

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.371/133/B/2018-RA  
F.No.371/134/B/2018-RA 1668

Date of Issue ~~01.2023~~  
02.02.2023

ORDER NO. 155-156 /2023-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2023  
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 No.1 : Shri Darnesh Shetty  
Applicant No.2 : Shri Jyotiram H. Gaikwad

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

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-880 & 881/17-18 dated 14.12.2017 [Date  
of issue: 14.12.2017] [S/49-209/2013/AP] and [S/49-  
211/2013/AP] passed by the Commissioner of Customs  
(Appeals), Mumbai Zone-III.

**ORDER**

This Revision Application has been filed by Shri Darnesh Shetty and Shri Jyotiram H. Gaikwad (herein referred to as "Applicants" or "Applicant No 1" and "Applicant No. 2") against the Orders-in-Appeal No. MUM- CUSTM-PAX-APP-880 and 881/17-18 dated 14.12.2017 [Date of issue: 14.12.2017] [S/49-209/2013/AP] and [S/49-211/2013/AP] respectively passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2.1. The Applicant No.1 carries on business of trading of 'Readymade garments' and Applicant No. 2 is employed with Air India as a 'Safaiwala Karmachari'. Brief facts of the case are that the Officers of Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI), on the basis of developed specific intelligence that two passengers would be arriving from Hong Kong by Jet Airways on 19.03.2011 and would attempt to clear wrist watches, pens, memory cards etc. without declaring to the Customs and to evade payment of Customs duty, two passengers Shri Amit Bakhtiani and Shri Swapnil Kawde were intercepted. Detailed examination of the baggage of the passengers led to the recovery of 10000 pcs of 2GB memory cards, 7 wrist watches and 55 pens valued at Rs. 45,59,644/-, readymade garments valued at Rs. 2,30,305/-, Indian currency amounting to Rs. 34,900/-, foreign currency equivalent to Rs. 28,305/- and one fake Rolex watch valued at Rs, 600/-, which were seized under Section 110 of the Customs Act, 1962 in the reasonable belief that the same were smuggled goods and hence liable for confiscation under the provisions of the Customs Act, 1962. During investigations it came to light that the seized memory card, wrist watches and pens belonged to on Iqbal and the readymade garments belonged to Jyotiram Gaikwad, and both the passengers had been recruited by Iqbal and Jyotiram Gaikwad to bring the said goods. It was further revealed during investigations that Jyotiram

Gaikwad was asked by one Moiz Ali Zafar @Moizbhai to form a group of four airline staff and travel to Hongkong and bring a bag weighing 20 to 25 kgs of readymade garments. The Applicant No. 1 is in the business associate of Moiz and was assigned the task of collecting the goods at the airport and paying remuneration to the staff who were a part of the smuggling racket.

2.2. The Applicant in his statement recorded on 13.09.2011, interalia admitted his complicity in the smuggling of readymade garments by utilizing the services of airline staff and that he was working in association with Moiz Ali Zafar @Moizbhai and he kept liason with Jyotiram Gaikwad on a day to day basis and that Moiz Ali Zafar @Moizbhai shared about 30% of the profits of the business with him. The Applicant was part of the criminal conspiracy hatched between Moiz Ali Zafar @Moizbhai, Jyotiram Gaikwad, Amit Bakhtiani, Swapnil Kawde and others in defrauding in the payment of revenue by resorting to smuggling of readymade garments.

2.3. Applicant No.2, in his statements, too admitted to smuggling readymade garment and that he had been recruiting airline employees to go to Hong Kong on Staff Travel Authority (STA) on 35 to 40 occasions in the past and that he knew Mr. Moiz and in the instant case, on the instructions of Mr. Moiz, and for a monetary consideration, he had asked the passengers in question to go to Hong Kong to get readymade garments and was waiting outside the airport to receive the goods, when the passengers were intercepted.

3. Pursuant to issue of show cause notice and following the process of law, Original Adjudicating Authority (OAA) viz: Additional Commissioner of Customs, CSI Airport, Mumbai, vide Order-in-Original No. ADC/SK/ADJN/11/2012-13 dated 17.01.2013 [Date of issue: 18.01.2013 [DRI/MZU/B/INV-34/2010-11 S/14-04-81/2011-12 ADJN], ordered absolute

