

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/40/B/15-RA /1017

Date of Issue 18.02.2021

ORDER NO. 10/2021-CUS (WZ)/ASRA/MUMBAI DATED (5.01.2021) OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Bhishamdas Jindumal Nathani

Respondent : Commissioner of Customs, CSIA, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-000-APP-564 & 565/14-15 dated 26.11.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Bhashamdas Jindumal Nathani (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-000-APP-564 & 565/14-15 dated 26.11.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Briefly stated the facts of the case are that Shri Bhashamdas Jindumal Nathani, his wife Smt. Bhagwatiben and sons Shri Dipesh and Shri Ashish arrived at the Mumbai airport from Dubai on 16.05.2013. They were intercepted at the *exit after having cleared themselves through the green channel*. On enquiring the passengers whether they were carrying any dutiable goods or gold they replied in the negative. However, a personal search of the Applicant resulted in the recovery of assorted gold jewelry weighing 425 gms., valued at Rs. 10,80,385/- (Rupees Ten lacs Eighty Thousand three hundred and eighty five).

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/ML/ADJN/91/2013-14 dated 27.02.2014 ordered confiscation of the impugned goods, but allowed redemption on payment of a fine of Rs. 3,00,000/- (Rupees Three Lacs) and imposed penalty of Rs. 2,00,000/- (Rupees Two Lacs) under Section 112 (a) & (b) of the Customs Act, 1962 and a penalty of Rs. 10,000/- (Rupees Ten thousand) under section 114AA of the Customs Act, 1962 on Applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-000-APP-564 & 565/14-15 dated 26.11.2014 rejected the appeal on the grounds of limitation as the application was received late by six days beyond a period of 60 days, *without sufficient cause for condoning the delay*.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that;

5.1 *The impugned order passed by the Respondent is bad in law and unjust*

5.2. The Applicant submits that the impugned order has been passed without giving due consideration to the documents on record and facts of the case

5.3 The Applicant submits that the delay in filing the appeal was due to unavoidable circumstances and was for reasons beyond his control.

5.4 The applicant submits that the Hon'ble Supreme Court on the issue of 'sufficient cause', in Collector, Land Acquisition, Anantnag vs. Mrs. Katiji, reported in (1987)2 SCC 107. The Hon'ble Supreme Court held that a liberal approach shall be adopted in condoning the delay because -

5.4.1 Ordinarily a litigant does not stand to benefit by lodging an appeal late.

5.4.2 Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

5.4.3 The requirement that "every day's delay must be explained." does not mean that a pedantic approach should be made. Why not every hours delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner .

5.4.4 When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5.4.5 There is no presumption that delay is occasioned deliberately or on account of culpable negligence, or On account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

5.4.6 The judiciary is respected not on account of its power to legalize injustice on technical grounds, but because it is capable of removing injustice and is expected to do so."

5.5 The Applicant submits that as per the provisions of Section 128 of The Customs Act an appeal can be condoned by the Commissioner of Customs (Appeals) for further period of 30 days if sufficient cause is shown by the Applicant.

5.6 The Applicant Submits that the appeal was filed within the condonable period of 30 days as the appeal was filed with the delay of 06 days.

5.7 The Applicant submits that the Applicant has an excellent prima facie case, and is confident of succeeding in Appeal on merits.

5.8 The Applicant submits that it would be in the interest of justice, if the delay caused inadvertently, in the unavoidable circumstances, is condoned and the Appeal is heard on merits.

The Applicant, therefore humbly Prays that the Order of Appellate Authority may kindly be Set Aside and case maybe remanded back to the Appellate Authority to be decided on merits.

6. A personal hearing in the case in the case was scheduled on 22.12.2020. Shri N. J. Heera Advocate appeared on behalf of the Applicant and prayed for setting the Order in Appeal and remanding the case to Commissioner (Appeals) for decision on merits, or decide the case on merits. Nobody attended the hearing on behalf of the department. The Revision Application is therefore being decided on grounds detailed above.

7. The Government has gone through the facts of the case. It is observed that the Appeal was filed before the Appellate authority after six days beyond the prescribed period of 60 days. However, it was within the condonable limits of 30 days. The Applicant has submitted that the delay in filing the appeal was due to unavoidable circumstances and was for reasons beyond his control. He has prayed for the Appeal to be heard on merits. As the Appeal was within condonable limits, Government condones the delay, sets aside the order in Appeal and proceeds to decide the case on merits.

8. The facts of the case state that the Applicant was travelling along with his wife and two sons. They were intercepted at the exit after having cleared themselves through the green channel. Nothing incriminating was found in their baggage or on the person of the Applicants wife and his two sons. The personal examination search of the Applicant resulted in the recovery of assorted gold jewelry weighing 425 gms., valued at Rs. 10,80,385/-. As the Applicants did not declare the gold as required under section 77 of the Customs Act, 1962. The confiscation of the gold jewelry is justified and the Applicant has rendered himself liable for penal action.

9. The original adjudicating authority in its order dated 27.02.2014 has mentioned a list of the gold jewelry in Annexure-1, recovered from the Applicant. The jewelry was carried by the Applicant on his person and two invoices covering the purchase of the gold was also recovered from his possession. The ownership of the gold is therefore not disputed. The Applicant in his statements recorded at the

time of the seizure has stated that the gold jewelry was purchased for the purpose of marriage of his son. In view of the above the Original Adjudicating Authority has allowed the redemption of the jewelry. Government, noting the nature of ornaments recovered opines that recovered gold jewelry belonged to the entire family. Considering that there were four persons travelling together the quantity of gold jewelry recovered was not large and the same was definitely not in commercial quantity. The Government agrees with the Original Adjudicating authority in allowing the impugned gold jewelry on redemption fine and penalty.

10. The redemption fine of Rs. 3,00,000/- (Rupees Three lacs) imposed in lieu of confiscation on the gold valued at Rs. 10,80,385/- (Rupees Ten lacs Eighty Thousand three hundred and eighty five). under section 125 of the Customs Act, 1962 is appropriate. The Government keeping in view the overall circumstances of the case, reduces the penalty imposed from Rs. 2,00,000/- (Rupees Two lacs) to Rs. 1,50,000/- (Rupees One lac fifty thousand) under section 112(a) of the Customs Act,1962. Government however observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA especially when there is no charge of submission of any false document and the Order in original and the order in appeal do not give ground for imposition of penalty under section 114AA. Therefore the penalty of Rs. 10,000/- (Rupees Ten thousand) imposed under section 114AA of the Customs Act,1962 is set aside.

11. The impugned Order is modified as detailed above. Revision Application is partly allowed.

Shrawan
15/11/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 10/2021-CUS (WZ) /ASRA/

DATED 15-01-2021

To,

1. Shri Bhishamdas Jindumal Nathani, 404, Sakar Apt., Opp Maharaja Agrasen Bhavan, City Light Road, Surat - 395 007.

Copy to:

1. The Commissioner of Customs, CSI Airport, Mumbai.
2. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.