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F.No.380/99/B/13-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.....2/2/16.....

ORDER NO. 20/2016-CUS DATED 26.02.2016 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/362/2013 dated 11.07.2013 passed
by the Commissioner of Customs (Appeal), New
Delhi.

Applicant : Commissioner of Customs (Import & General),
New Delhi.

Respondent : Mr. Surinder Singh Arora.

ORDER

This Revision Application is filed by Commissioner of Customs (Airport), New Delhi, (here in after referred to as the department) against the order-in-appeal No. CC(A)/CUS/362/2013 dated 11.07.2013 passed by Commissioner of Customs (Appeals), New Delhi, with respect to Order-in-Original No. 100/2012 dated 28.12.2012 passed by Addl. Commissioner of Customs, (Airport) New Delhi.

2. Brief facts of the case are that acting on the basis of specific intelligence that Shri Surinder Singh Arora (hereinafter referred to as respondent), holder of Indian Passport No. J6717006 dated 28.04.2011 arriving by Flight No.TG-323 dated 13.01.2012, would be indulging in smuggling of goods from Hong Kong via Bangkok in connivance with certain staff deployed at the IGI Airport. The passenger Shri Surinder Singh was identified at the aerobridge and was kept under surveillance and his movement was monitored.

2.1 The movement of the respondent was found to be abnormal and suspicious right from his emergence from aerobridge as was evident from the fact that after moving forward from the aerobridge, he turned back and entered the toilet situated at aerobridge near gate No. 19-B along with his hand carry bag following one person who was identified as Shri Kawaldeep Singh, an employee of M/s. IDDS, C/o M/s DIAL (holder of Airport entry Card no. A- 109454 issued by BCAS dated 03.01.2012) & resident of WZ-D- 60, Street No.60, Krishna Park, Tilak Nagar, New Delhi- 110018. The Customs Officer on surveillance also entered the toilet to watch their movements and found that both Shri Kawaldeep Singh and the PAX entered inside the toilet enclosures adjacent to each other.

2.2 The passenger handed over four (4) packets tightly wrapped with cello tape to Shri Kawaldeep Singh by sliding them underneath the open space between the two adjacent toilets partition. After handing over the four packets to Shri Kawaldeep Singh, the passenger moved out of the toilet and after some time Shri Kawaldeep also came out of the toilet. Thereafter, the passenger moved to the immigration counter and Shri Kawaldeep Singh was intercepted by the Customs officials at the toilet itself and was brought to the Customs area at the Arrival Hall.

2.3 Shri Surinder Singh was carrying one hand carry baggage and one checked-in-baggage bearing Tag No. TG-385484. After collecting his one checked-in-baggage bearing Tag no. TG 385484 from the conveyer belt he exercised his option to walk through the Green Channel and his disembarkation slip (Customs portion) was checked by the Customs Officers in which he had not declared any value in the prescribed Column 6 of the disembarkation slip (Customs portion). In view of the specific intelligence and the conduit, Shri Kawaldeep Singh, being caught at the toilet, Shri Surindra Singh was diverted for scanning of his hand and checked-in- baggage.

Thereafter, both the passenger and Shri Kawaldeep Singh, were brought to the Customs preventive room situated at the Arrival Hall, for a detailed examination of baggage and their personal search, in the presence of two independent witnesses.

2.4 After following due process of law, the Customs officer conducted the personal search of Shri Kawaldeep Singh and the passenger Shri Surinder Singh Arora in presence of two independent witnesses. Nothing incriminating was recovered from Shri Surinder Singh Arora. However, on the personal search of Shri Kawaldeep Singh 04 packets wrapped in brown colour tape besides other things as mentioned in the para 1.6 of the Order-in-Original were recovered.

