

REGISTERED  
SPEED POST



F.No.375/28/B/13-RA-Cus  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue...30.10.15...

**Order No. 28/2015-CUS dated 28.10.2015** 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 against the Order-in-Appeal No. CC(A)CUS/433/2013 dated 31.07.2013 passed by Commissioner of Customs (Appeal), New Customs House, New Delhi.

Applicant : Mr. Rajdeep Chawla

Respondent : Commissioner of Customs, (I&G) NCH, New Delhi.

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## **ORDER**

This revision application is filed by Sh. Rajdeep Chawla, against the Order-in-Appeal No.CC(A)CUS/433/2013 dated 31.07.2013 passed by Commissioner of Customs, (Appeals), NCH, New Delhi, with respect to Order-in-Original No. 79/2012 dated 14.11.2012 passed by Additional Commissioner of Customs, IGI Airport, T-3, New Delhi

2. On the basis of specific information that a passenger Sh. Rajdeep Chawla, aged around 30 years wearing black turban and violet colour T-shirt, having passport no.J3018628, seat no. 28E, was arriving on flight no. AI 315/26.01.2011 with two handbags (1 tag no. 782217) and he was supposedly carrying 7500 pieces of memory cards and 19 watches, a team of officers was deputed to track the movements of the said pax and keeping close watch on the passengers arriving on the said flight. It was observed that the said pax just before his immigration clearance, in front of immigration counters gave a Hong Kong duty free shop polythene bag to one person, who was wearing immigration uniform. The person wearing immigration uniform was followed and was found to be Shri Veerendra Singh, JIO-II, AFRRO office (Immigration) at IGI Airport. Shri Veerendra Singh after collecting the bag entered into shift in-charge's room (AFRRO's office), situated behind the immigration counter no 07/08 of the arrival hall. While coming out of the room, Sh. Veerendra Singh was intercepted by an Air Customs Officer (Preventive). He was carrying a black colour laptop size bag which was examined by the Customs Preventive Officer and it was found to contain one brown tape wrapped packet. Thereafter, Shri Veerendra Singh, in presence of both the Wing-in-Charge, AFRRO Arrival office, Mr. S.Bagchi and Mrs. Archana Andley, was taken into the room and the room was searched after giving notice under the Customs Act 1962. During the search of the shift in-charge office, one Hong Kong duty free polythene containing Chivas Regal bottle packing was recovered from the lower drawer of the table kept in the room. Examination of the Hong Kong duty free polythene bag also resulted in recovery of three brown tape wrapped packets. On further examination, these three packets were found to contain 7140 pieces of memory card micro SD 2GB. The recovery of 7140 Pcs of memory card Micro SD 2GB was recorded under panchnama dated 26.1.2011 drawn on the spot in the office of the AFRRO Shift in-Charge's room. Thereafter, Shri Veerendra Singh, along with his laptop bag, with the sealed memory cards recovered from shift in-charge office, was taken to the Preventive Customs room in the arrival hall. In the Customs Preventive room, the brown taped packet inside the black coloured laptop size bag was examined. It was found to contain 2360 pcs of memory cards micro SD 2 GB. The recovery of 2360 pieces of memory cards from the said bag was also recorded under panchnama dated 26/27.1.2011 drawn on spot. The said 2360 pieces of memory cards along with 7140 pcs of memory cards collectively valued at Rs.15,01,000/-were seized by the officer under section 110 of the Customs Act,1962 on reasonable belief that the same were smuggled into India and were liable to confiscation under the provisions of the Act ibid.

The value has been taken as per market enquiry which corroborated with the National Import Database (NIDB) pricing of the Directorate of Valuation for similar goods. The recovery/seizure proceeding of the same was recorded under panchnama dated 26/27.1.2011 drawn on spot.

