

SPEED POST



F. No. 373/289/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..15/05/23.

Order No. 192 /23-Cus dated 15-05-2023 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. HYD-CUS-000-APP-041-18-19 dated 25.07.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicants : Sh. Mohammed Shaibaz, Bhatkal

Respondent : Pr. Commissioner of Customs, Hyderabad

ORDER

A Revision Application No. 373/289/B/SZ/2018-RA dated 12.10.2018 has been filed by Sh. Mohammed Shaibaz, Bhatkal (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-APP-041-18-19 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. 13/2018-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, after he had passed through the Green Channel, by the Customs officers upon his arrival at RGI airport, Hyderabad, from Muscat, on 05.04.2017. Upon being enquired whether he was in possession of any dutiable or prohibited goods, he replied in negative. Upon being further asked to produce 'Indian Customs Declaration Form' required to be filed by him with the Customs in case he was carrying any dutiable/restricted goods, he replied that he was not in possession of any such form. Upon the search of his baggage, a metallic object was found which was concealed in the metallic frame of one of the checked-in baggage. The metallic frame was wrapped with black adhesive tape and cloth. Upon removal of black adhesive tape and cloth and after breaking up of the metallic frame silver coloured metallic strips were found. When questioned by the officers, the Applicant replied that the silver coloured metal strips were in fact made of gold and that he intentionally concealed the gold in the form of strips in his checked in trolley suitcase. The Government of India approved Valuer in his report dated 05.04.2017, certified the said offending goods to be of 24 carat purity gold of 99.9%, weighing 866 grams and valued at Rs. 25,33,050/-. In his statement dated 05.04.2017, recorded under Section 108 of the Customs Act, 1962, the Applicant herein, inter-alia, stated that he was engaged in readymade garments business in Dammam, Saudi Arabia; that after his arrival from Dubai on 05.04.2017, he opted for Green Channel to avoid detection by the Customs authorities and to evade payment of Customs duty on the contents of

baggage; that he had brought some of his personal clothing, household items such as dry fruits, cosmetics etc. and gold strips coated with silver colour concealed in the metal frame of the trolley suitcase; that he purchased the gold strips weighing 866 grams in Dubai from his savings, but he did not have any bills regarding the gold; that he had purchased one trolley suitcase in the market and asked one Ethiopian person who was engaged in bag repairing work to conceal these gold strips in the trolley suitcase to avoid detection by customs officials at the airport; and that he did not have any money to pay the customs duty and he also wanted to make profit by selling the gold in the local market. The original authority, vide aforesaid Order dated 01.02.2018, ordered for absolute confiscation of the gold strips, under Sections 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962 and imposed penalties of Rs. 5,00,000/- and Rs. 1,00,000/-, under Sections 112(a) and 114AA, respectively, 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 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 was fixed on 03.05.2023, in virtual mode. No one appeared for either side nor any request for adjournment was received. In the hearing held on 12.05.2023, in virtual mode, Sh. M. Ramesh, Advocate appeared for the Applicant and

reiterated the contents of the RA. 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 his 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 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 the grounds urged for delay, by producing evidence, becomes even more important, which the Applicant has

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). The Government has taken an identical view in one of the other such matters referred to in the Order impugned herein (decided by the Commissioner (Appeals), vide OIA No. HYD-CUS-000-APP-042-18-19 dated 25.07.2018), vide GOI Order No. 174/2023-Cus dated 08.05.2023.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Mohammed Shaibaz
S/o Sh. Mohiddin Jailani Rumnuddin
Khansa Manzil, Umer Street,
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Order No. 192/23-Cus dated 15-05-2023

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.

ATTESTED



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