2.5 The recovered four packets from Shri Kawaldeep Singh were opened in the presence of two independent witnesses and found to contain 8020 Nos. of 2GB memory cards, collectively valued at Rs. 12,03,000/- (@ Rs. 150/- per piece after allowing an abatement of 25% on the market value). As the Pax Shri Surinder Singh Arora and Shri Kawaldeep Singh failed to produce any documentary evidence for their licit import of memory cards, the same were seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the same were smuggled into India and therefore, liable for confiscation. The material which were used for concealing memory cards, were also seized under Section 118 read with Section 119 of the Act, *ibid*. A panchnama dated 13.01.2012 was drawn on the spot.

2.6 The statement of Shri Surinder Singh Arora was recorded on 13.01.2012 under Section 108 of the Act *ibid*, wherein he, *inter- alia* stated that he travelled from Hong kong to Bangkok by Flight no, TG -607 dated 12.01.2012 and from Bangkok to New Drelhi by Flight no. TG-323 dated 13.01.2012; that he brought some memory cards from Hong kong ; that after disembarking, at IGI Airport, New Delhi from Bangkok by Flight no, TG-323, he contacted Shri Kawaldeep Singh on mobile no. 9999504343 from his mobile no. 9811740711 and informed that his flight had landed; Shri Kawaldeep Singh informed him that he would wait at the gate and he (pax) was to follow Shri Kawaldeep Singh; that as decided, Shri Kavaldeep Singh was waiting at the gate and on seeing him Shri Surinder Singh Arora, started followirig Shri Kawaldeep; that Shri Kawaldeep took him to a toilet: that he handed over four packets containing memory cards underneath the open space of the toilet's partition to Shri Kawaldeep which he (pax) was supposed to receive back from Shri Kawaldeep outside the IGI Airport, in the toilet of Metro Station (outside the IGI Airport); that these four packets contained approximately 8020 pcs. of memory cards of 2GB each; that he on earlier occasion on 29.12.2011, brought 4000 memory cards which were cleared through Shri Kawaldeep in the same fashion; that for buying 4000 nos. of memory cards on the earlier occasion, he had borrowed Rs. 1.5 Lacs from SINGH MONEY EXCHANGER, HONG KONG, and the balance amount approximately Rs. 3 Lacs were taken from his personal funds; that he sold these memory cards for Rs. 5 Lakhs to VIPIN in Gaffar

Market, Karol Bagh; that this time some person from SINGH MONEY EXCHANGER was to collect these cards from his residence and he was supposed to get Rs. 50,000/- as profit; that during his last two visits to Hong Kong in Aug, 2011 & Nov, 2011 each time he had brought mobile phones and readymade garments; that he is engaged in the business of repair of water filters and RO and selling them on commission basis under the name and style M/s. S.S Arora; that he earned a profit of Rs. 2 Lakhs annually: that he bought his tickets from his own pocket from M/s ISHA TRAVELS & TOUR (P) LTD.; & that Shri Kawaldeep is a friend of his son, Shri Gurpreet Singh and occasionally visited his house to meet his son and in Dec, 2011 his son introduced Shri Kawaldeep to him.