2.1 The passenger Shri Rajdeep Chawla, who gave the packet to Shri Veerendra Singh was followed discreetly. After his immigration clearance he collected his checked in bag and walked through the green channel of the Customs arrival hall. As the pax bore close resemblance to the description given in the specific information, seat no. and baggage tag no., and two handbags (1 tag no. 782217) and also the fact that he had suspiciously handed over the bag to Shri Veerendra Singh, he was diverted for scanning of his baggage through the X-Ray machine. On scanning it was observed that the baggage contained watches in commercial quantity. The passenger was diverted to the nearby Customs counter for detailed examination of his baggage. Examination of the checked-in-baggage and hand bags resulted in recovery of watches numbering 260 pcs and 13 fuel injection pumps and the proceedings were recorded as per panchnama dated 27.01.2011 drawn on spot. On demand by the Customs officers the pax failed to produce any evidence, documentary or otherwise for lawful import and legal possession in respect of undeclared watches valued at Rs. 18,92,400/-. The value of 258 watches was taken @Rs. 7,000/- per piece upon market inquiry. The value of two watches were taken @ Hong Kong \$7200 on the basis of invoice recovered from the box of watches. The Hong Kong \$ was taken @Rs.6/- per Hong Kong \$. The automobile parts were valued at Rs. 48100/- (@ Rs.3700 per piece) as per market enquiry. The goods collectively valued at Rs. 19,40,500/- were seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the same were smuggled into India and were liable to confiscation under the Act ibid under panchnama dated 27.1.2011 drawn on the spot. Subsequently to ascertain the correct value of the seized watches, experts from the authorized dealers were called on 15.09.2011. These experts namely Sh. Rajesh Madan and Shri Tehrish Goyal from M/s Johnson Watch co. and M/s Priority Marketing Pvt. Limited respectively examined these watches and evaluated them as per proceedings recorded vide panchnama dated 15.09.2011 drawn on spot. They also tendered voluntary statements under Section 108 of the Act. Based upon the opinion of Sh. Rajesh Madan and Shri Tehrish Goyal the re-valuation of the said watches came to Rs. 17,44,400/- and the total value of the offending goods came to Rs.32,93,500/-.

2.2 The voluntary statement of Shri Veerendra Singh was recorded under Section 108 of Customs Act 1962 on 27.01.2011 and 28.1.2011 wherein he admitted the recovery of the aforesaid goods and other incriminating facts. In his voluntary statement dated 27.1.2011 Sh. Veerendra Singh accepted that he was doing all this on behest of a "Chacha". He also stated that he was feeling tired so he wanted a break. Statement of Sh. Veerendra Singh dated 27.01.2011 was recorded in the evening. He agreed with the panchnama proceedings and asked for one more day. Statement of Sh. Veerendra

Singh was recorded on 28.01.2011. He recognized Sh. Rajdeep Chawla who handed over the memory cards to him; that these goods were recovered from the Immigration in-charge's room and from the laptop bag of Sh. Veerendra Singh in Customs Preventive room.

2.3 The voluntary statement of Shri Rajdeep Chawla was recorded under Section 108 of Customs Act 1962 on 27.01.2011 and 28.1.2011 wherein he admitted the recovery of the aforesaid goods and other incriminating facts. In his voluntary statement dated 27.01.11 Sh. Rajdeep Chawla accepted that he was carrier of the goods and got petty amount in lieu of his services; that he refused doing this job three years back but about three months back his family faced acute financial crisis so he had to acquiesce to the offered allurements; that he was carrying goods on behalf of Sh. Mukesh Kumar Wahi. Another statement of Sh. Rajdeep Chawla was also recorded in the evening of 27.01 2011 wherein he agreed with the proceedings recorded in the panchnama.

