

SPEED POST



F. No. 373/292/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...08/5/23

Order No. 174/23-Cus dated 08-05-2023 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom 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-042-18-19 dated 25.07.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : Sh. Munibulla Khan, Shimoga.

Respondent : Pr. Commissioner of Customs, Hyderabad.

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ORDER

A Revision Application No. 373/292/B/SZ/2018-RA dated 12.10.2018 has been filed by Sh. Munibulla Khan, Shimoga (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-APP-042-18-19 dated 25.07.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 11/2018-Adjn.Cus (ADC) dated 01.02.2018, passed by the Additional Commissioner of Customs, Hyderabad, as time barred.

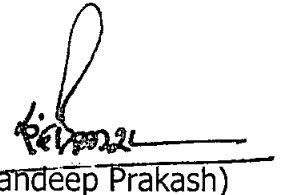
2. Brief facts of the case are that the Applicant herein was intercepted, by the officers of Directorate of Revenue Intelligence (DRI), Hyderabad, at the exit gate of the RGI Airport, Hyderabad, on 23.03.2017, upon his arrival from Dubai. Upon search, he was found to be in possession of 09 yellow metal bars (of gold of 24 carat), totally weighing 952.40 gms. and valued at Rs. 27,90,532/-. He had made a 'Nil' declaration in his Indian Customs Declaration Form. In his statement dated 23.03.2017, recorded under Section 108 of the Customs Act, 1962, the Applicant herein, inter-alia, stated that he was working as a driving instructor at Dubai; that he had procured 09 gold bars at Dubai; that he was not having sufficient foreign currency to pay Customs duty and he had not declared the same to Customs authorities and also submitted a 'Nil' declaration in the Customs Declaration Form; that he had purchased these 09 gold bars to make ornaments for the marriage of his daughter; that he accepted the offence committed by him and requested that a lenient view may be taken. After completion of investigations, a show cause notice dated 18.09.2017 was issued, which was adjudicated by the original authority vide the aforesaid Order-in-Original dated 01.02.2018. The original authority ordered for absolute confiscation of the offending gold and imposed penalties of Rs. 2,00,000/- and Rs. 1,00,000/- under Section 112 and Section 114AA, respectively, of the Customs Act, 1962. The appeal filed by the Applicant herein has been rejected as time barred.

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 his mistake; that the gold is not a prohibited item and that, therefore, an option for redemption ought to have been given; that the penalty imposed under Section 112 is too harsh which may be reduced; and that the penalty under Section 114AA need not be imposed as penalty under Section 112 had already been imposed.

4. Personal hearing in the matter was held, in virtual mode, on 08.05.2023. Sh. Ramesh Babu, Advocate appeared for the Applicant and reiterated the contents of the RA. He submitted that the Commissioner (Appeals) had unfairly rejected their COD application and that they have a good case on merits. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it 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 his request for condonation of delay, claimed that though the order of the original authority had been received 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 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 this stage, an affidavit supporting reasons for delay is being placed on record, no such affidavit forms part of the revision application. Irrespective of the same, Government is in agreement with the Commissioner (Appeals) that identical grounds for the delay being urged by three unconnected persons, involved in similar matters and represented by same learned Advocate, makes the whole matter doubtful. In such a case, the substantiation of these grounds by producing evidence becomes even more important, which the Applicant failed to do before the Commissioner (Appeals) and even before the Government. 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.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Munibulla Khan,
S/o Hussain Aleman Keri,
Lashkar Mohalla Kote, Shimoga,
Karnataka-577202.

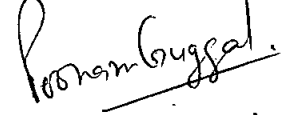
Order No. 174/23-Cus dated 08-05-2023

Copy to:

1. The Pr. Commissioner of Customs, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad-500004.

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

ATTESTED



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