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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 06.10.2022*

\+ **W.P.(C) 14142/2022**

ASKER ALI CHENGALA MALLAM ......Petitioner

Through: Mr Rahul Raheja, Advocate.

versus

UNION OF INDIA & ANR. ......Respondents

Through: Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur, Advocate.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 43191/2022

1. Allowed, subject to just exceptions.

W.P.(C) 14142/2022 and CM APPL. 43192/2022*[Application filed on behalf of the petitioner seeking interim relief]*

2. This writ petition is directed against order dated 20.07.2021 passed by the Additional Secretary to the Government of India, Ministry of Finance (Department of Revenue), in exercise of his revisional powers, under Section 129DD of the Customs Act, 1962.

2.1. The petitioner had filed the revision application against the order-in-appeal dated 27.04.2018 passed by the Commissioner of Customs (Appeals) i.e., respondent no.2.

3. To be noted, there are two respondents arrayed in the writ petition.

3.1 Respondent no.1 is the Union of India (UOI), which is sued through its Principal Commissioner & Additional Secretary to the Government of India, Ministry of Finance.

3.2 Respondent no.2 is the Commissioner of Customs, Terminal 3, Indira Gandhi International Airport.

4. Although the revisional authority is represented by UOI, it is not, as noticed above, sued through the Additional Secretary to the Government of India i.e., the designated revisional authority.

4.1 We may note, that Mr Harpreet Singh is present in Court on behalf of the respondent no.2 i.e., the contesting party.

4.2 Clearly, the revisional authority, having passed the order, would not ordinarily defend its order, by having its representative in Court. The order, if at all, would be defended by one of the parties.

4.3 Thus, in the instant case, the impugned order i.e., the order dated 20.07.2021, will have to be defended, if at all, by respondent no.2.

4.4 This position is not disputed by Mr Singh.

5. Issue notice to respondent no.2.

5.1 Mr Harpreet Singh accepts notice on behalf of the respondent no.2.

6. In view of the order that we propose to pass, Mr Singh says that he does not wish to file a counter-affidavit.

7. Given this stand, the writ petition is taken up for hearing and final disposal.

8. The record shows, that order-in-original was passed on 12.07.2016.

8.1 The operative directions issued by the adjudicating authority i.e., Additional Commissioner of Customs, read as follows:

> *i) I deny the free allowance as admissible to the Noticee of various omission and commission made by him.*
> *ii) I order absolute confiscation of thirty six (36) gold bars total weighing 4199.04 grams, the value was appraised at Rs. 99,36,104/- (Rupees Ninety Nine Lakh Thirty Six Thousand One Hundred Four only) seized from possession of the Noticee under Section111(l) & 111 (m) of the Customs Act, 1962. I do not give option to the noticee for payment of customs duty. I deny the ownership of the Noticee in respect of the seized goods.*
> *iii) I order confiscation of the concealing material i.e. black color cello tape having no commercial value under Section 118 and 119 of the Customs Act, 1962.*
> *iv) I also impose a penalty of Rs. 20,00,000/- (Rupees Twenty lakh only) on the Noticee under Section 112 and 114AA of the Customs Act, 1962."*

9. As is evident on a perusal of the record, the petitioner arrived from Dubai and landed at Terminal-3, Indira Gandhi International (IGI) Airport on 23.11.2014.

9.1 The petitioner, upon landing, was intercepted.

9.2 The interception revealed, that he was carrying 36 gold bars, weighing 4199.04 grams.

9.3 The said gold bars were valued at Rs. 99,36,104/-.

9.4 Accordingly, the said gold bars were seized, on the ground that they were liable for confiscation.

10. It is this, which led to the passing of the aforementioned adjudication order dated 12.07.2016, pursuant to a show cause notice dated 18.05.2015 being issued.

10.1 Being aggrieved, the petitioner preferred an appeal, which, however, was not decided on merits, and was dismissed on the ground of delay.

11. According to the Commissioner of Customs (Appeals), there was a delay of ten days, and because an application for condonation of delay was not filed, the appeal was not viable. The appeal was, thus, dismissed.

12. The petitioner escalated the matter to the revisional authority.

12.1 The revisional authority *via* the impugned order dated 20.07.2021, dismissed the revision application.

13. A perusal of the impugned order passed by the revisional authority shows, that although the matter was fixed on several dates for personal hearing, none had put in appearance for the writ petitioner.

13.1 These dates, as noted in paragraph 4 of the impugned order, are 28.04.2021, 12.05.2021 and 18.06.2021.

13.2 On 19.07.2021, when the matter came up, once again an accommodation was sought, on the ground that the counsel engaged in the matter was unable to appear, due to an "untoward incident."

13.3 The revisional authority declined to accommodate, and proceeded to pass the impugned order.

13.4 The revisional authority, like the Commissioner of Customs (Appeals), has not decided the matter on merits.

13.5 The revisional authority was of the view, that since condonation of delay application had not been filed, the order of the Commissioner of Customs (Appeals) need not be disturbed.

13.6 According to the revisional authority, the stance taken before him, that the condonation of delay application was not filed due to mistake of the lawyer, had not been substantiated.

13.7 In this regard, the revisional authority also noted, that there was no evidence placed before him, that the petitioner had instructed his lawyer to file an application for condonation of delay.

14. According to us, although a litigant should be held to account for failure of his lawyer to take necessary steps to protect his interest, there is only so much that the litigant can do.

15. Given the fact that the delay involved was of only ten days, and the matter has not been heard on merits, both before first appellate authority i.e., Commissioner of Customs (Appeals), as well as the revisional authority, we are inclined to set aside the order of the revisional authority, and the Commissioner of Customs (Appeals), with a direction to hear the matter on merits.

15.1 Accordingly, the order of the revisional authority dated 20.07.2021, and that of the first appellate authority i.e., Commissioner of Customs (Appeals) dated 27.04.2018 are set aside.

16. The matter is remitted to the Commissioner of Customs (Appeals) for a *de novo* hearing, on merits.

17. Since the petitioner, in a sense, too was responsible, partially, if not wholly, as regards the fate that the matter suffered both before the first appellate authority i.e., the Commissioner of Customs (Appeals) and the revisional authority, he should be, according to us, burdened with costs of Rs. 25,000/-.

18. The costs will be deposited with the "Bar Council of Delhi Indigent & Disabled Lawyers Account", within the next two weeks.

18.1 To ensure compliance, list the matter before the concerned Registrar on 14.10.2022.

19. The matter shall stand remitted to the Commissioner of Customs (Appeals), New Custom House, New Delhi.

19.1 The said authority will serve a written notice on the petitioner for grant of hearing on merits.

20. The writ petition is disposed of in the aforesaid terms.

21. Needless to add, if the costs are not deposited, the proceedings before the Commissioner of Customs (Appeals) will not proceed.

22. Pending application shall also stand closed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 6, 2022 / tr