2.4 Meanwhile searches were conducted at the residence of Sh. Mukesh Kumar Wahi at H No. 790, IIInd floor, Guru Ram Das Nagar Extn., near Ramesh Park Community Hall, Laxmi Nagar, Delhi and 70-A, Sector-6, Pkt-2, Dwarka, New Delhi and the proceedings were recorded under panchnama drawn on spot dated 27.01.2011 and 28.01.2011 respectively. Although nothing objectionable was found during the search and the person Mr. Mukesh Kumar Wahi was also not available, but the officers brought a photograph of Sh. Mukesh Kumar Wahi. The photograph of Sh. Mukesh Kumar Wahi was shown to Sh. Rajdeep Chawla, who readily recognized him as Sh. Mukesh Kumar Wahi, for whom he worked. Sh. Rajdeep Chawla confessed that he was involved in illegal import of goods and acted as carrier. Another statement of Sh. Rajdeep Chawla was recorded on 28.01.11 wherein he stated that on earlier occasions he carried readymade garments/ Sony LCD 32 inches TV only; that he recognized Sh. Veerendra Singh of Immigration department as the person to whom he handed over the goods.

2.5 Based on information, a search was also conducted at Sh. Baljeet Singh's residence and the proceedings were recorded under panchnama dated 27.01.2011 drawn on spot. Nothing objectionable was found during the search proceedings and the person was also not available during the search. The officers brought a photograph of Sh. Baljeet Singh and it was shown to Sh. Veerendra Singh, who readily recognized him as the same "Chacha" for whom he worked.

2.6 Panchnama dated 28.01.2011 was drawn on spot whereby the mutual identification proceedings of Sh. Rajdeep Chawla and Sh. Veerendra Singh were recorded. Both recognized each other. Sh. Veerendra Singh under his statement dated 28.01.2011 confessed that he was involved in illegal import of goods and acted as carrier. Sh. Rajdeep Chawla also under his statement dated 28.01.2011 confessed that he was involved in illegal import of goods and acted as carrier.

2.7 Both Sh. Rajdeep Chawla and Sh. Veerendra Singh, JIO-II, AFRRO office, were asked to produce evidence or documents in support of import of the above said goods but they were unable to do so. After that both Sh. Rajdeep Chawla (pax) and Sh. Veerendra Singh (JIO-II, AFRRO Immigration Office) were arrested as per order of the competent authority on 28.01.2011.

2.8 From the facts enumerated above, it appeared that. Sh. Veerendra Singh and Sh. Rajdeep Chawla colluded in an attempt to smuggle the said foreign origin goods into India, via I.G.I. Airport, New Delhi with an intention to evade payment of Customs duty leviable thereon. It was clear and evident that the goods recovered from both of them did not belong to either of them and they acted and facilitated as a carrier of the goods on behalf of Sh. Mukesh Kumar Wahi and Sh. Baljeet Singh, respectively. The summons under Section 108 of the Customs Act, 1962 were issued to Shri Mukesh Kumar Wahi and Sh. Baljeet Singh but only Sh. Mukesh Kumar Wahi turned up in response to tender his statement. Proceedings against Shri Baljeet Singh had been duly initiated with the Court of Hon'ble ACMM, Patiala House, New Delhi for seeking his appearance before the Customs authorities.

2.9 The voluntary statement of Sh. Mukesh Kumar Wahi was recorded on 14.03.11 under Section 108 of the Customs Act, 1962 . He stated that he was away in Punjab in February 2011. He further stated that he purchased readymade garments from Bangkok and used to sell it to Sh. Baljeet Singh. He also stated that he knew Sh. Baljeet Singh for the last six years. He stated that he (Shri Mukesh Kumar Wahi) had been shown the statement of Sh. Rajdeep Chawla, wherein he had stated that Mukesh Kumar Wahi was the owner of 260 pieces of watches and other goods and identified Sh Mukesh Kumar Wahi in the photograph. He stated that he told Sh. Rajdeep Chawla that Sh. Baljeet Singh wanted him to go Hongkong on 25.01.2011 and Mr. Baljeet Singh would arrange for the trip. He further stated that Sh. Baljeet Singh gave him printout of tickets alongwith 1000 US dollars and 300 Hong Kong dollars which he gave to Sh. Rajdeep Chawla. When Sh. Rajdeep Chawla returned from abroad at the Airport, he (Shri Chawla) feared that somebody was following him, so he (Sh. Mukesh Kumar Wahi) asked Sh. Baljeet Singh about this. Sh. Baljeet Singh told Mukesh Kumar Wahi to tell Sh. Rajdeep Chawla to wait near the escalator in the arrival hall; that he (Sh. Mukesh Kumar Wahi) had intimated to Sh. Rajdeep Chawla, Sh. Rajdeep Chawla waited near the escalator where a person in immigration uniform (later recognized as Sh. Veerendra Singh) came and received from him the said memory cards. He also stated that he often sat in the shop of Sh. Baljeet Singh. He denied having known any immigration official. He stated that he worked for Sh. Baljeet Singh and for his services he was expecting to get Rs. 4,000/-. Sh. Veerendra Singh in his statement dated 27.01.2011 stated that his mobile number was 9999372913 and that the Chacha (Sh. Baljeet Singh) contacted him from his mobile number 9811528834. Sh. Mukesh Kumar Wahi accepted vide his statement dated 25.07.2011 that the mobile no. 9811133481

