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SPEED POST



F.Nos. 371/103/B/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 30/4/14

ORDER NO. \_\_\_\_\_ 109/14-Cus DATED 30.04.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED, UNDER SECTION 129 DD OF THE CUSTOMS ACT 1962 AGAINST THE ORDER-IN-APPEAL No. MUM-CUSTM-PAX-APP-97-13-14 dated 18.06.2013 passed by Commissioner of Customs (Appeals) Mumbai-III

APPLICANT : Shri Narendra Jain @ Chagan Bhai, Byculla Love Lane, 1021 Vaishali Apartment, Mumbai

RESPONDENT : Commissioner of Customs(Airport), Mumbai

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**ORDER**

This revision application is filed by Shri Narendra Jain @ Chagan Bhai, Byculla Love Lane, 1021 Vaishali Apartment, Mumbai against the order-in-appeal No. MUM-CUSTM-PAX-APP-97-13-14 dated 18.06.2013 passed by Commissioner of Customs (Appeals), CSI Airport, Mumbai with respect to order-in-original No. ADC/AS/Adjn/24/12-13 dated 21.11.2012 passed by Additional Commissioner of Customs, CSI Airport, Mumbai.

2. Brief facts of the case are that Shri Narendra Jain alias 'Chagan Bhai' who has been implicated by passenger Shri Sultan Sayani Kasam Ali in a case of smuggling through baggage at CSI Airport, Mumbai. On 16.02.2011 passenger Shri Sultan Sayani Kasam Ali had arrived from Bangkok by flight No. CX-709 alongwith another passenger Shri Harris Abbas Amir Ahamed and were apprehended by the Customs Officers at the Airport resulting in the seizure of dutiable goods totally valued at Rs.7,93,730/- and Indian and Foreign currencies totally equivalent to Rs.5,39,700/-. The two passengers had reported at the Red Channel and had declared Sony 46 inch LCD televisions and the other goods were recovered on examination. During investigations it was found that the T.V. brought by Shri Sultan Sayani was meant for the applicant as stated by both Sayani and Narendra Jain. The case was adjudicated by the Additional Commissioner of Customs, CSI Airport, Mumbai, vide order-in-original No. ADC/AS/ADJN/24/2012-13 dated 27.11.2012, who while confiscating the impugned goods and imposing penalties on the two passengers who had brought the goods, have also imposed the penalty of Rs.3,00,000/- on the applicant under section 112(a) and (b) of the Customs Act 1962 for admitting that he used to purchase impugned goods on which duty was not paid.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who dismissed the appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 Being aggrieved by the said order it is prayed that Commissioner (Appeals) failed to appreciate evidence on record and without application of mind has ordered pre-deposit and applicant had excellent case on merits as applicant pointed out statement dated 02.08.2011 wherein no role of applicant is assigned to show that applicant aided or abetted.

4.2 Applicant submits that by order dated 20.06.2013, failure to comply with order of pre-deposit, Commissioner (Appeals) has rejected appeal.

4.4 It is prayed that failure to appreciate evidence on record and no Iota of evidence to establish applicant and nexus with impugned goods and imposing penalty has resulted in miscarriage of justice. Applicant has requested to set aside the penalty.

5. Personal hearing scheduled in this case on 12.04.14 at Mumbai was attended by Shri P.K. Shingrani, Advocate on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that in this case the passenger Shri Sayani Sultan Kasam Ali had stated in his statement recorded on 6.7.2011 that mobile No.9821015566 belong to one Narendra Chaggan who has a shop in Byculla that he knew him through a friend Wasim, that Shri Narendra Chaggan wanted to buy TV from him and TV seized from him was to be given to Shri Narendra. Shri Narendra Jain @ Chagan Bhai in his statement recorded on 02.08.2011 stated that he know Sayani Sultan Kasim Ali as Sultan who used to supply him perfumes, cosmetics, garments etc. for personal use, that he gave order for bringing TV from Bangkok for his daughter,

that he has not paid any amount to him to bring TV. The original authority in his finding in para 44 of order-in-original has observed as under :-

