



F. No. 375/18/2013-RA
F.No. 380/85/2013-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 28/6/2015

ORDER NO. 18-19/2015-RA DATED 29.06.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed, Under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)CUS/210/2013 dated 29.04.2013.

F.No. 380/85/2013-RA

Applicant : The Commissioner of Customs(I&G), New Customs House, IGI Airport , New Delhi.

Respondent : Sh. Ramesh Kumar

F.No. 375/18/2013-RA

Applicant : Shri Ramesh Kumar

Respondent : The Commissioner of Customs(I&G), New Customs House, IGI Airport, New Delhi

ORDER

These revision applications are filed by Shri Ramesh Kumar (hereinafter referred as "Applicant") and by the Commissioner of Customs, Import & General New Custom House, New Delhi. (hereinafter referred as "Applicant Department") against the Order-in-Appeal No. CC(A)CUS/210/2013- dated 29.04.2013 passed by Commissioner of Customs (Appeals), NCH, Delhi, as detailed below:-

S.No.	R.A. No.	R.A. filed by	O-I-A No./Date	O-I-O No./Date
1	380/85/B/2013-RA	Deputy Commissioner of Customs, NCH, New Delhi.	CC(A)Cus/210/2013 dt. 29.04.2013	92/2012 dated 12.12.2012
2	375/18/B/13-RA	Ramesh Kumar		

The two cases are being disposed of by this common order as they are from a common Order-in-Appeal.

2. Brief facts of the case are that on the night of 01.11.2011, a case was booked by the preventive unit of Air Customs, New Delhi, on specific intelligence that a pax named Shri Vijay Kapoor would arrive from Hong Kong and would be bringing non bonafide baggage containing memory cards in his baggage and would be passing the same to Shri Naresh Kumar Saini, who is a loader working for M/s SPML. On arrival, surveillance was kept and Shri Vijay Kapoor while coming down to immigration clearance, entered the departure toilet no. 17 and telephoned to Shri Naresh Kumar Saini on his mobile and asked him to collect two polythene bags which he left intentionally to be picked up by him and to be cleared by him through Customs under the camouflage of waste collection and to hand over the same to Shri Ramesh Kumar. The passenger was caught red handed by the vigilant Customs Officers for leaving two polythene bags in the toilet no. 17 of the IGI Airport before it was picked by Shri Naresh Kumar Saini. He was confronted by the Preventive Officer of the Customs on duty, who reminded him that he might have left two polythene bags in the said toilet to which Shri Kapoor admitted and picked up the same. Subsequently, he was intercepted walking through the Green Channel near the Exit Gate. His checked in baggage and hand baggage were screened and found to contain abnormal things. Upon examination his bags were found to contain 67980 pcs of branded and unbranded memory cards of various GB along with other miscellaneous goods packed in five pouches wrapped with adhesive tape and further packed in two multi coloured bags, valued at Rs. 1,11,65,160/-, which were placed under

seizure. Shri Vijay Kapoor was arrested and released on bail. The voluntary statement dated 01.11.2011 of the pax was recorded under Section 108 of the Act ibid, wherein he, inter alia, stated that he had travelled abroad 14 times since March 2011; that one Sh. Ramesh Kumar (Noticee No.2) used to bear all the expenses of his travelling and lodging for those visits; that Sh. Ramesh Kumar used to give him Rs.3,000/- for each trip; that he had brought costly mobiles on earlier occasions and had brought memory cards on earlier occasions thrice; and that one Shri Naresh Kumar Saini (Noticee No.3) was to collect the said pouches if left in the toilet; that Shri Ramesh Kumar booked the Air ticket through M/s Isha Travels and Tours Pvt. Ltd. This fact was corroborated by the voluntary statements dated 11.11.2011 and 19.11.2011 of Shri B.K. Singh, Travel Executive of the above said travel agency which was recorded under Section 108 of the Customs Act, 1962. He inter alia stated that tickets for the pax (Sh. Vijay Kapoor) was booked and paid by Shri Ramesh Kumar on 29.10.2011 and also on earlier occasions. He also identified the photograph of Shri Ramesh Kumar from copy of his passport. In his voluntary statement dated 28.12.2011, Shri Naresh Kumar Saini admitted that one Shri Ramesh Kumar used to come to receive memory cards. He also identified the photograph of Shri Ramesh Kumar from his passport as is stated in the impugned Order-In-Original.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide Order-In-Appeal dated 29.04.2013 modified the Order-in-Original dated 12.12.2012 by reducing the penalty on Mr. Ramesh Kumar from Rs.5,00,000/-to Rs.30,000/-.

