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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. 371/169/B/WZ/2021-RA / 203 Date of Issue 01.02.2024

ORDER NO. 106 /2024-CUS (WZ)/ASRA/MUMBAI DATED 30.01.2024
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. Ronak Jain

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai.

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal F. No.
MUM-CUSTM-PAX-APP-25/2021-22 dated 05.04.2021
and issued on 15.04.2021 through F. No. S/49-1026/
2019 passed by the Commissioner of Customs (Appeals),
Mumbai-III.

ORDER

This Revision Application has been filed by Shri. Ronak Jain [herein after referred to as the Applicant] against the Order-in-Appeal F.No. MUM-CUSTOM-PAX-APP-25/2021-22 dated 05.04.2019 and issued on 15.04.2019 through F.No. S/49-1026/2019, passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. The brief facts of the case are that Officials of Sahar Police Station intercepted one crew member by name Mr Abdulla Ali Said of Kenya Airways, from Hotel Hyatt Regency, Mumbai, when he was trying to hand over a bag containing gold to one person of Kenyan Origin by name Ibrahim Ali Hussain. The crew member, Mr Abdulla Ali Said had arrived earlier from Flight No. KQ-210 on 11.02.2018 carrying 22,826.50 grams of foreign origin gold which was smuggled out of CSI Airport, Mumbai under concealment in specially made belt and knee caps. The value of the said gold was amounting to Rs.6,37,50,991/- Both the persons and the impugned gold were handed over by the Police officers to Officers of AIU, Customs vide letter dated 12.02.2018. During the investigation it was revealed that Mr Abdulla Ali Said was regularly doing such smuggling with the help of others and used to sell the gold in Indian market with the help of Mr. Ismail Khatri, Mr Aslam Khatri and Mr. Manish Jain and in the process sold such gold smuggled (earlier), weighing 700 grams and 3.5 kg to the applicant viz Shri Ronak Jain. On conclusion of the investigation, Show cause notice was issued to the Applicant along with the other Noticees. The applicant was asked to show cause as to why personal penalty should not be imposed under Section 112(a) and (b) of the Customs Act, 1962.

3 After due process, Original Adjudicating Authority i.e. Addl Commissioner of Customs, CSMI Airport, Mumbai by vide his Order-In-

Original i.e. OIO No. ADC/AK/ADJN/139/2019-20 dated 22.08.2019 ordered for absolute confiscation of the seized gold collectively weighing 22826.500 grams and valued at Rs.6,37,50,991 under section 111(d), (l) and (m) of the Customs Act, 1962. Personal Penalty of Rs.20,00,000/- was imposed on Mr Abdulla Ali Said and Rs.30,00,000/- was imposed on Mr. Ibrahim Ali Hussain under Section 112 (b) of Customs Act,1962; Personal penalty of Rs5,00,000/- each was imposed on Mr. Ismail Khatri and Mr. Manish Jain under Section 112 (b) of Customs Act,1962; Personal Penalty of Rs.1,00,000/- was imposed on Mr. Aslam Khatri and Rs.3,00,000/- was imposed on Mr. Ronak Jain under Section 112 (b) of Customs Act,1962; Absolutely confiscated the recovered/seized Rs.60,00,000/- from the premises of M/s Manish Gold.

4. Aggrieved by the said order, the applicant filed an appeal against the impugned order limited to the penalty imposed on him, before the Appellate Authority (AA) i.e Commissioner of Customs (Appeals), Mumbai – III, who vide his Order-in-Appeal F.No. MUM-CUSTOM-PAX-APP-25/2021-22 dated 05.04.2019 and issued on 15.04.2019 through F.No. S/49-1026/2019 did not find any reason to interfere with the order passed by the OAA and upheld the said Order.