2.7 The statement of Shri Kawaldeep Singh was also recorded under Section 108 of the Act ibid on 13.01.2012 wherein he, inter- alia stated that he joined M/s IDDS, C/o M/s. DIAL as engineer in July, 2011; that in the year 2010 he befriended Shri Gurpreet Singh through facebook; that after Shri Kawaldeep joined the job at IGI Airport, Gurpreet introduced him to his father Shri Surinder Singh Arora; that after meeting Shri Kawaldeep twice or thrice, Shri Surinder Singh Arora told him that he (Surinder Singh Arora) used to visit Bangkok and other countries and brought memory cards with him; that Shri Arora allured him of giving money for helping him in removing memory cards brought by the Shri Surinder Singh Arora out of the IGI Airport; that out of greed he agreed to the same; that the Shri Surinder Singh Arora provided him two long socks and demonstrated to him the method of concealing memory cards inside these socks; that on earlier occasion when Shri Surinder Singh Arora arrived at Delhi IGI Airport, he (pax) gave a call to him on his mobile no. and told him to come near Bay No.3, after that he entered the toilet near the said Bay and passenger Shri Surinder Singh Arora followed him inside the toilet and handed over four packets of memory cards from underneath the open space of toilet's partition ; that after putting those four packets inside the long socks which he was wearing, he came out of Customs exit gate and reached the toilet situated in Delhi Metro Airport station (outside IGI, Airport) where the Pax Shri Surinder Singh Arora was already waiting for him, that he handed over the said packets to Shri Surinder Singh Arora and in return Shri Arora paid him Rs. 3000/- for job done by him. Similarly on 13.01.2012, the same modus operand was adopted the only difference was this time it was toilet near the gate No. 19-B on the departure side of the Airport. That as he came out of the toilet, an officer in plain clothes guided him to the preventive room of Customs situated near the exit gate of the International Arrival Hall; that a Customs Officer took his personal search in the presence of two independent witnesses which resulted in the recovery of 04 (Four) packets from the long woolen socks which he was wearing; that on opening of these packets approximately 8020 memory cards were recovered; that the Customs officer seized the said memory card under Section 110 of Act, ibid on a reasonable belief and that he was supposed to get Rs. 4000/- from the Shri Surinder Singh Arora on delivery of memory cards outside the IGI Airport.

2.8 Since the PAX and Shri Kawaldeep Singh could not produce any documents in support of the import of 8020 Pieces of 2G Memory Cards, collectively valued at Rs. 12,03,000/- both were arrested under section 104 of the Act, *ibid*, on 13.01.2012 and subsequently released on bail. Summons dated 13.01.2012 were issued to the pax Shri Surinder Singh Arora, Kawaldeep Singh and Shri Gurpreet Singh S/o Shri Surinder Singh Arora for their appearance on 17.01.2012.

2.9 Shri Kawaldeep Singh appeared before Customs officer on 17.01.2012 and tendered his voluntary statement under section 108 of the Act *ibid*, wherein he *inter alia* stated that on 13.01.2012, as decided, the Shri Surinder Singh Arora after arriving from Flight No. TG-323 from Hong Kong handed over four packets containing 8020 nos. of memory cards of 2GB each, which he concealed inside his socks; that he was to hand over the said packets back to the Shri Surinder Singh Arora outside the IGI Airport, but before that the Customs Officers caught him and recovered the said four packets from him ; that Shri Surinder Singh Arora was supposed to pay him Rs. 4000/- for completion of the said work.

2.10 Shri Surinder Singh Arora also appeared on 17.01.2012 and tendered his voluntary statement under section 108 of the Act *ibid* on 17.01.2012, wherein, he *inter- alia* stated that Shri Kawaldeep Singh worked at Airport and was a friend of his son; that in Dec. 2010 asked his son to call Shri Kawaldeep Singh at their residence; that to, earn more profit he called Shri Kawaldeep Singh at his house so that he could bring memory cards from Hong Kong and take it out of IGI Airport without payment of Customs Duty; that he discussed the matter of bringing memory cards from Hong Kong with Shri Kawaldeep Singh ; that Shri Kawaldeep Singh would take away the memory cards outside the IGI Airport and hand over the same to him as he was aware that it was not difficult for the employees at IGI Airport to take out goods concealed on their person, as in normal course the employees working at IGI Airport are not searched by the Customs Officers; that he explained the method of concealing memory cards inside the long socks to Shri Kawaldeep Singh and they had also practiced the same at home by concealing TV remote in place of memory cards; that he brought long woolen socks for Shri Kawaldeep Singh; that on earlier occasion in Dec, 2011, he brought approximately 4000 memory cards, which he handed over to Shri Kawaldeep in the toilet at Aerobridge & Shri Kawaldeep delivered the packets of memory cards to him at Metro station outside the IGI Airport; that for bringing memory cards out of IGI Airport he paid Rs.3000/- to Shri Kawaldeep Singh at that time ; that this time he brought approximately 8000 memory cards, which Shri Kawaldeep was to deliver outside the Airport to him; that this time also it was decided to pay Rs.4000/- to Shri Kawaldeep Singh on completion of the said work.

