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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

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F.No. 371/44/B/2016-RA / 6140

Date of Issue 20/10/2021

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ORDER NO. <sup>255</sup>/2021-CUS (WZ)/ASRA/MUMBAI DATED 30.09.2021 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.

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Applicant : Shri. Shailesh Dattatry Rediji.

Respondent : Commissioner of Customs (Prev), NCH, Ballard Estate, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PRV-APP-723 & 724/15-16 dated 17.03.2016 passed by the Commissioner of Customs (Appeals), Mumbai - III, Marol, Mumbai - 400 059.

ORDER

This revision application has been filed by Shri. Shailesh Dattatry Rediji (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-PRV-APP-723 & 724/15-16 dated 17.03.2016 passed by the Commissioner of Customs (Appeals), Mumbai – III, Marol, Mumbai – 400 059

2. Brief facts of the case are that the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU) had developed an intelligence indicating that certain importers had imported motorcycles (Superbikes) of International brands such as Honda, Suzuki, Yamaha, Harley Davidson, Kawasaki etc in disassembled form and had cleared the same at Kolkatta, NhavaSheva and other ports as "parts of motorcycle" which attracted basic Customs Duty @7.5 to 10% advalorem+other Customs Duties. The modus operandi was to import complete motorcycles in guise of parts and the values declared to Customs was of these individual parts. The Basic Customs Duty on complete motorcycles is 100% ad valorem. All these consignments had been imported under cover of fictitious IEC's. The Consignments of these so called "parts" had been then transported to Mumbai and Pune and then re-assembled into complete motorcycles. Forged Bills of Entry were prepared to show import of complete motorcycles, and these motorcycles were registered at RTOs on the basis of such forged Bills of Entry. These locally assembled complete superbikes were thereafter sold to gullible buyers. The same modus operandi was used to import and sell the a Yamaha R1' bearing Registration No. MH-01-SA-3599 and Suzuki GSXR 1000 bearing Registration No MH-02 BC-6300 to one Mr Sanjit Gavand. The super bikes were confiscated under section 111(d) and 111(m) of the

Customs Act for violations of Policy provisions and mis-declaration of description and value as per order of settlement commission. Earlier, Sanjit Gavand had approached the Settlement Commission for final settlement of the bikes purchased by him.

3. Thereafter, in a separate Order-in-Original No. JC/R&I/JS/01/2014-15 dated 30.04.2014, the adjudicating authority had imposed penalty under on 7 persons for omission and commission in smuggling of motor bike as "parts to evade Customs duty as these persons had not approached the Settlement Commission. The penalty was imposed under Section 112(b) of the Customs Act, 1962. The applicant who has filed this review application is included in the said 7 persons against whom penalty of Rs. 1,00,00/- was imposed under Section 112(b) of the Customs Act, 1962.

4. Aggrieved, with this Order-in-Original dated 30.04.2014, the applicant filed an appeal before the appellate authority who vide Order-in-Appeals No. MUM-CUSTOM-PRV-APP-723 & 724/15-16 dated 17.03.2016, rejected the appeal and declined to interfere in the Order-in-Original passed by the original adjudicating authority.

5. Aggrieved with the aforesaid order dated 17.03.2016 passed by the Commissioner of Customs (Appeals), Mumbai - III, Marol, Mumbai - 400 059, the Applicant has filed this revision application inter alia on the grounds that;

5.1. Appellate Authority had not considered that he had no knowledge of evasion of Customs Duty done by others.

5.2. Appellate Authority had not considered that he had a clean record and had never been under adverse notice of any authorities.

5.3. Applicant Authority had not considered that the in his statement the applicant had denied that he had made import of any goods in dismantled condition with an intention to assemble the same after Customs clearance.

5.4. it is submitted that in similar case where Commissioner of Customs (P), R&I Mumbai had imposed penalty on one Mr. Abdul Rashid Khan, the appellate authority had set aside the order on the ground that there is nothing on record to show the involvement directly or indirectly in the smuggling of the motor cycle or with forging the bill of entry for the purpose of registration and that there was no evidence to show knowledge of smuggled nature of motor cycle. Without proving the knowledge, no penalty can be imposed.

5.5. Cross examination should have been allowed as laid down by the Apex Court in AIR 1964 SC 1184 and that no reliance can be placed on the statement of other co-noticees.

5.6. it is stated that Special Bench of the Hon'ble Tribunal in the matter of Orient Enterprises, New Delhi v/s. Collector of Customs, Cochin [1986(23) ELT 507 - Tribunal] and of Mangilal Bherumal Wadalmiya @Jain v/s. Collector of Customs (P), Mumbai [1999 (108) ELT 206 Tribunal], had clarified that the statement even if recorded under Section 108 of the Customs Act, 1962 did not mean that the contents had ipso facto been accepted as truthful. It was only a piece of evidence which was relevant and admissible but the true value was still required to be gauged in conjunction with other evidence and attendant circumstances to prove the facts of the issue.