belonged to him. M/s. Vodafone Essar Mobile Services Limited, Delhi was requested to supply details of mobile no.9811528834 of Sh. Baljeet Singh. M/s Vodafone Essar Mobile Services Limited gave the details of calls on this mobile number under section 65B (4)( c) of the Indian Evidence Act 1872. The call details showed communication between Sh. Baljeet Singh, with Sh. Veerendra Singh and Sh. Mukesh Kumar Wahi between 12 January 2011 and 26 January 2011 and it appeared that Sh. Baljeet Singh and Sh. Mukesh Kumar Wahi were aiding and abetting the act of smuggling and they colluded with Sh. Veerendra Singh and Sh. Rajdeep Chawla for these activities. Sh. Mukesh Kumar Wahi was also arrested on 26.07.2011.

2.10 Meanwhile a Show Cause Notice dated 22.07.2011 was issued to four Noticees namely Sh. Baljeet Singh, Sh. Mukesh Kumar Wahi, Sh. Veerendra Singh and Sh. Rajdeep Chawla for extension of period of investigations for further six months. On 25.07.2011 only two of them viz. Shri Veerendra Singh and Sh. Rajdeep Chawla appeared for personal hearing. Shri Veerendra Singh pleaded for early issuance of show cause notice. Sh. Rajdeep Chawla submitted that he had nothing to do with the seized goods as they belonged to Sh. Baljeet Singh. The Additional Commissioner of Customs passed Order-in-Original dated 25.07.2011 extending the period of investigations for further three months only under proviso to section 110(2) and 124 of the Act *ibid*.

2.11 Sh. Rajdeep Chawla filed a Writ petition W.P.(C) No.4104/2011 before the Hon'ble High Court of Delhi for provisional release of the seized goods in terms of Section 110A of the Customs Act 1962 pending investigation. The Hon'ble High Court disposed off the writ petition vide its order dated 22.07.11 thereby directing the petitioner to appear before the Commissioner of Customs, (Import and General), at 1100 hrs on 29.07.2011 for hearing of his representation in respect of provisional release of the subject goods and the Hon'ble High Court also directed to pass a speaking order on the said petition as per law on or before 12.08.2011 and if the petitioner remained aggrieved he should have remedies in law. Sh. Rajdeep Chawla did not appear for personal hearing on 29.07.2011. He was given another opportunity for personal hearing on 09.08.2011 at 11.30 hrs by the Additional Commissioner of Customs, IG1 Airport, Terminal-3, New Delhi in the subject case and was told that if he or his authorized representative did not appear, the case would be adjudicated on the basis of facts available on record without making any further reference to him in the matter. Sh. Rajdeep Chawla did not appear on 09.08.2011 also but sent his written reply through post. Shri Rajdeep Chawla said in his written reply that Sh. Baljeet Singh took his signatures on some authority letters for release of goods and said that if this office received any order from High Court or any other authority then it should be considered from the side of Sh. Baljeet Singh and not from Sh. Rajdeep Chawla. Sh. Rajdeep Chawla reiterated, that he had nothing to do with these seized goods and that these goods belonged to Sh. Baljeet Singh. Sh. Rajdeep Chawla stated that his economic condition was not good; that each time he had to come to Delhi in this case; that it entailed Rs.1,000/- to Rs. 1500/- to him, therefore he was sending this reply

through speed post. Sh. Rajdeep Chawla prayed that this case be finalized quickly. In these circumstances an urgent application was filed on 11.08.2011 for recalling the order of the High Court dated 22.07.2011 and for dismissing the writ petition. Further Sh. Baljeet Singh did not appear in the court of the ACMM and the Learned ACMM issued an arrest warrant against him (Shri Baljeet Singh).