2.11 Shri Gurpreet Singh, S/o Shri Surinder Singh Arora, (pax) appeared before Customs officer on 17.01.2012 and tendered his voluntary statement under Section 108 of the Act *ibid* on 17.01.2012, wherein, he *inter- alia* stated that

Shri Kawaldeep Singh was his friend; that they came in contact through facebook on internet ; that through internet he came to know that Shri Kawaldeep was residing in his neighborhood & was working at IGI Airport, New Delhi; that they often met in Gymnasium located in their locality; that as the friendship developed they started visiting each other houses; that during one of his visits, he introduced Shri Kawaldeep to his father, Shri Surinder Singh ; that his father often visits Hong Kong for business purpose, that his father used to bring readymade garments on order basis; that apart from this his father also brought mobile phones, which were sold in Ghaffar Market at Karol Bagh; that during the last visit to Hong Kong, his father brought Memory Cards and his friend Shri Kawaldeep Singh assisted his father for bringing Memory cards out of Airport; that his father asked him to contact Shri Kawaldeep who was working at IGI Airport, so as to clear some electronic items without payment of Customs duty; that he called up Shri Kawaldeep Singh at his house on one day and introduced to his father, Shri Surinder Singh; that his father discussed with Shri Kawaldeep Singh clearance of memory cards from IGI airport without payment of Duty; that it was decided that Shri Kawaldeep Singh would receive the packets of memory cards in the toilet of the Airport and would deliver the same outside the Airport and for the said task Rs.4000/- was paid to Shri Kawaldeep Singh.

2.12 In order to verify the authenticity of the conversation between Shri Surinder Singh Arora and Sh. Kawaldeep Singh, M/s Vodafone Mobile Services Ltd., C-48, Okhla Industrial Area, Phase-II, New Delhi was requested to supply the call details of mobile nos. 9999504343 and 9811740711. The Nodal Officer M/s Vodafone Mobile Services Ltd., C-48, Okhla industrial Area, Phase-II, New Delhi vide his letter dated 31.01.2012 supplied the call details of the aforesaid mobile numbers. Scrutiny of the call records reveals that the pax was in touch with Shri Kawaldeep Singh and vice versa. It appeared from the above, the pax Shri Surinder Singh Arora and Sh. Kawaldeep Singh were in touch with one another and the interception of Sh. Kawaldeep Singh near the toilet and subsequent recovery of memory cards from him points out that he acted as a conduit for the pax.

2.13 Investigation revealed that the pax Shri Surinder Singh Arora in conjunction with Shri Kawaldeep Singh and his son Shri Gurpreet Singh were a part of the conspiracy, wherein the pax deliberately encouraged his son, Shri Gurpreet Singh to befriend Shri Kawaldeep Singh and subsequently used the friendship to aid and abet Shri Kawaldeep Singh and accordingly pax Shri Surinder Singh Arora and Shri Kawaldeep Singh in connivance and collusion with each other attempted to smuggle the illegally imported goods i.e. Memory Cards without payment of duty, as is evident from the above stated facts.

2.14 It, cumulatively appeared that the pax not only tried to mislead the department but also stated deliberately the facts contrary to avoid the truth in the disembarkation slip (customs portion). Hence, it appeared that the pax,

Shri Kawaldeep Singh and Shri Gurpreet Singh are liable to penalty under section 112 of the Act *ibid* for the acts of their omission and commission committed by them. A Show Cause Notice bearing C.NO.VII(AP)/10/P&I/77-C/2012 dated 09.07.2012 was issued to Shri Surinder Singh Arora and others, to show cause to the Additional Commissioner of Customs 1GI Airport, Terminal-3, New Delhi, within 30 days of the receipt of show cause notice, as to why:

- (i) Free allowance of Rs.25000/- (as was applicable at the material time) should not be denied to Shri Surinder Singh Arora on account of various acts of omission and commission committed by him.
- (ii) goods i.e. 8020 nos. of memory cards of 2 GB each, totally valued at Rs. 12,03,000/- should not be held liable to confiscation under Section 111(l) & (m) of the Act, *ibid*;
- (iii) Customs duty @ 36.05% (35% + 2% Education Cess +1% Secondary and Higher Education Cess) amounting to Rs. 4,33,862/- (Rs.Four Lacs Thirty Three Thousand eight hundred sixty two only) on the dutiable goods of value Rs.12,03,000/- (as calculated above), imported on 13.01.2012 should not be demanded and recovered from him, under the provisions of Section 28 with applicable interest under Section 28AB of the Act *ibid*.
- (iv) Penalty should not be imposed on them under section 112 of the Act *ibid* for the various acts of omission and commission committed by them.

2.15 After following due process of law the case was adjudicated and the adjudicating authority ordered the following:-

- (a) Disallowed free allowance of Rs.25,000 /- (as was applicable at the material time) to Shri Surinder Singh Arora (Noticee No.1) on account of various acts of omission and commission as committed by him.
- (b) Ordered for confiscation of the impugned seized goods (8020 nos. memory cards of 2 GB each) totally valued at Rs. 12,03,000/- under section 111 (l) & (m) of the Customs Act, 1962, with an option to Shri Surinder Singh Arora to redeem the same on payment of redemption fine of Rs 4,00,000/-(Rs. Four Lakhs only) under Section of 125 of the Act *ibid* on payment of appropriate duty and interest thereon under Section 28 and 28AB of the Act *ibid*;
- (c) Ordered for confiscation of the two pairs of socks (one pair of normal socks and one pair of long woolen socks) recovered from Shri Kawaldeep Singh, used for concealing the said smuggled goods under section 118 and section 119 of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine of Rs.2,000/-(Rs. two Thousand only) under Section of 125 of the Act *ibid*;
- (d) Imposed a penalty of Rs. 2,50,000/-(Rs. Two lakh fifty thousand only) upon Shri Surinder Singh Arora (Noticee No.1) under Section 112 of the Act *ibid* for the various acts of omission and commission committed by him.

- (e) Imposed a penalty of Rs. 1,00,000/- (Rs. One Lakh only) upon Shri Kawaldeep Singh (Noticee No.2) under section 112 of the Act ibid for the various acts of omission and commission committed by him.
- (f) Imposed a penalty of Rs.50,000/- (Rs. Fifty Thousand only) upon Shri Gurpreet Singh (Noticee No.3) under section 112 of the Act ibid for the various acts of omission and commission committed by him.
3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who in its Order-in-Appeal No. CC(A)/CUS/362/2013 dated 11.07.2013 observed that at the outset it is already an admitted fact that no market enquiry was conducted in this case and also that there is no evidence on record about existing market value of impugned goods. He further observed in para 6 of his Order-in-Appeal dated 11.07.2013 that Adjudicating Authority himself provided abatement of 40% in several cases at IGI Airport, New Delhi. Therefore, vide his above mentioned Order-in-Appeal he modified the Order-in-Original by directing Adjudicating Authority to recalculate the value of goods recovered after extending 40% abatement on the market value and duty was to be recovered accordingly and in view of the given circumstances, following revision of value and higher duty rates, Redemption Fine was reduced to Rs. 1,50,000/- from Rs.4 lakhs under Section 125 of the Act ibid and penalty to Rs.1,50,000/- from Rs. 2.5 lakhs under Section 112 (a) of the Act ibid upon Shri Surinder Singh Arora.
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 Vide impugned Order-in-Appeal, the Commissioner (Appeal) has ordered re-valuation of goods by allowing 40% abatement instead of 25% allowed by the Adjudicating Authority. Further he reduced the redemption fine from Rs. 4 lakhs to Rs. 1.50 lakhs and penalty from Rs. 2.50 lakhs to 1.50 lakhs, imposed under Sections 125 & 112(a) of the Act, ibid upon Shri Surinder Singh Arora.
- 4.2 The Appellate Authority has also erred while allowing 40% abatement, reduction in amount of redemption fine and penalty on Shri Surinder Singh Arora ignoring the several important facts, which are as under.-
- (g) It is a serious case of smuggling of large quantity of Memory cards valued at Rs.12,03,000/- (arrived at by giving 25% abatement on market value);
- (h) In this case, the Appellate Authority has ordered 40% abatement from the market value. Ordering 40% abatement in the instant case is excessive and not consistent with his order in other cases.
- (i) The pax, Shri Surinder Singh Arora does not appear to be bonafide pax and does not deserve any leniency with reduced fine and penalty.