The Applicant has prayed to set aside, (a). and quash the impugned Order-in-Appeal No. MUM-CUSTOM-PRV-APP-723 & 724/15-16 dated 17.03.2016 passed by the Commissioner of Customs (Appeals), Mumbai - III and (b). the imposition

of penalty of Rs. 1,00,000/- which was harsh and to (c) pass any other order as deemed fit.

6. A personal hearing in the case was scheduled on 15.09.2021 / 22.09.2021. Ms. Ashwini Jadhav, Advocate and Shri. Ravi Hiran, Advocate appeared on behalf of the Applicant and reiterated their earlier submissions. They submitted that issue of duty evasion on the matter has been settled by the Settlement Commission. The penalty imposed on the applicant was excessive and requested for lenient view and reducing penalty.

7. The Government has gone through the facts of the case, and notes that the role played / allegedly committed by the applicant as brought out in the Order in Original are as under;

7.1. applicant was involved in the illegal imports of super bikes and was actual importer.

7.2. One foreign motor cycle was detained under panchanama form the workshop of the applicant viz, M/s. Ultimate Auto located at Shop No. 9, Panchal House, Jaywant Industrial Estate, Opp. Cross Road, Tardeo, Mumbai.

7.3. applicant was arrested on 30.03.2009 concerning the fraudulent import of motorcycles.

7.4. the purchaser of the bike, Shri. Sanjit Gavand in his statement recorded under Section 108 of the Customs Act, 1962 had admitted that one super bike viz Suzuki GSXR 1000 bearing Chassis No. JS1CK111100113682 and registration no. MH-02-BC-6300 had been purchased by him from the applicant for Rs. 8 Lakhs which had been paid in cash. This bike had been inspected by the purchaser at the applicant's garage located opp. Cross Road, Tardeo.

7.5. the applicant's statement was recorded under Section 108 of the Customs Act, 1962 on 10.03.2010 and he admitted that he had sold the super bike viz Suzuki GSXR 1000 bearing Chassis No. JS1CK111100113682 and registration no. MH-02-BC-6300 to Shri. Sanjit Gavand on commission basis when the bike was sent by Shri. Karl Pandey to his garage. He had negotiated with Shri. Sanjit Gavand the purchaser on behalf of Shri. Karl Pandey and the super bike was sold for Rs. 8 lakhs in cash.

7.6. Shri. Karl Pandey's statement was recorded under Section 108 of the Customs Act, 1962 on 12.08.2010 and he admitted that he had sent the bike to the applicant garage for repairs and asked the applicant to sell the super bike on behalf of Nadir Ali for a commission and that the papers of the bike were given by him to the applicant.

7.7. In the statements of Shri. Bharat Patel, Shri. Akram Tajuddin Shaikh, Shri. Sajal Satyaranjan Das and Shri. Rehman Iqbal Shaikh, all recorded under Section 108 of the Customs Act, 1962, the role played by the applicant is disclosed, wherein they have stated that the applicant (a). used to give the IEC details to Shri. Bharat Patel who would then forward it to the CHA at Kolkata; (b). applicant had worked with Shri. Bharat Patel for one consignment and thereafter started dealing directly with Shri. Sejal of Indo Foreign company; (c). Shri. Akram Tajuddin Shaikh stated that he used to procure reassembled bikes from the applicant and got Rs. 20,000/- as selling commission; (d). Shri. Sajal Satyaranjan Das stated that the applicant who was his client had requested him to handle Customs clearance of motorcycle parts imported through Kolkata Air Cargo Complex and he had received all his payments from the applicant who used to send Rs. 6000/- per consignment in cash through angadia; that he used to send the ARO bill numbers to the applicant of the consignments sent to Mumbai through Blue Dart Courier.; Shri. Rehman Iqbal Shaikh stated that he had assisted a number of clients in Customs clearance of

parts of imported motorcycle and that the applicant was his client who was actual importer; that the consignments were delivered by him to the applicant at his garage at Tardeo; that he had assisted in clearance of atleast 50 such consignments of motorcycle parts for the applicant; that the applicant used to arrange for payment of Customs duty, demurrage charges, agency charges etc.

8. Government finds that nothing has been placed on record to show that the applicant has retracted his statement recorded under Section 108 of the Custom Act, 1962 neither has the same been recorded in the Order in Original or the Order in Appeal.

9. Further, the Government observes that the appellate authority has passed a cogent, comprehensive and proper order wherein the entire role played by the applicant has been lucidly explained at paras 7 and 8 which is reproduced here below;

*"7. I further find that Shri ..... & Shailesh Redji had clear knowledge of the fact that the motorcycles were imported as parts to evade customs duty and to bypass the licensing regulations for import of vehicles. The appellants Shri ..... & Shailesh Redji had provided premises to the main offender Shri ..... to reassemble all these bikes. The appellants Shri ..... & Shailesh Redji had negotiated and finalized price of the impugned motorcycle and sold to Shri Sanjit Gavand....."*