3. An Order-in-Original No. 79/2012 dated 09.11.2012 (issued on 14.11.2012) was passed by the Additional Commissioner of Customs, IGI, Airport, New Delhi, and following order was passed pertaining to the applicant:-

- I. Free allowance of Rs.25,000/- is denied to Shri Rajdeep Chawla, on account of various acts of omission and commission as discussed supra;
- II. Ordered for absolute confiscation of the seized goods. i.e. Memory cards, Watches & Injection Fuel Pump collectively valued at Rs. 32,93,500/- and recovered from Shri Veerendra Singh, JIO-II and Shri Rajdeep Chawla, the pax, under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962;
- III. Ordered for absolute confiscation of the bags and packets used for carrying/concealing the seized goods under Section 118 and 119 of the Customs Act, 1962;
- IV. Imposed a penalty of Rs.4,00,000/- (Rs. Four lakhs only) on the Noticee No.3 Shri Rajdeep Chawla for the various acts of omission and commission as discussed herein above, under Section 112 of the Customs Act, 1962.

3.1 Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who vide his Order-in-Appeal No. CC(A) CUS /433/2013 dated 31.07.2013 modified the impugned Order-in-Original in terms of reducing the penalty from Rs.4,00,000/- to Rs. 3,00,000/- imposed upon Shri Rajdeep Chawla under Section 112 of the Customs Act, 1962.

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 :

- (a) That the impugned order passed by the authority below is contrary of the facts on record, illegal and bad in law.
- (b) That the amount of penalty of Rs.3,00,000/- is very much high keeping in view the fact that the applicant is a very poor man and is a victim of circumstances.
- (c) That the authorities below have not appreciated the circumstances under which the applicant was compelled to carry the goods to India.
- (d) That the authorities below have failed to appreciate the statement recorded under Section 108 of the Custom Act, 1962 and has wrongly relied upon the statement of the applicant which is neither voluntary nor true but was an outcome of undue influence, threat, pressure and coercion extended by the Customs officers. In this regard it is respectfully submitted that the allegation, that the applicant handed over one Hong Kong duty free polythene bag to one person namely Sh. Veerendra Singh, JIO-II,

AFRRO, Office and impugned goods were recovered from his possession is absolutely false and a concocted version and could not be believable in the absence of any proof of its truthfulness, which could be easily testified, if the goods/bag recovered from the said Sh.Veerendra Singh was opened and examined in presence of the applicant. Having not done so, the charge of non-declaration under the provisions of Section 77 of the Customs Act, is not made out against the applicant and thus the penalty imposed on the applicant is not sustainable.

(e) That the authorities below have not appreciated that the applicant was intercepted in the arrival hall itself before he was reporting to red channel counter and not that he has opted for green channel and intercepted at green channel. As such the applicant has not contravened the provisions of Section 77 of the Customs Act. Moreover, it is pertinent to mention here that the goods were not found concealed in any manner in any package. It was kept by the applicant in the bag and hand bag, which is the normal place where the passenger/s normally keep the goods while travelling.

(f) That as alleged goods are not prohibited or restricted goods, the authorities below ought to have given the option to redeem the goods on redemption fine before absolutely confiscating the goods as per under Section 125 of the Customs Act, 1962.