(j) The noticee Shri Kawaldeep Singh also does not deserve any leniency with reduced penalty.

(k) In view of above, it appears that the appellate authority order to reduce abatement along with fine and penalty is not legal and proper.

4.3 The applicant made the following prayers :-

(i) To stay the order passed by the Commissioner (Appeals);

(ii) To determine the correctness of the order passed by the Commissioner (Appeal) with regard to reduced abatement fine and penalty in the light of facts and circumstance of the case; and

(iii) To pass such other orders as deem fit in the facts and circumstances of the case.

5. A Show Cause Notice was issued to the respondent under Section 129DD of Customs Act, 1962 to file their counter reply.

6. Personal hearing scheduled in this case on 4.8.2015, 3.9.2015 and 18.9.2015. Neither applicant nor respondent appeared for hearing on any of the dates mentioned above nor sought any adjournment. Hence the Government proceeds to decide the case.

7. Government has carefully gone through the relevant case records available in case file and perused the impugned Order-in-Original and Order-in-Appeal.

8. Upon perusal of records, Government observes that the case is based on specific information about the respondent Sh. Surinder Singh Arora that he would be carrying the impugned goods on flight No. TG-323 on 13.01.2012. It was observed by Customs Officers that upon arrival he handed over 4 packets to Shri Kawaldeep Singh an employee of M/s. IDDS c/o DIAL in the toilet of IGI Airport. Upon detailed examination of baggage and personal search of both the persons, 4 packets wrapped in brown colour tape containing 8020 nos of 2 GB memory cards valued at 12,03,000/- @ Rs. 150/- piece after allowing abatement of 25% on market value/ were recovered from Sh. Kawaldeep Singh. As no documentary evidence for licit import of the memory cards would be produced by them, the same were seized under Section 110 of the Customs Act 1962 on the reasonable belief that they were smuggled into the country and were liable for confiscation. Both Sh. Surinder Singh Arora and Sh. Kawaldeep Singh in their statements recorded under Section 108 of the Act, accepted that they were involved in illegal import of goods. A Show Cause Notice was issued to the respondent along with others as to why duty free allowance not be denied, the impugned goods should not be confiscated under Section 111, duty should not be demanded and recovered under the provisions of Section 28 and penalty should not be imposed under Section 112 of the Act *ibid*. The original

authority vide impugned Order-in-Original interalia ordered confiscation of the goods with the option to redeem the goods on payment of redemption fine of Rs. 4,00,000/- under Section 125 on payment of appropriate duty and interest under Section 28 and 28 AB. A penalty under Section 112 of Rs. 2,50,000/- was imposed on Sh. Surinder Singh Arora Rs, 1,00,000/- on Sh. Kawaldeep Singh and Rs. 50,000/- on Sh. Gurpreet Singh. The respondent filed appeal before Commissioner (Appeals) who allowed 40% abatement on the market value of the goods and reduced the redemption fine to Rs. 1,50,000/- and penalty on Sh. Surinder Singh Arora was reduced to Rs. 1,50,000 and on Sh. Kawaldeep Singh to Rs. 75,000/-. Now the department on grounds as mentioned in para 4 has filed the present revision application mainly on the issue of 40% abatement on market value allowed by Commissioner (Appeals) and against reduction in the fine and penalty amount.

