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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. 371/37 & 39/B/15-RA

12755

Date of Issue

06/05/21

ORDER NO. ¹¹⁶⁻¹¹⁷ /2021-CUS (WZ)/ASRA/MUMBAI DATED 31.03.2021 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.

Applicants : 1. Shri Paivalike Ahammadali Mohammed
: 2. Shri Kumhabdul Pathayakkoottil

Respondent : Commissioner of Customs, (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-605 to 610/14-15 dated 22.12.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.



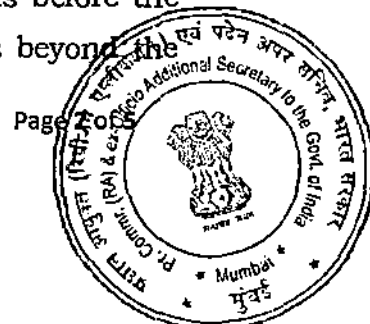
ORDER

These revision applications have been filed by Shri Paivalike Ahammadali Mohammed and Shri Kunhabdulla Pathaykkoottil (herein referred to as the Applicants) against the order No. MUM- CUSTM-PAX-APP-605 to 610/14-15 dated 22.12.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the Applicant No. 1, Shri Paivalike Ahammadali Mohammed, a domestic passenger arrived from Chennai on a flight which originated from Dubai to Mumbai via Mangalore on 21.04.2013. The officers of AIU, Mumbai acting on specific information, boarded the flight and intercepted the Applicant and recovered five gold bars weighing 583.250 gms valued at Rs. 17,67,245/- (Rupees Seventeen Lakhs Sixty seven thousand Two hundred and forty five). Investigations in the case also resulted in the seizure of dutiable goods valued at Rs. 89,719/- (Rupees Eighty nine thousand Seven hundred and Nineteen). Further investigations also revealed that the gold was brought by one Shri Nazar Meethala Kallulla Parambath who travelled on the international route of the flight. The officers also intercepted Shri Kumhabdulla Pathayakkoottil, Applicant No. 2, one of the investors in the impugned smuggling operation, who had arrived at the Mumbai Airport to receive the Applicant No. 1.

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/ML/ADJN/92/2013-14 ordered absolute confiscation of the impugned gold bars and dutiable goods under Section 111 (d) (l) & (m) of the Customs Act, 1962, and imposed penalties of Rs. 3,00,000/- (Rupees Three lacs) on the Applicant, Rs. 2,00,000/- (Rupees Two lacs) on Shri Nazar Meethala Kallulla Parambath and Rs. 1,00,000/- (Rupees One lac) Shri Kumhabdul Pathayakkoottil under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the Applicants both filed appeals before the Commissioner (Appeals) seeking a condonation of delay of 3 weeks beyond the



prescribed period of 60 days. The Commissioner (Appeals) vide Order-In-Appeal No. MUM- CUSTM-PAX-APP-605-606/14-15 dated 22.12.2014 rejected the appeal of the Applicant as time-barred without condoning the delay or going into the merits of the case. In its order the Commissioner(Appeals) observed "*It is observed that the appeals as well as the stay application were received by this office on 11.06.2014 whereas Order-in-Original was communicated to the appellants on 20.3.2014 thus involving a delay of 3 weeks beyond the prescribed period of 60 days. The appellants have stated that certain domestic problems and urgent issues to be addressed and for reasons beyond their control caused delay in filing the appeals. I find that reasons given are vague and not backed by any evidence. Moreover, all the three appellants have given identical reasons for delay which do not seem to be credible. 3. Without going into the merits of the case, I proceed to examine whether the delay in filing of appeals can be condoned. Section 128 empowers the Commissioner(Appeals) to condone delay upto 30 days only if cause is sufficient enough to prevent the appellant from filing the appeal within 60 days. No specific reason is stated in this case by the appellants for day in filing of appeals. As such, no case is made out for condonation of delay*".