5 Aggrieved with the above order, the Applicants have made an exhaustive submission of case laws and have submitted copies including their submissions made before the lower authorities etc. They have filed these revision applications on the following main points:

5.01 That the impugned Order-in-Appeal dated 05-04-2021 is not an order on merits and not a speaking order;

5.02 That the applicant's statement dated 11-05-2018 was involuntary and against the truth, hence the same cannot be relied on;

5.03 That the statements of the Co-accused cannot be relied upon against another co-accused and that the retracted statements of the co-accused do not have any evidentiary value at all;

5.04 That the case against the applicant was made on the basis of assumption and presumption;

5.05 That the applicant concluded that the involvement of the appellant in the offences as a member of the syndicate of smuggling has not been proved; that in the present case, without any credible evidence linking the appellant to the act of smuggling, the Investigating Agency resorted to careless investigation and unlawful apprehension of innocent person; that the applicant submitted that a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case as carefully scanned and the contentions raised by the applicant may be taken into consideration while adjudicating the case. In view of all the above said submissions, allegations made against the applicant are not proved; That the applicant did not commit any act of omission or commission which can be termed as a crime or manifesting of a smuggling activity. The applicant was never concerned with acquiring possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing or in any other manner dealing with any prohibited goods which he knew or had reason to believe were liable to confiscation under section 111. Therefore, he is not liable for any penal action u/s 112 of Customs Act, 1962. The applicant submitted that he is from a respectable family and a law-abiding citizen/ businessman and he has never come under any adverse remarks. He was falsely implicated in the case of smuggling. The guilt of the appellant is not proved in this case.

Under the above circumstances, the applicant humbly submitted that penalty imposed on him by the Adjudicating Authority may be set aside and

further proceedings against him may be dropped since he was in no way concerned with any smuggling activity.

6. Personal hearing in the case was scheduled for 17.08.2023. Shri. Prakash Shingrani, Advocate appeared for personal hearing and reiterated earlier submissions. He stated that penalty has been imposed on the applicant only on the basis of statements of co-accused. He requested to drop the penalty as no independent evidence exists against the applicant.

7. The Government has gone through the facts of the case, the oral and written submissions, Order in Original, Order in Appeal and the Revision Applications. Government notes that in this case the applicant has filed the appeal against the penalty imposed on him.

8. On going through the Order in Appeal, Government finds that the Adjudicating Authority and the Appellate Authority has imposed penalty on the applicant mainly on the ground that the statements recorded under Section 108 of the Customs Act, 1962 of the applicant and the co-accused is relevant and admissible evidence and is valid even if it is retracted subsequently.

9. Government observes that one crew member of Kenya Air by name Mr Abdulla Ali Said of Kenya Airways, had arrived by Flight No. KQ-210 on 11.02.2018 carrying 22,826.50 grams of foreign origin gold which was smuggled out of CSI Airport, Mumbai under concealment in specially made belt and knee caps. Officials of Sahar Police Station intercepted him at Hotel Hyatt Regency, Mumbai, when he was trying to hand over a bag containing gold to one person of Kenyan Origin by name Ibrahim Ali Hussain and was handed over to the AIU officers, Customs vide letter dated 12.02.2018. The

impugned gold was seized by the authorities in the reasonable belief that the same were smuggled into India. The mobile phones and the pen drive of both the accused were also seized. During the investigation it was revealed that Mr Abdulla Ali Said was regularly doing such smuggling with the help of Ibrahim Ali Hussain and used to sell the gold in Indian market with the help of Mr. Ismail Khatri, Mr Aslam Khatri and Mr. Manish Jain. In the statements recorded of Mr. Manish Jain and Mr. Ismail Khatri, they stated that they had sold such gold smuggled (earlier), weighing 700 grams and 3.5 kg to the applicant viz Shri Ronak Jain. The applicant in his initial statement recorded had admitted that he had bought 700 grams of gold from Mr. Ismail Kahtri. These statement recorded by the applicant was retracted subsequently and his contention for filing this application is that the Adjudicating Authorities has not established any other evidence to prove that he was involved in the smuggling racket except for the statements of the co-accused.

