

REGISTERED SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 373/43/B/17-RA / 2750

Date of Issue 03.12.2018

ORDER NO. <sup>973</sup>/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.11.2018  
 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
 MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
 SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD  
 OF THE CUSTOMS ACT, 1962.

Applicant : Shri Abdul Rahuman Nathakar Bava

Respondent : Commissioner of Customs, Cochin

Subject : Revision Application filed under Section 129DD of the  
 Customs Act, 1962 against the Order-in-Appeal No.  
 98/2016-17 dated 31.08.2016 passed by the Commissioner  
 of Customs(Appeals), Cochin

**ORDER**

This revision application has been filed by Shri Abdul Rahuman Nathakar Bava (hereinafter referred to as the "Applicant") against the Order-in-Appeal No. 98/2016-17 dated 31.08.2016 passed by the Commissioner of Customs(Appeals), Cochin.

2. Briefly stated, the facts of the case are that on 25.03.2016, Officers of Customs at Cochin International Airport, Nedumbassery intercepted the applicant who had opted for the green channel and walked through. On search of the applicant, the officers recovered 4 number of gold keys totally weighing 107 gms valued at Rs. 2,91,573/-(Rupees Two Lakhs Ninety One Thousand Five Hundred Seventy Three Only). As the applicant was ineligible to import gold, the adjudicating authority vide his Order-in-Original No. 150/16 dated 25.03.2016 ordered absolute confiscation of the 107 gms of gold which he had concealed and imposed a penalty of Rs. 30,000/-(Rupees Thirty Thousand Only).

3. Aggrieved by the adjudication order, the applicant filed an appeal before the Commissioner(Appeals). The Commissioner(Appeals) did not find any merit in the appeal filed by the applicant. She rejected the appeal and upheld the Order-in-Original vide her Order-in-Appeal No. 98/2016-17 dated 31.08.2016.

4. Being aggrieved by the Order-in-Appeal, the applicant has now filed a revision application alongwith an application for condonation of delay of 50 days in filing the revision application. The applicant has filed for condonation of delay on the grounds that they were able to lay their hands on the original copy of the Order-in-Appeal only on 31.12.2016 and that they had immediately thereafter forwarded the Order-in-Appeal to their consultant for drafting a revision application. Even so, unfortunately a delay of 50 days had occurred in filing the application. The revision application has been filed on the following grounds:

- (i) The applicant was not coversant with the customs formalities prevalent at private airports like Nedumbassery Airport, Cochin.
- (ii) The applicant is an airline employee and a frequent visitor as he gets tickets at concessional rate.



- (iii) The applicant had not earned much inspite of having worked abroad for 17 years.
- (iv) The applicants wife alongwith daughter was waiting outside the airport to receive him.
- (v) The applicant was waiting in the customs hall for examination and had bonafide intention of declaring the gold keys to the customs officers.
- (vi) The Commissioner(Appeals) had not applied her mind in arriving at the conclusion that the applicant had indulged in a novel modus operandi of converting gold in the shape of keys and coating them.
- (vii) The Commissioner(Appeals) claims to have relied upon corroborative evidence while deciding the case but has not mentioned what the corroborative evidence was. Her order was based on assumptions and presumptions.
- (viii) The applicant submitted that gold was not converted into keys but that he had bought the keys from the open market in Dubai, that such keys and other articles made of gold are to sell to passengers travelling to various countries so that they could safely travel without fear of theft or pilferage of the gold.
- (ix) That the applicant had been detained by customs before he was questioned by any customs officer about carrying any gold, that he did not get an opportunity to declare the gold, that the gold was seized in haste by the customs which was not legal and proper.
- (x) The applicant was not asked by the customs officers if he was carrying any gold and that there was no charge of trying to walk through green channel.
- (xi) That the applicant had brought the gold keys for the use of his wife and daughter.
- (xii) That the orders for absolute confiscation of the gold was not correct and was contrary to the provisions of customs law as Section 125 of



the Customs Act, 1962 mandates allowing of option to redeem the goods on payment of fine.

- (xiii) That the applicant had brought the gold in the bonafide belief that he was entitled to bring gold on payment of duty under Notification No. 12/2012-Cus. dated 17.03.2012.
- (xiv) That the applicant was from a poor family, that he had decided to bring some gold for the first time for the use of his wife and daughter, that he had used his entire earnings to buy the gold keys for his family.
- (xv) The prayer to the revision application was that the order for absolute confiscation may be set aside and the gold may be released on payment of duty and fine. It was further prayed that the penalty be set aside as the applicant was a poor man.