4. Being aggrieved by the impugned Order-in-Appeal, applicant viz, Shri Ramesh Kumar and Commissioner of Customs (I&G), Delhi, have filed revision applications under Section 129 DD of Customs Act, 1962 before Central Government on the grounds as mentioned below:-

Grounds of Revision tendered by Shri Ramesh Kumar (Applicant)

4.1 That it is clear with the facts of the case that the petitioner never dealt in any manner with the clearance of the goods without duty. That is to say that the petitioner never helped Mr. Vijay Kapoor(the pax) in the said clearance nor he told the pax to clear the goods without payment of duty.

4.2. That the applicant never received the goods from the pax Shri Vijay Kapoor nor he ever dealt with the goods brought by Mr. Vijay Kapoor. In these situations no penalty

is imposeable as held by the Hon'ble Supreme Court of India & CESTAT in the following cases:

- D.Ankineedu Chowdry Vs Commissioner of Customs Chennai-2004(178)ELT578(Tri-Chennai)
- Gopal K. Sapru Vs Commissioner of Customs (Airport) Chennai-2007(213)ELT689(Tri-Chennai)
- Commissioner of Customs & Central Excise, Meerut Vs Pawan Kumar Gupta - 2011(271)ELT 10 (SC)

4.3. That the statement of the pax is the sole reason the applicant is being brought in the picture of the case. That the statement is not corroborated by any independent evidence. On the basis of statement without any corroboration, no penalty can be imposed as held by the Hon'ble CESTAT in the following cases:-

- Mahabir Prasad Vs Commissioner of Customs (Prev) INB, Patna -2000 (126) ELT 803.
- Ram Prasad Vs. Commissioner of Customs, Amritsar-2003(159) ELT 594 (Tri-Del)

4.4 That Section 112 is not applicable to the applicant. Section 112 reads as :

"112-Penalty for improper importation of goods, etc. Any person:-

(a)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, or

(b)who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111."

As there is no finding that applicant acquired possession of, or otherwise physically dealt with the offending goods nor the applicant dealt with their commission or omission which rendered the goods liable for confiscation or abetted such offence. Hence this Section is inapplicable to the applicant.

4.5. That the Appellate Tribunal has held in majority of cases that where the sub-section of Section 112 was neither specifically mentioned in the charge nor in the final order penalty imposed without specifying sub-clause of Section 112 of the Customs Act, 1962 is sustainable or not has now been referred to the High Court, being a question of law, under Section 130 of the Customs Act, 1962. Still it is held that without specifying sub-clause of provision of Section 112, penalty imposed is unsustainable. As was held in

the case of Commissioner of Customs, Amritsar Vs A.T.M. International Ltd –2007(208)-ELT 288 (Tri-Del) held that penalty imposition without specifying the sub-clause of provision invoked, it is unsustainable. It is very important that the Customs Authorities did not recover any incriminating document from the official or the residential premises of the applicant.

4.6 That there is no evidence disclosed in the order that the applicant has to receive the goods brought by Mr. Vijay Kapoor or dealt with goods any manner prescribed under Section 112 of the Customs Act, 1962. That it was Mr. Arvind who was to receive the goods brought by the pax and not the applicant.

4.7. Shri Ramesh Kumar has prayed before the Revisionary Authority to quash the impugned order and also Review Application filed by the Customs Department be rejected.

Grounds for revision submitted by the Department Applicant.

4.8 That vide impugned Order-in- Appeal, the Commissioner (Appeal) has reduced penalty from Rs.5 Lakhs to Rs. 30,000/- on Sh. Ramesh Kumar. It is a serious case of smuggling of memory cards (67980 Nos) valued at Rs.1,11,65,160/- on payment and in spite of clear incrimination of the appellant by the Pax, Sh. Vijay Kapoor, the penalty has been reduced.

4.9. That the Appellate Authority's order to reduce penalty on Mr. Ramesh Kumar, who is main master mind behind the entire Smuggling operation going on some time, therefore the order is not proper & legal.

4.10 The Applicant Department has pleaded to set aside the order of Commissioner (Appeals) and restore the Order-in-Original.

