upon his arrival at Calicut Airport; that Baputty also told him to pay duty on the entire quantity of gold if nobody contacted him after arriving at Calicut International Airport and hand over the same to a person waiting outside the Airport upon which his promised remuneration of Rs. 50,000/- per Kg. of gold would be paid; that after arriving at Calicut Airport, one person telephoned him and asked him to meet him at the Duty Free Shop located in the arrival hall after immigration section; that when he reached at the Duty Free Shop one person approached him; that at that point he made a call at the phone number in which he had received a call when he had reached at Calicut Airport; that mobile phone of the person who met him at the Duty Free Shop started ringing and that the said person introduced himself and stated that he was the person he was supposed to hand over the gold bars to; that as per the earlier directions from Baputty the two gold bars of one Kg. each along with the amount of US Dollar 8300 were handed over to the said person; and that he thereafter came to the customs counter and paid duty on the remaining one Kg of gold.

The original adjudicating authority, vide the aforementioned Order-in-Original, confiscated absolutely the impugned gold bars and imposed penalties of Rs. 22,20,000/- & Rs. 8,75,000/- on Sh. Araveetil Nabeel Ansari under Section 112(a) and 114AA, respectively and penalty of Rs. 22,20,000/- on Sh. Shameem under Section 112(a). However, no penalty was imposed on the Applicant. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), who modified the order of original authority as mentioned in para 1 above.

3. The revision application has been filed mainly on the grounds that the submissions made by the Applicant in Cross Objections filed by him were rejected in a vague and perfunctory manner; that the Applicant did not receive any notice after filing the cross objections; and that Commissioner (Appeals) ought to have considered each of the findings of the Original Authority and recorded a speaking order as to how and why the Original Authority's findings are not acceptable and why the Applicant must be penalized.

4. Personal hearings were granted on 21.08.2023, 11.09.2023 & 09.10.2023. Ms. Latha R., Assistant Commissioner attended the hearing on 21.08.2023, however no one appeared for the Applicant. Sh. Zahir, Advocate for the Applicant attended the hearing on 11.09.2023 and stated that no contraband or documents were seized from his client and that Section 123 is not applicable in his case. Out of the 3 Kgs of impugned gold, 1 Kg was duty paid by one Nabeel Ansari who allegedly on one Baputty's instructions was handed over to one Shameem along with the impugned currency notes. Shameem named his client, but his client is not involved in the matter. He stated that the department has not adduced any evidence to establish that the phone from which Kochu was stated to have made calls to Shameem belonged to him. His client has denied that the phone belonged to him. The LAA passed a fair and just order which was overturned by the Appellate Authority. He further stated that Appellate Authority did not take cognizance of the retraction of the statement and the second statement recorded by Shameem of which he sought to provide a copy. He sought restoration of Lower Adjudicating Authority's order. None appeared from the

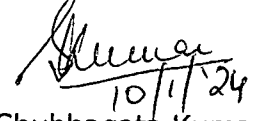
side of Respondent. In the hearing held on 09.10.2023, Sh. Zahir submitted that he has forwarded a copy of the Appeal memorandum, obtained from Commissioner (Appeals)'s office. It does not contain a copy of Commissioner's review order. Rule 4(2) provisions have made it mandatory to provide the Commissioner's order of review. Without a copy of the review order, he could not file a proper cross objection.

5.1 The Government has carefully examined the matter.

5.2 The Government observes that, in terms of sub-section (2) of the Section 129DD, a revision application shall be made within three months from the date of the communication of the order against which the application is being made. In the present case, the OIA impugned herein was received by the Applicant in the first week of November 2018. The instant revision application has been filed on 15.03.2019, after a period of more than 4 months from the date of receipt. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, proviso to said sub-section (2) provides discretion to the Government to allow an application to be presented within a further period of 3 months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. In the present case, the reason cited for non-filing of the revision application within the normal period of 3 months is that he misplaced the Order-in-Appeal and was forced to approach the office of the Commissioner (Appeals) for a certified copy of the Order for filing the revision application, however, the same has not been substantiated with any documentary evidence.

Therefore, Government holds that the Applicant has failed to establish that he was prevented by sufficient cause from presenting the application within the normal period of 3 months. Hence, the application is liable to be rejected on this ground alone, without going into the merits of the case. In the conspectus of these facts and circumstances, the Government is constrained to hold that the applicants have been

unable to show "sufficient cause" as required under Section 129DD of the Customs Act, 1962. The revision application is thus rejected on grounds of limitation without traversing the merits of the case.


10/11/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Kochu @ Muhammed P.P @ Ahammed P.P
S/o Late Hassan P.P., Parambat Palliyil House
Kumminipara, Kumminiparamba P.O.
Malappuram

Order No. 10/24-Cus dated 10-01-2024

Copy to:

1. The Commissioner of Customs (Preventive), Cochin, 5th Floor, Cochin Centre, Broadway, Cochin-682031.
2. The Commissioner of Customs (Appeals), 4th Floor, C.R Building, I.S Press Road, Cochin-18.
3. Sh. Mohammed Zahir (Advocate), 3/57-A, Nedungadi Gardens, West Nadakkavu, Calicut-673011.
4. PPS to AS(RA).
5. Guard File.
6. ☒ Spare Copy.
7. Notice Board.

ATTESTED



रीतेश कुमार / RITESH KUMAR
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.