(g) That the appellate authority below have not appreciate that the adjudicating authority i.e. Ld. Addl. Commissioner of Customs, I.G.I. Airport, while passing the impugned order, has failed to mention specifically the clause of section 112 of the Customs Act under which the order was passed. The adjudicating authority should have mentioned whether the penalty is being imposed under section 112 (a) or (b). It is well settled law, that if the penal action is proposed to be taken and proceedings initiated which are likely to culminate in the imposition of penalty, then the authority must be clear in mind as to which clause (a) or (b) of section 112 will apply or both, the allegation should be clear and not ambiguous. If there is a failure to do so the order of penalty cannot be sustained. Section 112 of the customs act is reproduced as :-

" *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 act, or*
- (b) *Who acquires possession of or is in way concerned in carrying removing depositing, harboring, keeping concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section*

(h) That the authorities below have not appreciated the plea of the applicant that he was not aware of the present Customs law that carrying the goods is an offence under Customs law. The applicant reiterated the actual facts and informed the



authorities below that he had nothing to do with the seized goods and the goods belongs to one Sh.Mukesh Kumar Wahi and the applicant is innocent and wrongly implicated in the case as he was mere carrier of the said goods against payment of Rs.2000/-for the job. Therefore in spite of the plea of ignorance and innocence of the applicant, the authorities below imposed penalty.

(i) That the value of goods were assessed exorbitantly in order to justify the seizure by the Customs officers.

(j) That the penalty imposed on the applicant is very much high and excessive keeping in view the fact that the value of the impugned goods as allegedly recovered from the possession of the applicant was only Rs.15,01,000/- and the authorities below while imposing the penalty have not appreciated the fact that the goods recovered from the said Sh.Veerendra Singh as alleged has not been proved to be that of the applicant and therefore the value of the goods recovered from Sh.Veerendra Singh cannot be merged with the value of the goods recovered from the applicant.

(k) That in any case the amount of penalty is very much high and excessive in view of the fact and circumstances explained as above.

(l) That the applicant has already deposited Rs. 25,000/- as penalty and further prayed for leniency before the authorities below and again pleads for leniency with the prayer that the impugned Order-in-Appeal imposing penalty of Rs. 3,00,000/- on the applicant may kindly be set-aside.

5. Personal hearing in this case held on 04.08.2015 was attended by Shri I.S. Kapur, Advocate on behalf of the applicant who reiterated the grounds of revision application. He stated that the Revision Application was in the nature of a mercy petition as the applicant carried the goods for a very meager payment and his economic condition was not good, therefore a lenient view may be taken. Nobody attended the hearing on behalf of the department.

6. Government has carefully gone through the relevant case records available in case file, oral and written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. Upon perusal of records, Government observes that the case is based on a specific information about the applicant Shri Rajdeep Chawla that he would be carrying the impugned goods on flight no. AI 315 on 26.01.2011. It was observed by Customs Officers that upon arrival, the applicant handed over a Hong Kong duty free shop polythene bag to Shri Veerendra Singh who in turn entered the AFFRO shift in charge's office. Upon search of the room 01 bottle packing of Chivas Regal, 3 packets containing 7140 pieces of memory cards were recovered from the Hong Kong duty free bag,. Upon search of a laptop bag carried by Shri Veerendra Singh out of the room, a brown

taped packet comprising 2360 pieces of memory cards were recovered. While the applicant was walking through green channel of Customs arrival, he was diverted for scanning of his baggage resulting in recovery of 260 pieces of watches and 13 fuel injection pumps. Thus the goods collectively valued at Rs.32,93,500 /-were seized under Section 110 of the Act, *ibid*. Both the applicant and Shri Veerendra Singh in their statements recorded under Section 108 of the Customs Act, 1962 accepted that they were involved in illegal import of goods and acted as carriers and got petty amount in lieu of their services; that the applicant was carrying the goods on behalf of Shri Mukesh Kumar Wahi. A Show Cause Notice was issued to the applicant along with other noticees as to why duty free allowance not be denied to the applicant, the impugned goods totally valued at Rs. 32,93,500/- should not be confiscated under Section 111 of the Act *ibid*, duty to the tune of Rs. 11,87,307/- should not be demanded under Section 28 of the Act *ibid*, interest should not be recovered; and penalty should not be imposed under Section 112 of the Act. The original authority *vide* impugned Order-in-Original *inter-alia* ordered absolute confiscation of the goods and imposed penalty of Rs. 4,00,000/-on the applicant. Aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner(Appeals) who *vide* impugned Order-in-Appeal reduced the penalty on the applicant from Rs. 4,00,000/- to Rs. 3,00,000/-. Now the applicant on grounds as mentioned in para 4 has filed the present revision application mainly on the issue for setting aside penalty on the applicant.