9. Government observes that the main issue which forms the basis for seeking revision of the Appellate order is the valuation of the impugned goods. The department has contended that the Commissioner (Appeals) has erred in granting benefit of 40% abatement on the market value of the impugned goods for duty calculation instead of 25% abatement which is excessive and not legal and proper considering the smuggling of large quantity of Memory Cards (8020 pcs) valued at Rs. 12,03,000/- and is also not consistent with appellate orders in other cases.

9.1 In this regard, Government notes that the original adjudicating authority has dealt at length with the issue of valuation of the impugned goods in para 26 of the order as under:

"26. As far as valuation of the impugned seized goods is concerned, I find that in the proceeding recorded under the panchnama dated 13.01.2012, it is clearly mentioned that at the time of recovery of the goods the pax was specifically asked to produce any evidence, documentary or otherwise for the lawful import and legal possession of the undeclared memory cards but he failed to produce any documents in this connection. Therefore, the valuation of the seized memory cards was done on the basis of market enquiry conducted in a similar case. In this regard, I find that the valuation on the basis of market enquiry has been correctly done as the quotations have been taken from the persons who are dealing in the memory cards. Market enquiry is an authentic source of valuation in cases where the passenger is not having any proof of purchase at the time of import. It may however be mentioned that during the course of personal hearing, the learned Counsel has agreed to accept the valuation done on the basis of market enquiry. Further, an abatement of 25% has already been given to the Noticee on the market price. It has been noticed that Memory cards has very good margin of profit in grey market. It is a fact that memory cards attracts duty @ 15.033% under chapter head 85235220 at the time of import from normal channel of cargo as against duty @ 36.05% when imported as baggage. It is the intention of the government to charge lesser duty on such electronic goods

when imported through normal channel. However, in the instant case, the pax has tried to smuggle huge quantity of Memory cards valued at Rs. 12,03,000/- through passenger baggage without declaring the same before proper officer of Customs. It shows clear violation of Section 77 and 79 of the Customs Act, 1962 with full intent to evade payment of duty. The modus operandi attempted by the pax to clear the impugned seized goods clearly reveal the intention of the Noticee/s. The abatement of 25% on the market value of the goods already given is not on the lower side as tariff rate of duty on memory card is 15.033% and the pax cannot be allowed to make profit out of his act of attempted smuggling."

9.2 The Commissioner (Appeals) on the other hand has allowed abatement of 40% on the ground that no market enquiry was conducted in the instant case. However as is seen from preceeding para market enquiry was conducted in a similar case and the same has not been taken into consideration in the appellate order.

9.3 Further, in this statement Shri Surinder Singh Arora has admitted that on an earlier occasion 4000 memory cards smuggled by him were sold in Ghaffar Market to one Vipin for Rs. 5 lakhs.

9.4 Government therefore finds that the abatement of 40% on market value allowed by Commissioner(Appeals) is on the higher side and the Order-in-Original allowing abatement of 25% is upheld.

10. Further, Government finds that Appellate Commissioner's decision to reduce the quantum of redemption fine and penalty as a result of redetermination of value for duty purpose is thus also incorrect. Government therefore, restores quantum of redemption fine under Section 125 and penalties under Section 112 as imposed under the Order-in-Original.

11. The Revision Application is allowed in above terms.

12. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Govt. of India

Commissioner of Customs (I&G)
New Customs House,
Near I.G.I. Airport, New Delhi

ATTESTED 

ORDER NO. 20/2016-CUS DATED 26.02.2016

Copy to:

1. Mr. Surinder Singh Arora, H.No. S-2/106, 3rd Floor, Old Mahavir Nagar Tilak Nagar, New Delhi-110018.
2. The Commissioner of Customs (Appeal), New Customs House, New Delhi.
3. The Additional Commissioner of Customs, IGI Airport, terminal-3, New Delhi-37
- ✓ 4. Guard File.
5. PA to JS (RA)
6. Spare Copy

ATTESTED

(Shaukat Ali)

Under Secretary to the Government of India