"44. Shri Narendra Jain @ Chagan Bhai in his defence reply has stated that he had never ordered Sultan to bring any TV for him, neither did he pay any amount for the same. However, I find that Shri Jain in his statement recorded on 02.08.2011 had stated that he had ordered Sultan to bring TV from Bangkok for his daughter. He had also stated that he had also dealt with him in the past. Therefore the contention of Shri Jain in the defence reply is an afterthought. Shri Jain has quoted a judgment of the Hon'ble Supreme Court wherein the Hon'ble Court has held that no penalty should be imposed for technical or venial breach. I find that the quoted case law is not relevant in the matter as the acts and omissions on part of Shri Jain cannot be termed as technical breach. Therefore, I hold him liable to penalty under section 112(a) and (b) of Customs Act, 1962 as he is the person who had admitted that he used to purchase impugned goods on which duty was not paid."

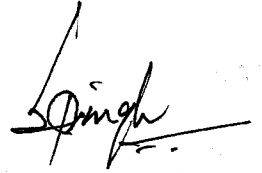
The original authority has imposed penalty of Rs.3,00,000/- on the applicant under section 112(a) of Customs Act 1962. Commissioner (Appeals) has upheld the said penalty. Now applicant has contested the said order-in-appeal in this revision application on the grounds stated above.

8. Government notes that the passenger Shri Sayani Sultan Kasam Ali who arrived at CSI Airport Mumbai on 16.02.2011 from Bangkok was found carrying goods in commercial quantity and foreign currency / Indian currency. He has stated in his statement dated 06.07.2011 recorded after 5 months of his arrival that one TV was to be given to Shri Narendra Jain, applicant. Shri Narendra Jain has also accepted in his statement dated 02.08.2011 for having ordered for a TV. He also admitted that he used to buy goods from Sayani Sultan in the past for personal use. It is observed that Shri Sayani had evaded duty of Rs.36,416/-. Shri Sayani had evaded duty of Rs.36,416/- in the past as he failed to pay said amount of duty by claiming full free baggage allowance. As such, it is clear that Shri Narendra has purchased goods on

which duty was not paid. Applicant has therefore committed an offence by buying non-duty paid goods and rendered him liable to penal action under section 112(a) of Customs Act 1962. As per clause (ii) of section 112(a), the penalty can be imposed equal to duty sought to be evaded. Government therefore, keeping in view the overall circumstances of the case and provision of section 112(a) (ii), reduces the penalty to Rs.36,416/- on the applicant. The impugned order-in-appeal is modified to this extent.

9. The revision application is disposed off in terms of above.

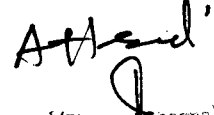
10. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

Shri Narendra Jain @ Chagan Bhai,  
Byculla Love Lane, 1021 Vaishali Apartment,  
Opp. Telephone Exchange,  
Mumbai – 400 010.



(सामन्त शर्मा/Biswajit Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C.B.E.C.-D.S.U. (Revision Application)  
द्वितीय मजदूर (द्वितीय श्रेणी)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Ministry of Finance  
अहमदाबाद (GANDHI NAGAR, BHIM)

Order No. 109/14-Cus Dated 30.04.2014

Copy to:

1. The Commissioner of Customs, Chhatrapati Shivaji International Airport, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East), Mumbai – 400 059.
2. Commissioner of Customs (Appeals), Mumbai-III, Avas Corporate Point, Makhwana Lane, Andheri Kurla Road, Andheri (East), Mumbai – 400 059.
3. Additional Commissioner of Customs, Chhatrapati Shivaji International Airport, Mumbai – 400 099
4. Shri Prakash K. Shingrani, Advocate, 12/334, New MIG Colony, Bandra (E), Mumbai – 400 051.

5. PA to JS(RA)

6. Guard File.

7. Spare Copy



(B.P. Sharma)  
OSD(Revision Application)