8. Government observes that the applicant has at the outset contended that the statements recorded under Section 108 of the Customs Act, 1962 were not voluntary statements tendered by the applicant and were recorded under duress and coercion. Government notes that no objection to this effect was raised by the applicant before the original adjudicating authority or the Commissioner ( Appeals) or even before the ACMM when he was placed under arrest nor did he retract his statements at any point. Therefore, Government finds no force in the plea of the applicant that his statement was recorded under pressure and that it is clearly an afterthought.

9. Government further observes that the applicant's contention that the allegation that applicant handed over impugned goods to Shri Veerendra Singh and these were recovered from his possession was not believable in absence of applicant at the time of recovery of the impugned goods from Shri Singh is not borne out by any evidence. In this regard, Government observes that in the voluntary statements dated 27.01.2011 and 28.01.2011 of Shri Veerendra Singh recorded under Section 108 of the Customs Act, 1962, he admitted the recovery of the impugned goods from him and the recovery proceedings were carried out by the Customs Officer after following due process of law under panchnama dated 26.1.2011 drawn on the spot in the presence of witnesses. The fact of handing over the impugned goods by Shri Rajdeep Chawala to Shri Veerendra Singh was admitted by both Shri Veerendra Singh and the applicant in their voluntary statements. Government further observes that this statement which is held to be material piece of evidence has not been retracted at any point of time. The

adjudicating authority has thus decided the case based on evidence brought on record as a result of investigation undertaken by the Department.

9.1 In this regard Government places reliance on the following judgements :

- The Apex Court in the case of Naresh Kumar Sukhwani Vs Union of India 1996(83) ELT 285(SC) 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 inculcating 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.

- 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.

10. The applicant has also contended that goods were not concealed in any manner and that he was intercepted in the baggage hall and not the green channel. It is a fact on record that the applicant was diverted for screening after he had walked through the green channel at Airport and this fact has not been disputed either before the original authority or the appellate authority. Therefore, had the applicant not been intercepted he would have walked away with the impugned goods without declaring the same to the Customs. Moreover, though the goods may not have been concealed in an ingenious manner, the intention to smuggle the same is clearly established by the fact that part of the goods were handed over to Shri Veerendra Singh before Immigration and goods in the checked in baggage were attempted to be cleared without filing any declaration under Section 77 *ibid* and by walking through the green channel. Government, therefore, finds that the intention of the applicant to smuggle the impugned goods is not only an admitted fact but is also clearly established.

11. The applicant has also pleaded that the value of the impugned goods was assessed exorbitantly. Government observes that the value has been assessed by the Customs Authorities based on NIDB data for contemporaneous imports and valuation by experts. The applicant has not placed on record anything contrary to challenge the assessment. Hence, Government is of the view that the valuation of the goods is in order. Further, the value of the goods seized from Shri Veerendra Singh has rightly

been included in the total value of the impugned goods as the goods were admittedly carried into India and thereafter handed over by the applicant to Shri Veerendra Singh.