*8. I observe that all these facts have been accepted by the appellants in their respective statements recorded under Section 108 of Customs Act, 1962. As far as the evidential value of confessional statement under Section 108 is concerned I find that it is settled law that the Customs officer not being a police officer, the statement has evidential value for proceedings under Customs Act, 1962. This view has been affirmed by the Constitutional Bench of Supreme Court in the case of Romesh Chandra Mehta v State of West Bengal (1969) 2 SCR 461. Another Constitutional Bench of the Apex Court in case of Illias vs Collector of Customs, Madras 1985 ECR 2252 (SC) held that confessional statement made before Customs officials would be*

*admissible evidence against them. In case of Naresh J. Sukhawani v Union of India 1996 (83) ELT 258 (SC), the Hon'ble Supreme Court held that statement made under section 108 before Customs official is a material piece of evidence which can certainly be used to connect the petitioner in the contravention. In the case at hand the confessional statement of the appellant has also been corroborated by the statements of other persons who had individually performed their acts to make the offending goods liable for confiscation under Section 111(d) and 111(m). The facts as discussed above make it apparently clear that the appellant was consciously involved in purchasing and selling activities of the smuggled imported bikes. These acts on part of the applicant make him liable under Section 112(b) of the Customs Act, 1962".*

10. The Government relies on the undermentioned case laws which have held that the statement recorded under Section 108 of the Customs Act, 1962 and corroborated with that of other accomplices has evidential value and is admissible;

a). In 'Naresh J. Sukhawani V. Union of India' - 1995 (11) TMI 106 SUPREME COURT OF INDIA, the Supreme Court held that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. It is a material piece of evidence collected by Customs Officials under Section 108 of the Customs Act. That material incriminates the petitioner inculcating him in contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention as much as Mr. Dudani's statement clearly inculcates not only himself but also the petitioner. The SC held that therefore the statement can be used as substantive evidence connecting the petitioner with the contravention by exporting foreign Currency out of India.

(b). In Collector of Customs V. D. Bhoormull- 1974 (4) TMI 33 SUPREME COURT OF INDIA, the Supreme Court has held that the Department is not required to prove the case with mathematical precision. All that is required is that the occurrence and complicity of individual should be established to such a degree of probability that a prudent person may, on its basis, believe in the existence of the fact of the issue

(c) . In 'Commissioner of Customs V. Ghanshyam Gupta 2010 (3) TMI 1067-PATNA HIGH COURT, the Division Bench of Patna High Court held that there is



no doubt about the legal position that the statements in the scheme of the Act are admissible evidence in terms of Section 108 of the Act.

11. The Government also finds that the original adjudicating authority too at para 29 (iii). Summarized the role of the applicant as under;

*29.(iii). I find that Shri Shailesh Redij has accepted that he sold the Suzuki GSXR 1000 bearing registration number MH 02- BC-6300 to Shri Sanjit Gavand and he has thereby aided and abetted the importers of the said bike in selling the illegally imported bike. It was incumbent upon him to deal directly with the registered owner of the said bike while selling it which he has failed to do. He has accepted that the registration papers were given to him. He was therefore aware that he was not dealing with the actual owner of the bike and could not have any means ascertaining that sale proceeds were going to the rightful owner. It is therefore evident that he was aware he was dealing with illegally imported bikes. In any event, he is involved in acts of omission and commission and/ or aiding and abetting, such acts of omission and / or commission that have rendered the seized goods liable to confiscation under Section 111 of the Customs Act, 1962 and thereby rendered himself liable for penal action under Section 112 of the Customs Act, 1962".*

12. In view of the aforesaid paras, the Government finds that applicant was part of a syndicate involved in the act of smuggling to evade duty and therefore, the penalty imposed on the applicant under Section 112(b) of the Customs Act, 1962 is correct, appropriate and commensurate with the omissions and commissions committed by him.

13. The Government also notes that this is not a case of baggage. The parts of motorcycles had been imported at Kolkata Air Cargo (3 B/E) and JNPT, Nhava Sheva (1 B/E). The Government has examined the matter and it is observed that as per first proviso to Section 129A read with Section 129DD of Customs Act, 1962, a revision application can be filed before the Government against the order-in-appeal, if it relates to the issue of baggage, drawback of duty and short landing of the goods. But no such issue is involved in this case.

Therefore, the Government does not have jurisdiction to deal with this Revision Application.

14. In view of above discussions, the Government is of the opinion that the issue involved in this case does not fall within the jurisdiction of its authority. The revision application is thus not maintainable before this authority for want of jurisdiction in terms of Section 129A read with Section 129DD of the Customs Act, 1962. Therefore, Government does not have jurisdiction to deal with instant application / appeal

15. Therefore, the revision application thus, stands rejected as being non-maintainable for lack of jurisdiction.

  
( SHRAWAN KUMAR )

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

ORDER No. <sup>255</sup>/2021-CUS (WZ) /ASRA/

DATED 30.09.2021

To,

1. Shri. Shailesh Dattatry Rediji, Sankar CHS, B-Wing, Flat No. 101A, Ganesh Peth Lane, Next to Sena Bhavan, Dadar, Mumbai - 400 014.
2. Commissioner of Customs (Prev), 11<sup>th</sup> Floor, New Customs House, Ballard Estate , Mumbai - 400 001.

Copy to:

3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File. ,
5. Spare Copy.