5. The Applicant Department vide its letter dated 14.11.2013 has also filed the application for condonation of delay of 28 days in filing the Revision Application.

6. Personal hearing in this case held on 16.03.15 & 24.03.15 was attended by Shri S.S.Arora, Counsel for Mr. Ramesh Kumar and on 24.03.15 by Shri Ashish Kumar, Air Custom officer, IGI Airport, New Delhi from the Department's side, who reiterated the grounds of their respective revision applications.

7. Government has carefully gone through the relevant case records/available in case files, oral & written submission and perused the impugned Order-in-Original and Orders-in-Appeal.

8. Government notes that the Revision Application is filed by the Applicant Department after a delay of 28 days. However they have requested to condone the delay on the ground that it is genuine and bonafide. As the delay is within condonable limit, Government in exercise of powers vested in Section 129 DD(2) of the Customs Act, 1962 condones the delay and now proceeds to take up the Revision Applications for decision on merit.
9. On perusal of the records, Government observes that in the statements of Shri Vijay Kapoor, the passenger, recorded during the investigation under Section 108 of Customs Act, 1962, it is interalia stated that he brought these goods on behalf of Shri Ramesh Kumar for monetary consideration who also used to bear all his expenses of his travelling and lodging in Hong Kong; Shri Naresh Kumar Saini, a loader of M/s SPML was to clear the same through Customs as stated supra; Shri Ramesh Kumar was the person on whose behalf he had also on earlier occasions brought costly mobile phones and memory cards for monetary gain. Shri Ramesh Kumar was found absconding from his residence and business place. A Show Cause Notice was issued and Shri Ramesh Kumar was made Noticee no. 2 on the basis of statements of main pax Shri Vijay Kapoor, Shri Naresh Kumar Saini a loader of M/s SPML and Shri B.K.Singh, Travel executive, for colluding and abetting with Shri Vijay Kapoor in the smuggling activities. Further he is alleged to be the actual owner of the impugned goods. The case was adjudicated by the Additional Commissioner, Customs, IGI Airport vide Order-In-Original no.92/2012 dated 12.12.2012 and penalty of Rs 5,00,000/- was imposed upon Shri Ramesh Kumar on the grounds as stated above. Aggrieved by this order, Shri Ramesh Kumar through his counsel filed an appeal before Commissioner (Appeals) who vide his Order-In-Appeal dated 29.04.2013 reduced the penalty levied under Section 112 of Customs Act,1962 from Rs 5,00,000/- to Rs 30,000/- stating the reason that Shri Ramesh Kumar was never investigated and not in picture in the entire episode of smuggling of impugned goods; that only evidence against him were some statements recorded by the department which were not corroborated by any other concrete evidence. Hence it cannot be taken as a reliable evidence for alleging that Shri Ramesh Kumar colluded and abetted in smuggling activities that took by main accused Shri Vijay Kapoor by above said modus operandi. Aggrieved by the impugned Order-In-Appeal, both Shri Ramesh Kumar and Department have filed the instant Revision Applications on grounds stated in Para 4 above.
10. On going through the records of the case, Government finds that the facts on record clearly establish the collusion in smuggling activities by Shri Ramesh Kumar with Shri Vijay Kapoor (main accused) and his abetment of such actions. Government further notes that the

statement dated 01.01.2011 tendered by Shri Vijay Kapoor, the main accused, has been corroborated by the statements recorded under Section 108 of Customs Act, 1962 of Sh. B.K.Singh, Travel Executive of M/s. Isha Travels & Tours (P) Ltd. on 11.11.2011 and 19.11.2011 and Shri Naresh Kumar Saini the co accused on 25.12.2011. Shri B.K. Singh has clearly stated that ticket for the passenger was booked and paid for by the applicant on 29.10.2011 and also on earlier occasions. Shri Naresh Kumar Saini in his voluntary statement has admitted that the applicant also used to come to receive memory cards. Both of them have also identified the photograph of the applicant from his passport.

