

SPEED POST



F. No. 373/283/B/SZ/2018-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.. 5/9/23..

Order No. 209/23-Cus dated 04-09-2023 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. HYD-CUS-000-APP-043-18-19 dated 25.07.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicants : Smt. Bushara Imtiyaz Sayed, Mumbai

Respondent : Pr. Commissioner of Customs, Hyderabad

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ORDER

A Revision Application No. 373/283/B/SZ/2018-RA dated 12.10.2018 has been filed by Smt. Bushara Intiyaz Sayed, Mumbai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-APP-043-18-19 dated 25.07.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. 12/2018-Adjn.Cus (ADC) dated 01.02.2018, passed by the Additional Commissioner of Customs, RGI Airport, Hyderabad, as time barred.

2. Brief facts of the case are that the Applicant herein was intercepted at the exit gate of Customs Arrival Hall by the officers of DRI, Zonal Unit, Hyderabad upon her arrival at RGI airport, Hyderabad, from Abu Dhabi, on 13.07.2017. Upon being enquired whether she was carrying any gold bullion, she replied in negative. Upon the search of her baggage, a white colour mixer alongwith some food items and used clothes were found. After opening up the mixer, it was noticed that the motor in the mixer appeared to be tampered with as some screws were missing. Thereafter, the officers with the help of airport technical staff dismantled the motor and found two semicircular shaped yellow metal bars fixed in the core of the motor. The two semicircular shaped yellow metal bars were found to weigh 646.630 grams and 644.060 grams i.e., total 1290.690 grams. Upon being enquired about the two yellow metal bars found concealed in the core of the motor, the Applicant admitted that the same were of foreign origin gold. The Government registered Valuer examined the two yellow metal bars and certified both of them to be of 24 carat gold of 99% purity having total net weight of 1290.690 grams and collectively valued at Rs. 37,73,840/-. In her statement dated 13.07.2017, recorded under Section 108 of the Customs Act, 1962, the Applicant herein, inter-alia, stated that she was native of Delhi; that her husband drives autorickshaw in Mumbai and she is a beautician and works in a beauty parlour in Mumbai; that she resorted to gold smuggling and made several trips from UAE to India and for each trip she was paid an amount of Rs. 5000/- to Rs. 10000/-

depending upon the quantity of gold brought into India, besides to and fro flight tickets and boarding arrangements; that upon her arrival into India, the smuggled gold was to be handed over to the persons as per the directions of the person who arranged the trip; that gold which was smuggled by her was neither purchased by her nor belonged to her; that one lady by name Ms. Nafeesa of Andheri, Mumbai, lured her by promising handsome amounts by bringing gold in good quantities by concealing the same in checked-in baggage from UAE and that Ms. Nafeesa also told her that she would arrange to and fro tickets and boarding and lodging at UAE and she accepted her proposal as her income was less; that in her previous trips from UAE, she arrived at different airports as per directions of Ms. Nafeesa, only for the purpose of smuggling of gold for monetary consideration and handed over to her contact persons; and that she had not purchased the mixer and gold bars at Abu Dhabi UAE, but one person by name Nazir, contact person of Ms. Nafeesa went to her room in Abu Dhabi on 12.07.2017, UAE and asked her to hand over the same to Sri Rameez, another contact of Ms. Nafeesa at Hyderabad and that she was promised an amount of Rs. 10,000/- on her arrival at Mumbai after handing over the gold at Hyderabad. The original authority, vide aforesaid Order dated 01.02.2018, ordered for absolute confiscation of the 02 gold bars, under Sections 111(d), 111(i), 111(j), 111(l) of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- under Section 112(b)(i) of the Act, *ibid.* Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected as time barred, i.e., for a delay of 28 days.

3. The revision application has been filed, mainly, on the grounds that the appeal had been rejected as time barred even though sufficient reasons were given for condonation of delay; that the Commissioner (Appeals) had stated that the Applicant had not produced any evidence in support of the application for condonation of delay but no deficiency memo etc. was issued in this respect; that, now, an affidavit in this regard is being submitted which may be taken on record; that there was no dispute about non-declaration and the manner in which the subject gold was brought by the Applicant and the Applicant had accepted her mistake; that the gold is not a prohibited

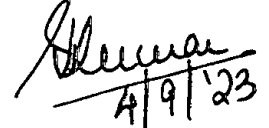
item and that, therefore, an option for redemption ought to have been given; and that the penalty imposed under Section 112 is too harsh which may be reduced.

4. In the hearing held on 08.08.2023, in virtual mode, Sh. Ramesh Babu, Advocate appeared for the Applicant and submitted that this is an old matter and he has not got any documents nor anything to state about 'sufficient cause' for condonation of delay. He accepted that identical grounds were there in all the cases represented by him before Commissioner (Appeals) as discussed in the OIA and that he has nothing further to state in the matter. He reiterated that gold is not a prohibited item and that his submissions are all contained in the RA filed. No one appeared for the department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the case. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), on the grounds of delay. It is not disputed by the Applicant that the appeal was filed 28 days after the normal limitation period of 60 days, provided under Section 128 of the Customs Act, 1962. The Applicant had, in support of her request for condonation of delay, claimed that though the order of the original authority had been received by a relative at the home of the Applicant but it was misplaced which led to delay in filing of the appeal. The Commissioner (Appeals) has rejected this request for condonation on the grounds that no evidence had been produced in support thereof and no affidavit had been placed on record from the relative or the Advocate of the Applicant to prove the facts stated in the COD application. It has also been brought out that two other similar appeals, which were also heard by the Commissioner (Appeals) on the same day and where the same learned Advocate appeared, the facts stated and the reasons submitted for seeking condonation of delay were identical. The Commissioner (Appeals) observed that the persons involved in these cases were unconnected but the reasons for delay were identical, which led him to conclude that the grounds urged for delay were false and fabricated. The Government observes that the observations made by the Commissioner (Appeals) regarding identical reasons being put forth to seek

condonation of delay in two other unconnected matters, represented by the same learned Advocate, are not denied. Further, while in the revision application it is stated that, at revision stage, an affidavit supporting reasons for delay is being placed on record, no such affidavit forms part of the revision application. In the conspectus of these facts and circumstances, the Government is constrained to conclude that sufficient cause under Section 128(1) has not been shown by the applicants for condonation of delay under the said section establishing sufficient cause. Thus the Applicant has failed to establish sufficient cause for condonation of delay under section 128(1). In view of these facts and circumstances, the Government does not find any infirmity in the view taken by the Commissioner (Appeals).

6. The revision application is, accordingly, rejected.


4/9/23

(Shubhagata Kumar)

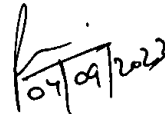
Additional Secretary to the Government of India

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Order No. 209/23-Cus dated 04.09.2023

Copy to:

1. Pr. Commissioner of Customs, GST Bhavan, L.B Stadium Road, Hyderabad-500004.
2. The Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500004.
3. Sh. M. Ramesh Babu, Advocate, Opp. RGIA Police Station Ground, Kothwalguda Road, Post Shamsabad (Village and Mandal), Rangareddy District, Telangana-501218.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.


04/09/2023

ATTESTED

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