5. The applicant was granted an opportunity for personal hearing on 22.11.2018. Shri Manoj Pillai, Advocate appeared on behalf of the applicant. The Advocate for the applicant submitted that there was a delay of 50 days in filing the revision application and reiterated the contents of the application for condonation of delay. The Advocate agreed that the application for condonation of delay does not give any reasons for delay as mandated in the Supreme Court judgment. He pleaded that the delay had occurred because his client was confused as to whether such application was to be filed before CESTAT or the Revisionary Authority in view of the judgment of the High Court of Punjab and Haryana. In the light of these submissions, he prayed that the delay of 50 days in filing the Revision Application be condoned.

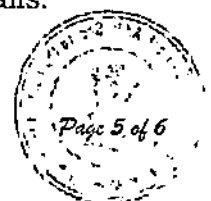
6. On perusal of the application for condonation of delay, the Government notes that the applicant has applied for condonation of delay of 50 days in filing the Revision Application. The application sets out the reason for delay as the applicant not being able to lay his hands on the original copy of the impugned Order-in-Appeal. It is observed from the Form CA-8 filed by the applicant that they have conceded the fact that they have received the copy of the Order-in-Appeal on 23.09.2016 and have filed the Revision Application alongwith an application for condonation of delay on 21.03.2017. Therefore, this ground of not



having received the original copy of the impugned copy of the Order-in-Appeal has been controverted by the applicant himself. It is observed that the Advocate for the applicant has submitted during the course of personal hearing that the filing of revision application was delayed as the applicant was confused as to whether revision application is to be filed before the CESTAT or the Revisionary Authority in view of the judgment of the High Court of Punjab and Haryana in the case of M/s NVR Forgings and M/s Modi Springs Pvt. Ltd.

7. Government is aware that a litigant would not benefit from filing an appeal late and refusal to condone delay may make the litigant remediless. However, there is no preemptory right to condonation of delay. In this backdrop, it is observed that the genuineness of the grounds for condonation of delay filed by the applicant appear to be suspect in view of the varying reasons. The applicant has clearly been inconsistent in so far as the reasons for delay are concerned. Needless to say, inspite of the judgment of the Hon'ble High Court nothing prevented the applicant from filing appeal/application seeking relief either before ~~the~~ CESTAT<sup>2</sup> or the Revisionary Authority within the stipulated period of limitation. The bonafides of the applicant would have been established even if they had pursued the matter before the wrong forum. The submission of being ~~confused by the judgment of the High Court~~ indicates that the applicant had preferred to postpone the remedial measure without being vigilant and unmindful of the consequence of the delay in filing appeal.

8. The record reveals that the applicant has not adopted a vigilant attitude. In fact, the delay calculated by the applicant is 50 days whereas the actual delay is 88 days. Therefore, even the calculation of delay has been made in a lackadaisical manner. It is obvious that any aggrieved person who has a genuine case would not forego his remedy which would cease after passage of time. Any prudent and diligent person will not prejudice his rights by seeking appeal belatedly. Government is of the view that only the diligent are entitled to leniency in condonation of delay. An indolent man does not deserve such consideration. Government is of the firm view that an indolent applicant has no right to abuse the process of law. The reasons for delay made out by the applicant are unconvincing. In the result, the application for condonation of delay fails.



9. The application for condonation of delay is dismissed and consequently the Revision Application filed by the applicant is held to be non-maintainable and hence dismissed.

10. So ordered.

*(Signature)*  
28.11.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. <sup>973</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.11.2018

To,

- 1) Shri Abdul Rahuman Nathakar Bava  
33, Alathumakuthanam, East West Street,  
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Tamil Nadu 627 751
- 2) Shri Manoj Pillai  
M/s Taxaide,  
T. C. 26/1747,  
Kalyan, Uppalam Road,  
Trivandrum 695 001

**ATTESTED**

*(Signature)*  
3.12.18  
S.R. HIRULKAR  
Assistant Commissioner (R.A.)

Copy to:

1. Commissioner of Customs, Cochin
2. Commissioner of Customs(Appeals), Cochin
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard File
5. Spare Copy