11. Government observes that the applicant has pleaded that these statements have not been corroborated by any independent evidence. In this regard, Government places the reliance on the following case laws:-

- Naresh Kumar Sukhwani Vs Union of India 1996(83) ELT 285(SC) wherein the Apex court has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- Collector of Customs, Madras and Ors Vs D. Bhoormull-1983(13)ELT1546(S.C.) wherein it was held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- G.V. Ramesh Vs Commissioner of Customs, Chennai-2010 (25) ELT 2012 (Tri Chennai) wherein it is held that standard of proof required in quasi-judicial proceedings is preponderance of probability and not proof beyond reasonable doubt that the applicant has colluded with the passenger in aiding and abetting smuggling of the impugned goods.
- Kanwarjeet Singh & Ors Vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri) wherein it is held that strict principles of evidence do not apply to a quasi judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.

The case laws relied upon by the applicant are, therefore, not applicable to the present case.

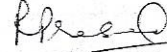
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Order No. 18-19/2015-RA dated 29.06.2015

12. Government further observes that these statements which are held to be material piece of evidence have not been retracted at any point of time. The adjudicating authority has decided the case based on evidence brought on record as a result of investigation undertaken by the Department. In this regard, it has been held by various Courts time and again that the standard of proof required in such quasi judicial proceedings was preponderance of probability and not proof beyond reasonable doubt. The facts of the case clearly point that there was more than preponderance of probability to come to the conclusion that the applicant has colluded with the passenger in abetting smuggling of the impugned goods.
13. The applicant has also argued that penalty has been imposed under Section 112 of the Customs Act, 1962 without specifying the subsection. Government observes that the acts of commission committed by the applicant cannot be ignored on mere technical ground that the relevant subsection of Section 112 of Customs Act, 1962 is not specifically mentioned especially when no prejudice is shown to have been suffered by the applicant. Also it is not the case that the applicant was not put on notice regarding the charges against him. This also finds support in the case of CC, Amritsar Vs ATM International 2008(222)ELT 194(P&H) wherein the Hon'ble Punjab & Haryana High Court reversed the order of Tribunal relied upon by the applicant.
14. From the above discussions, Government finds that Shri Ramesh Kumar has rightly been held as the active mind by the Applicant Department behind the entire smuggling operation, who actively colluded with and abetted Shri Vijay Kapoor in smuggling of the goods without payment of customs duty into the country and has therefore rightly been held as liable for penalty under Section 112 of the Customs Act, 1962. As regards the quantum of penalty Government notes that the penalty imposed by the original authority is commensurate to the value of the goods and the offence. Therefore, the penalty imposed by the original adjudication authority of Rs. 5,00,000/- on Shri Ramesh Kumar is not harsh considering the role of Shri Ramesh Kumar in facilitating the smuggling of impugned goods. Keeping in view the gravity of offence and overall circumstances of the case, the penalty is rightly imposed and the Commissioner (Appeals) has erred in holding that the statements cannot be taken as reliable evidence and in consequently reducing the penalty on the applicant. Therefore, the order passed by the Commissioner (Appeals) with regard to reduction of fine and penalty is not proper and legal.

15. In view of the above position, the original authority has rightly ordered imposition of penalty of Rs. 5,00,000/- under Section 112 of the Customs Act, 1962 on the applicant. Commissioner (Appeals) has erred in reducing the penalty to Rs. 30,000/- ignoring the facts and circumstances of the case and the case laws cited above. Government, therefore, sets aside the impugned Order-In-Appeal to the extent of quantum of penalty imposed and restores the impugned Order-In-Original to that extent.

16. The Revision Applications are disposed of in the above terms.

17. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

1. Shri Ramesh Kumar,
c/o Shri S.S. Arora, Advocate,
B-1/71, Safdarjung Enclave,
New Delhi-110029.
2. The Commissioner of Customs (I&G),
NCH, New Delhi-110037

Attested

शुकेत अली
Shaukat Ali
अध्यापक (प्र. अ.)
Under Secretary (RA)


Under Secretary (RA)

GOI ORDER NO. 18-19/2015-RA DATED 29.06,2015

Copy to:-

1. The Commissioner of Customs(I&G), NCH, New Delhi-110037.
2. Mr. Ramesh Kumar C/o S.S. Arora Advocate, B-1/71, Safdarjung Enclave, New Delhi
3. The Commissioner of Customs (Appeals) New Delhi.
4. Shri S.S.Arora (Advocates), B1/71 Safdarjung Enclave, New Delhi-110029.
5. The Additional Commissioner of Customs, IGI Airport, New Delhi.
6. PA to JS (Revision Application)
- ✓ 7. Guard File
8. Spare Copy.

ATTESTED


(SHAUKAT ALI)
UNDER SECRETARY (RA)