confiscation of the 10000 pcs of 2GB memory cards, 7 wrist watches and 55 pens valued at Rs. 45,59,644/-, readymade garments valued at Rs. 2,30,305/- and Indian currency amounting to Rs. 34,900/-, foreign currency equivalent to Rs. 28,305/- and one fake Rolex watch valued at Rs, 600/-under Section 111(d) of the Customs Act, 1962. Penalties were also imposed on Shri Amit Bakhtiani, Shri Swapnil Kawde, Shri Moiz Ali Hussain Zafar, Shri Iqbal Hamidani, Shri Amin Lakhani and Applicant No. 1 and 2 under Section 112(a) & (b) of the Customs Act, 1962. Personal penalty of Rs. 50,000/- each were imposed on both the Applicants under Section 112(a) & (b) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicants filed separate appeals with the Commissioner of Customs (Appeals), Mumbai Zone-III pleading for waiver/reduction of the personal penalty. The Appellate Authority (AA) vide Orders-in-Appeal No. MUM-CUSTM-PAX-APP-880 and 881 /17-18 dated 14.12.2017 [Date of issue: 14.12.2017] [S/49-209/2013/AP] and [S/49-211/2013/AP] rejected the appeal.

5. Aggrieved with the order of the Appellate Authority, the Applicants have filed separate revision applications against the imposition of penalty on each of them, inter alia on the same grounds as elucidated under:

5.01. That the AA failed to appreciate that there is no role played by the Applicant in clearing the passengers;

5.02. That there is no evidence to show that the services of Amit Bhaktiani and Swapnil Kawde were sought by the Applicant or had paid money to purchase readymade garments;

5.03. That the Applicant No 1 was in the business of trading of readymade goods and Applicant No. 2 was a Safaiwala Karmachari and there was no evidence that the Applicants were involved in the smuggling of readymade garments which are neither restricted nor prohibited under the Customs Act, 1962;

5.04. That the Applicant No 1 did not know Sharad More and though Applicant No. 2 knew Sharad More, none of the Applicants had monetary dealings with him and so provisions of Section 112(a) or 112(b) of the Customs Act, 1962 were not attracted;

5.05. That a statement recorded under the Customs Act, without any corroborative evidence cannot be relied upon for imposing penalty on the co-noticees as held in the following case laws:

- (i) Arvind Kumar vs, CC, New Delhi [2001(136) E.L.T. 439 (Tri-Del)
- (ii) K.I.Pavunny vs. AC (HQ) C.Ex. Cochin [1997(90) E.L.T. 241(SC)]
- (iii) Mohtesham Mohd. Ismail vs. SPI Director, ED [2007(220) E.L.T. 3(SC)]
- (iv) CC (Imp) Chennai vs. Sainul Abideen Neelam [2014(300) E.L.T. 342(Mad)]

5.06. That there was no nexus between Applicant No 1 and 2 and Shri Sharad More as Shri More has denied helping Applicant No. 2 in clearing the passengers;

5.07. That the readymade garments seized from the two passengers was worth Rs. 33,975/- and Rs.47,250/- and after deduction of the free allowance the value of the goods was meagre to indulge in smuggling;

5.08. The Applicant relied upon the following case laws in support of their contention

(i) Akbar Badruddin Jiwani vs. Collector of Customs [1990(47) E.L.T. 161(SC)]

5.09. That there was no malafide and/or mens rea on the part of the Applicants which was required for imposition of penalty;

5.10. That proceeding against Sharad More were dropped and the appeal by the department was dismissed and so the penalty against the Applicants have to be set aside;

5.11. That no goods were received by the Applicants which showed that he had no knowledge of any goods being cleared by the passengers without payment of duty;

In view of the above submissions the Applicants in the revision applications filed individually, prayed that the OIA dated 14.12.2017 imposing penalty be set aside.

6. The Applicants have also filed individual applications for condonation delay of 30 days in filing the Revision Application. Applicant No. 1 has stated that he was unwell and was being treated at his native place in Bangalore and could not file the application in time. Applicant No. 2 has stated that he had gone to his native place to attend the wedding of his sister-in-laws granddaughter and hence could not file the application in time

7. Personal hearing in the case was scheduled for 04.08.2022 or 26.08.2022. Shri N.D. George, Advocate, appeared online for the personal hearing on 02.09.2022, on behalf of Applicant No. 1 and 2. He submitted that the Applicants were penalized without any evidence. He submitted that goods for the Applicants were garments within free limit which were also not given to the Applicants. He requested to drop the penalty against the Applicants.