10. On going through the case in detail, Government observes the following.

- a) Forensic Analysis of the Electronic devices of the two accused did not indicate the name of the applicant anywhere. It revealed the Gold Assay reports issued by M/s Mahavir Tunch on different dates, The assay reports contains the date and time of the assay, token number, tukda number, weight, karat, customer name, percentage of gold and other metals etc, The customer name shown in the assay report was of "Khatri" and "M.G" and not of the applicant; Khatri and M.G are the short form of Mr. Ismail Hussein Khatri and Manish Gold who had given statement that they have sold the gold to the applicant;
- b) The investigations have not brought out any call records wherein the applicant's name is involved;
- c) The handwritten accounts/calculations retrieved from the notebook/mobile has not established the applicant's role in the syndicate. There is no allegation of the applicant's name appearing in any of the data seized by the authorities except the statement of Mr. Ismail Hussein Khatri

and Mr. Manish Jain who is the proprietor of M/s Manish Gold. The investigations had not established from the records any link between the applicant and the syndicate

d) There is no allegation of any incriminating documents/gold with foreign markings to have been seized from the applicant's premises.

e) In the statement recorded on 16.05.2018 of Mr. Ashok Kumar Jain, the proprietor of M/s. Rachana Jewellers and the father of the applicant, has mentioned that Mr. Ismail Khatri had come to his shop on two or three occasions with gold bars for helping him to sell the same and he had refused to help him as Mr. Khatri wanted to sell the said gold bars on cash basis. He had also denied purchasing of gold from Manish Jain of M/s. Manish Gold. Further Manish Jain of M/s. Manish Gold and M/s. Rachana Jewellers are in the same line of business located in and around the neighboring areas. Hence their acquaintance is normal. Hence the confrontation panchanama held on 10 05.2018 wherein Mr. Ismail Khatri & Mr. Manish Jain identified Mr. Ronak Jain, son of Mr. Ashok Kumar Jain has no corroborative or evidential value.

f) The statement of the applicant dated 11.05.2018 retracted subsequently, in absence of any other corroborative tangible evidence, can be construed as involuntary.

11. In view of the above Government finds that there was no evidence on the record to warrant any inference that the applicant was acting as a member of the Syndicate in collaboration with other co-conspirators and the only evidence is the statement recorded of the co-accused. Penalty has been imposed on the applicant only on the basis of statements which had been retracted. No other evidence has been brought against them. The only allegation against the applicant is that he has purchased the smuggled gold and had knowingly involved himself in the syndicate of dealing, handling, purchasing, and selling

of smuggled gold. Government notes that investigation has not brought out any direct evidence of involvement of the applicant in the smuggling of impugned gold. Reliance was placed only on statements which had been retracted and no other corroborative evidence of their involvement exists. The same cannot be based merely on statements that too retracted subsequently. Corroboration of the statement should have been carried out

12. Government notes that in Vinod Solanki vs. U.O I, reported in 2009 (13) S.T.R. 337 (S.C.) [18-12-2008], the Apex Court had held as under;

22. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. {See Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras [(1999) 6 SCC 1]}

13 All these indicate that sufficient evidence is not available against the applicant to hold the charge of being in the syndicate of smuggling. Charges of involvement in smuggling is required to be established either through direct evidence or through recovery of benefits derived by such acts Government finds that no direct evidence was available to implicate the applicant in the smuggling of gold The Department has not presented any documentary evidence beyond these statements of the co-accused and which were subsequently retracted. Consequently, in the absence of corroboration of the passenger's statement, penalty on the applicant is not sustainable.

14 Therefore, Government finds that the penalty imposed on applicant is unwarranted in the absence of any reasonable evidence establishing some role

of the applicant in the present case and therefore the Government is inclined to set aside the penalty imposed on the applicant.

15. Accordingly, the Government modifies the impugned order of the appellate authority and sets aside the penalty imposed on the applicant. Revision Applications filed by the applicant is decided on the above terms

Shrawan Kumar
(SHRAWAN KUMAR)

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

ORDER No. 106 /2024-CUS (WZ) /ASRA/MUMBAI DATED 30 01.2024

To,

1. Shri. Ronak Jain, 901-902, Arihant Tower, 119 T.B. Kadam Marg, Opp Byculla Railway Goods, Byculla, Mumbai - 400027
2. The Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Terminal - 2, Sahar, Andheri East, Mumbai - 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S. M. Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059

Copy to:

4. Shri. Prakash Shingrani, Advocate, 12/334, Vivek New MIG Colony, Bandra East, Mumbai - 400 051.
5. Sr. P.S. to AS (RA), Mumbai.
6. File Copy.
7. Notice Board.

