

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. 371/34/B/15-RA / 5371

Date of Issue 14.09.2020

ORDER NO. 38/2020-CUS (WZ)/ASRA/MUMBAI DATED 13.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Nazar Meethala Kallula Parambath

Respondent : Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-000-APP-607-608-14-15 dated 22.012.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.



ORDER

This revision application has been filed by Shri Nazar Meethala Kallula Parambath (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-000-APP-607-608-14-15 dated 22.012.2014 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Briefly stated the facts of the case are that the officers of DRI on specific information intercepted a domestic passenger Shri Paivalike Ahammadali Mohammed who arrived at the Mumbai airport from Mangalore on 21.04.2013 on the domestic leg of an international flight, Dubai-Mangalore-Mumbai. On enquiring the passenger admitted to carrying gold and handed over five gold bars weighing 583.250 gms., valued at Rs. 17,67,245/- (Rupees Seventeen lacs Sixty seven Thousand two hundred and forty five) in addition the officers recovered dutiable goods valued at Rs. 89, 719/- (Rupees Eighty Nine thousand Seven hundred and nineteen). Investigation conducted revealed that the gold was kept under the seat in the aircraft by Shri Nazar Meethala Kallula Parambath, the applicant, who had travelled from Dubai to Mangalore. Further enquiries revealed that an elaborate smuggling operation was involved wherein the Applicant would travel on the international flight carrying gold, leave the gold below a seat on the aircraft. The gold would then be recovered by a passenger travelling on the domestic leg of the flight, thereby giving the Customs officers the slip and clear the contraband without payment of duty.

3. The Original Adjudicating Authority vide Order-In-Original No. ADC/ML/ADJN/92/2013-14 dated 13.03.2014 ordered absolute confiscation of the impugned goods under Section 111 (d) (l) and (m) of the Customs Act,1962 and imposed penalty of Rs. 2,00,000/- (Rupees Two Lacs) under Section 112 (a) of the Customs Act on the applicant and a penalty of Rs. 3,00,000/- (Rupees Three Lacs) on Shri Paivalike Ahammadali Mohammed.

grieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-000-APP-



607-608-14-15 dated 22.012.2014 rejected the appeal on the grounds of limitation as the application was received late by three weeks without sufficient cause for condoning the delay.

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

5.1 That the Hon'ble Bombay High Court in the case of Bhalchandra V. Jadhav V/s. Union of India in CIVIL WRIT PETITION NO. 9254 of 2010 has condoned the delay of 13 months and 9 days in filing the Appeal and directed CESTAT to dispose of the appeal on merits in accordance with law.

5.2 The Honble Supreme Court on the issue of "Sufficient Cause", in Collector, Land Acquisition, Anantnag V/s. Mrs. Katiji, reported in (1987) 2 SCC 107 held that a liberal approach shall be adopted in condoning the delay because:-

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

5.4 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.

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

5.6 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.

5.7 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.



5.8 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."

5.9 The Ld. Commissioner of customs (Appeals) has not considered the above judgments. Therefore the Applicants pray: That the Delay in filing the Appeal may kindly be condoned and the case may 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.

6. A personal hearing in the case in the case was scheduled on 24.10.2018, 19.09.2019 and 16.10.2019. Nobody attended the hearing on behalf of the department nor any representing the Respondent. The Revision Application is therefore being decided on grounds detailed above.

FINDINGS AND ORDER

7. The Government has gone through the facts of the case. The order of the Appellate authority notes that the original appeal was received by the Appellate authority's office on 11.06.2014. The order in original and was received by the applicant on 20.03.2014. There was a delay of three weeks beyond the prescribed period of sixty days. Addressing the issue the Appellate commissioner has rejected the appeal without going into the merits as the reasons given for the delay are vague and not backed by any evidence. The Order of the Appellate authority also notes that the three Applicants (penalised in the case) have given identical reasons for the delay. In addressing the issue on whether such delays can be condoned upto 30 days, the Appellate authority has observed, that such delays can be condoned only if there is sufficient cause to prevent the applicant from filing the appeal within the period of initial 60 days. As there is no specific reason for delay in filing the appeal there is no case made out for condonation of delay.


8. Government notes that the applicant has filed the appeal 21 days after 60 days and before expiry of the condonable limit of 30 days. The revision application has been filed without giving any reasons for the delay and has



instead submitted case laws justifying condonation of the delay. These case laws are not applicable as the petitioners in the impugned case laws have given sufficient reasons for delay in filing the appeal, and condonation has been granted accordingly. The order of the Commissioner (Appeals) has clearly elaborated as to why the delay in filing the appeal cannot be accepted and has rejected the appeal. Government also observes that three opportunities were given to the Applicant to appear before the revision authority, which could have been used by the applicant to submit sufficient reasons which has caused the delay. The Applicant nor his advocate has responded to these letters of personal hearing indicating that the applicant is no more interested to pursue the appeal. The revision application for condonation of delay therefore does not merit interference and the revision application is therefore liable to be dismissed.

9. Revision application is accordingly dismissed.

10. So, ordered.


 (SEEMA ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 38/2020-CUS (WZ) /ASRA/

DATED 13.08.2020

To,

1. Shri Nazar Meethala Kallula Parambath, C/o Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.

Copy to:

1. The Commissioner of Customs, CSI Airport, Mumbai.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File. ,
4. 5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