8.1. At the outset, the Government notes that both the Applicants have filed for condonation of delay. The Revision Application was filed by the Applicants on 18.04.2018. The date of communication of the Order of the appellate authority as informed by the Applicants is 14.12.2017. Accordingly, the applicants were required to file the applications by 13.03.2018 (i.e. taking the first 3 months into consideration) and by 13.06.2018 (i.e. taking into consideration a further extension period of 3 months). The Applicant has accepted that there was a delay of around 30 days from the date of receipt of the order. Thus it is seen that the Revision Application has been filed within the date, after considering the extended period.

8.2. The Applicants' in their application for condonation of delay have stated that the revision application could not be filed due to the ill health and due to a marriage in the family.

8.3. For understanding the relevant legal provisions, the relevant section is reproduced below :

**SECTION 129DD. Revision by Central Government.-**

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A annul or modify such order.*

.....

.....

.....

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

*Provided that 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, allow it to be presented within a further period of three months.*

.....

8.4. From above, it is clear that the applicant was required to file the Revision Application within 3 months from the communication of the Appellate Order. The delay thereafter, upto 3 months can be condoned. Since, the Revision Application is filed within the condonation period of three months, and assumes the reason to be genuine, Government condones the delay on the part of the applicant in filing the application and proceeds to examine the case on merits.

9. The Government has gone through the facts of the case and observes that the issue involved in the instant applications are the imposition of penalty under Section 112(a) and (b) of the Customs Act, 1962, on Applicant No 1 and 2. Applicant No. 1, who admittedly was part of the syndicate and in tandem with Mr Moiz had recruited the passengers who had smuggled the readymade garment and other goods and admittedly the Applicant had after the illegal import had acquired possession of the readymade garments. Applicant No. 2 also had admitted that on the instructions of Mr. Moiz, had recruited airline staff independently on regular basis to go to travel on Staff Travel Authority(STA) and get readymade garments and on return of the passengers, Applicant No. 1 would collect the smuggled goods from the passengers.

10. Government observes that in the instant case, the ingredients of Section 112(a) has been brought out with clarity, so that the penalties can be imposed on the Applicants. Section 112(a) of the Customs Act, 1962 stipulates that a



person shall be liable to penalty, who, in relation to any goods does or omits to do any act, which act or omission would render such goods liable to confiscation under Section 111 or abets the doing or omission of such an act. In the instant case, the Applicant No.1, by recruiting the passengers in association of Mr Moiz and subsequently taking possession of the readmade garments cleared without payment of duty and Applicant No. 2, by independently recruiting the passengers for smuggling of goods, albeit on the instructions of Mr. Moiz, makes it crystal clear that both the Applicants had prior knowledge of the illicit nature of the clearances and regarding violation of the provisions of Customs Act, bringing in penal consequences under Section 112(a) and thus establishing the positive act of mala fide/abetment for imposition of penalty under the Customs Act, 1962.

11. In view of the above discussions, Government observes that the it is clear that the Applicants had been in know of the smuggling of the readymade garments and other goods and do not appear to be innocent. Government observes that the Applicants acted in cahoots with the other accused to avail of gains for each other and thus penalty imposed on the Applicants is confirmed. Similarly, Government finds that the role played by the Applicants on the previous occasions had not been corroborated during the investigations, as rightly held by the lower authorities. Government also observes that in the instant case, the Applicants being an accomplice/conduits and the value of the smuggled readymade garments not being substantial, the quantum of penalty imposed is excessive and reduction of penalty would be considered fair in the circumstances of the case and the nature of indiscretions of the Applicants and thus the revision appeal filed by both Applicant No. 1 and 2 is allowed partially.

12. In view of the above, the Government reduces the penalty imposed on the Applicants in the impugned Order under Section 112(a) & (b) of the

Customs Act, 1962 from Rs. 50,000/- each to Rs.15,000/- (Rupees Fifteen Thousand only) each, which is fair considering the quantum of goods and circumstances of the case.

13. The Revision Applications are disposed of on the above terms.

*Shrawan Kumar*  
31/11/23  
( SHRAWAN KUMAR )

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

155-156

ORDER No. /2023-CUS (WZ) /ASRA/

DATED 31/01/2023

To,

1. Shri Darnesh Shetty@Anna, Flat No 602, B Wing , Chandrakiran, Opp, Mothercare Hospital, off S.V.Road, Jogeshwari (West), Mumbai 400 103
2. Shri Jyotiram Gaikwad, 1A/I, Indian Airlines Colony, Kalina, Santacruz (East), Mumbai 400 029.
3. Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
4. The Commissioner of Customs (Appeals), Mumbai-Zone III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai – 400 059.

Copy to:

1. Shri N.D. George, Advocate, 213, Seth Mansion, Kumpta Street, Fort, Mumbai 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Noticeboard.