12. Government observes that the applicant has contended that as the impugned goods are not restricted goods and therefore the option to redeem the goods on redemption fine, should be given as per Section 125 of the Customs Act, 1962. It is observed that the applicant after handing over part of the impugned goods to Shri Veerendra Singh, collected other baggage and attempted to walk through the green channel only to be apprehended by the Customs Authorities. It is an undisputed fact that the contents of the baggage were not declared by the applicant upon his arrival at the Airport, thereby contravening provisions of Section 77 of the Act. Moreover, the impugned goods were in commercial quantity and hence do not constitute bonafide baggage in terms of Section 79 of the Act read with provision of Para 2.20 of the EXIM Policy in force. In terms of CBEC's Circular No. 29/2000-Cus, import of goods in commercial quantities would not be permissible within the scope of baggage rules, even on payment of duty. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi 2003(155) ELT 423 (SC) wherein it is held that the goods which can be imported subject to certain conditions and if the conditions are not fulfilled, it has to be treated as prohibited goods. Also it is an admitted fact on record that the applicant had carried the goods at the behest of Shri Mukesh Kumar Wahi and is not himself the owner of the goods. Further even in the case of Writ Petition filed by the applicant as referred in para 2.11 above, seeking provisional release of the seized goods, he withdrew before the Commissioner claiming he is not the owner of the goods; that he had nothing to do with the seized goods & that they belong to Shri Baljeet Singh. The applicant therefore cannot stake a claim for the release of the goods particularly when he has already done so earlier before the Hon'ble High Court and thereafter submitted that if any order from High Court or any other authority is received then it should not be considered from his side. Government also notes that Hon'ble Supreme Court in its decision in the case of Mohammad Ajaj Ahamed 2010(253) ELT E 83 (SC) has upheld order of Mumbai High Court wherein release of goods to passenger who acted as carrier of gold was not allowed & absolute confiscation was upheld. Therefore, Government finds no force in the plea of the applicant that the goods be released on redemption fine.

13. The applicant has also argued that penalty has been imposed under clause of Section 112 of the Customs Act, 1962 without specifying the sub clause. Government observes that the acts of commission committed by the applicant cannot be ignored on mere technical ground that the relevant sub-section 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. In the present case, exact nature of contravention has clearly been set out in the Show Cause Notice. Government places reliance in support of the above averments in the case of CC, Amritsar Vs ATM

International 2008(222)ELT 194(P&H) and Commissioner of Customs, Amritsar Vs Gurdip Singh 2009(234)ELT 403 (P&H) which are squarely applicable in the present case.

14. In view of the above circumstances, Government finds that Commissioner (Appeals) has already taken a lenient view in case of applicant Shri Rajdeep Chawla in considerably reducing the penalty imposed under Section 112 ibid from Rs. 4,00,000/- to Rs. 3,00,000/- imposed by the adjudicating authority taking into consideration the circumstances of the applicant. Therefore, keeping in view the gravity of the offence and overall circumstances of the case, there is no ground for further reduction in the penalty imposed upon the applicant under Section 112 of the Customs Act, 1962. Government thus finds no cause to interfere with the Order-in-Appeal as regards to the quantum of penalty imposed upon the applicant.

15 In view of the above, Government finds no infirmity in the Order-in-Appeal and therefore upholds the same.

16. The Revision Application is thus rejected as devoid of merit.

17. So ordered.



**(RIMJHIM PRASAD)**  
**JOINT SECRETARY GOVERNMENT OF INDIA**

Shri Rajdeep Chawla,  
S/o Shri Raghubir Singh, H.No. 2, Ramayan Awaas,  
Suresh Sharma Nagar,  
Bareilly-243001, Uttar Pradesh

Attested.



श्रीरामजी  
जुआरिफर (3. 30)  
हडिअरिफर (12)

**Order No. 28/2015-CUS dated 28.10.2015**

Copy to:-

1. The Commissioner of Customs (I&G), NCH , New Delhi-110037.
2. Mr. Rajdeep Chawla, C/o Shri Inderjit Singh Kapur, Advocate, 24-25, Patiala House Courts, New Delhi-110001
3. The Commissioner of Customs (Appeals), NCH, New Delhi.
4. The Additional Commissioner of Customs, IGI Airport, New Delhi.
5. PA to JS (Revision Application)
- 6 Guard File
7. Spare Copy.

ATTESTED

( SHAUKAT ALI )  
UNDER SECRETARY (RA)

शाकत अली  
Shaukat Ali  
अंडर सेक्रेटरी (रा)  
Under Secretary (RA)