5. Before going into the facts of the case Government observes that this Revision Application has also been submitted seeking a condonation of delay of 89 days beyond the prescribed period of 90 days. In seeking condonation the Advocate of the Applicant has relied on the judgement in the case of Bhalchandra V. Jadhav V/s UOI in Civil Writ Petition No. 9254 of 2010, wherein the Hon'ble Bombay High Court, condoning the delay, held that "*This petition is filed against the order of CESTAT dated 09/04/2010 whereby the Tribunal has declined to condone the delay of 13 months and 9 days in filing the Appeal. The grievance of the petitioner is that the order in original which was received by the family members of the petitioner was misplaced and therefore there was delay in filing the appeal. He submits that serious prejudice would be caused to the petitioner if the delay is not condoned. In our opinion, the explanation given by the petitioner is not convincing, however, looking into the totality of circumstances, the interest of justice would be met by condoning the delay and directing the CESTAT to dispose of the appeal on merits. Accordingly, the order of the CESTAT dated 09/04/2010 is set aside. The delay is condoned. CESTAT is directed to dispose of the appeal on merits in accordance with law.*"



6. That is would not be out of place to cite hereunder the ratio laid down by the Hon'ble Supreme Court on the issue of "Sufficient Cause", in Collector, Land Acquisition, Anantnag V/s. 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 as ordinarily a litigant does not stand to benefit by lodging an appeal late and when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The Ld. Commissioner of Customs (Appeals) has not considered the above judgements. Therefore the Applicants pray that the delay in filing the Appeal may kindly be condoned and the case be remanded back to the Ld. Adjudicating Authority with the direction to it to pass the order on merits after giving opportunity to be heard to the Applicant or to his authorized representative.

7. Government observes that the Appeal was filed before the Appellate Authority after a delay of 3 weeks beyond the prescribed period of 60 days and the Applicant had pleaded that they had misplaced the Order-in-Original, Commissioner(Appeals) did not condone delay and rejected the appeal. It is however noticed that the Applicant has again filed this Revision Application after a delay of 89 days beyond the prescribed period of 90 days i.e. the last day of filing the Revision Application. No reasons for the delay have been submitted by the Applicant.

8. Section 129DD of the Customs Act, 1962 states

"(2) An application under sub-section (1) shall be made within three months from the date of communication to the applicant of the order against which the application is being made:

Provided the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months".

As explained in the earlier para no reasons for the delay have been submitted for the delay in submitting this Revision Application. Having delayed the Appeal before the Appellate Authority, the Applicant should have ensured submitting the revision application within the stipulated time. Government therefore opines that



in the absence of a genuine reason/cause, preventing the Applicant in presenting this Revision Application, within the stipulated period the application for condonation of delay is liable to be rejected.

9. Applicant has mentioned the judgment of Supreme Court in Collector, Land Acquisition, Anantnag V/s. Mrs. Katiji, reported in (1987) 2 SCC 107. Government agrees with the ratio of the judgement that a liberal approach should be adopted in condoning the delay. This judgement was passed in context with requirement of explaining every day's delay. Hon'ble Supreme Court laid down the law that in such cases a pedantic approach be avoided. Government finds that in instant case, Applicant has repeatedly caused huge undue delays without showing sufficient cause for such delays. Therefore Government respectfully following the ratio of above judgment does not find any cause to condone delay of 89 days.

10. Revision Application is accordingly dismissed.

Shrawan
31/03/21
(SHRAWAN KUMAR)

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

ORDER No. ¹¹⁶⁻¹¹⁷ /2021-CUS (WZ) /ASRA/

DATED 31.03.2021

To,

1. Shri Paivalike Ahammadali Mohammed, Pivalike House, P.O. Paivalike, Kargod - 671 348. 404, Sakar Apt., Opp Maharaja Agrasen Bhavan, City Light Road, Surat - 395 007.
2. Shri Kumhabdul Pathayakkoottil, Valliad Post, Villiyapalli via Vatakaraa, Kerala- 673 542.

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.

ATTESTED

[Signature]
अधिकांक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

