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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/340/B/2018-RA/4996 : Date of Issue 23.10.22

ORDER NO. 29/2022-CUS (WZ)/ASRA/MUMBAI DATED 18.10.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. Pritpal Singh Kalsi

Respondent : Principal Commissioner of Customs, CSMI Airport,
Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-637/18-19 dated 11.10.2018 issued through F.No. S/49-249/2016-17/AP passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Shri. Pritpal Singh Kalsi (herein referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-637/18-19 dated 11.10.2018 issued through F.No. S/49-249/2016-17/AP passed by the Commissioner of Customs (Appeals), Mumbai - III. This revision application is on the limited issue of imposition of penalty on him.

2(a). Brief facts of the case are that on 19.05.2014, the Customs Officers at CSMI Airport, Mumbai intercepted one passenger viz, Shri. Kunnil Abbas Muhammad (hereinafter referred to as the passenger) near the exit gate after he had cleared himself through the green channel. The said passenger had arrived from Dubai onboard Jet Airways Flight No. 9W-537 / 18.05.2014. The passenger had filed a nil Customs declaration form and denied that he was carrying any gold in his baggage. The metal detector when passed over the passenger's body, indicated presence of metal on his person. Personal search of the passenger led to the recovery of two packets which were heavy and which had been wrapped with adhesive tape and stuck to the left and right front pockets of the jeans worn by him. On cutting open the packet recovered from the right pocket, two gold bars of 01 kg each were found and from the left side pocket one gold bar of 1 kg was found. Passenger informed that that same had been handed over to at Dubai by Anwar with instructions to deliver it to someone inside the arrival hall. Further, the passenger informed that when he had landed at the airport he had received a call from Ramesh who had instructed him to wait near Belt no. 6 in the arrival hall as someone would come to collect the gold before Customs clearance. As nobody came, he had called up Ramesh who further instructed him to clear Customs through green channel where he had then been intercepted by the Customs Officers. Thereafter, on instructions from the Officers he had called Anwar and had informed him that he had still been waiting at the Customs Arrival Hall. Anwar instructed him to continue waiting at belt no. 6 and told him that some person who would identify himself and address him as Raju would come to collect the gold. A person wearing Jet Airway Ground Staff uniform approached the passenger and loudly called out the name Raju. This

person was immediately intercepted by the Officers and identified himself as Hameed Latif Mohammad and informed that he had come meet the passenger and he had been requested by the applicant who was his colleague.

2(b). The said 3 gold bars weighing 1 kg each, totally weighing 3 kgs (3000 gms) having foreign markings and bearing serial nos, valued at Rs. 76,44,720/-were seized.

2(c). In his statement recorded under Section 108 of the Customs Act, 1962, Shri. Mohammed Hameed Latif stated that he was working for Jet Airways and was posted at the baggage area to monitor off-loading of arrival baggage; that on 19.05.2014, he had received a call from the applicant who was Load Controller, Jet Airways and was instructed to help one of his guest passengers to which he had agreed; that the applicant had told him that the name of his guest was Raju and he was carrying some article on which Customs duty was applicable and requested to assist him; that he was not aware that the passenger (Raju) was carrying gold; that at the request of the applicant he had agreed to assist the passenger. The applicant and Shri. Mohammed Hameed Latif were confronted and they identified each other.

2(d). In his statement recorded under Section 108 of the Customs Act, 1962, the applicant admitted that he had instructed Mohammed Hameed Latif in his personal capacity. Applicant admitted that previously he was involved in another case booked by Customs, Chennai of smuggling 23 kgs of gold brought by his colleague.

3. After, due process of law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai Cochin vide Order-In-Original No. ADC/RR/ADJN/320/2015-16 dated 09.02.2016 issued through F.No. 14-5-427/2014-15 Adjn [SD/1NT/AIU/345/2014-AP'A'] ordered the absolute confiscation of the 3 gold bars, totally weighing 3000 gms and valued at Rs. 76,44,720/-(LMV) under Section 111(d), (1) and (m) of the Customs Act 1962 and imposed a penalty of Rs. 4,00,000/-each under Section 112(a) and (b) of the

Customs Act, 1962 on (i) the passenger, (ii). the applicant, and (iii). Hameed Latif Mohammed (co-accused).

4. Aggrieved by this Order-In-Original, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who vide his Order-in-Appeal No. No. MUM-CUSTOM-PAX-APP-637/18-19 dated 11.10.2018 issued through F.No. S/49-249/2016-17/AP did not find it necessary to interfere in the Order passed by the OAA.

5. Aggrieved by the above Order-in-Appeal, the applicant has filed a revision application only on the limited issue of penalty imposed on him. The records indicate that the other names appearing in the OIA have not filed Revision Applications. The grounds of revision are as follows;

5.01. that the case is based on the basis of statements of co-noticee, that statement of the co-noticee cannot be relied upon as he has kept on changing his statement and had given contradictory statements; that summons issued to co-accused viz Hameed Latif Mohammed is dated 18.05.2014 whereas, the seizure had taken place on 19.05.2014; that the seizure panchanama and all other incidents are shrouded in doubt and suspicion; that statement of applicant was recorded on 04.09.2014 while the summons is dated 12.11.2014; that the applicant has been falsely implicated in the case; that applicant had nothing to do with this case and ought not to have been penalised; that applicant relies upon the Tribunals order in the case of Vikram Singh Dahiya vs. Commr. Of Customs (Export), New Delhi [2008-223-ELT-619-Tri-Delhi wherein it was held that statemen of co-noticee without any corroborative evidence cannot be taken up as an evidence to impose penalty; that there was no corroborative evidence against the applicant; that cross-examination had not been granted;

The applicant has prayed to the Revision Authority, Mumbai that the penalty imposed on the applicant be set aside.

6. Personal hearings in the case through the online video conferencing mode was scheduled for 03.12.2021, 09.12.2021, 23.02.2022 and 02.03.2022. No one appeared for the applicant. Also, no one appeared for the respondent. Sufficient

opportunities of personal hearings having been granted, the case is taken up for a decision on the basis of evidence on record.

7. Government has gone through the facts of the case and the case papers available on the records. Government finds that this application is only on the limited issue of imposition of penalty on the Applicant. The applicant was working for Jet Airways and had authorized access to the airport. The role of the applicant has been detailed comprehensively by the co-accused who was his subordinate and had been instructed to meet the passenger and collect the packets containing the gold bars. The applicant had been confronted with the co-accused on the same day. Later, the call data too indicated that the applicant was in touch with the co-accused on the day when the seizure was effected. The co-accused viz, Mohammed Hameed Latif had elaborately revealed the role played by the applicant. The applicant too in his statement admitted his role in the smuggling operation. Government notes that this smuggling operation was a well thought out plan and the modus operandi was ingenious in that the staff of the airline having access to the airport were involved. Government notes that the lower authorities have confirmed the absolute confiscation of the gold seized from the passenger and a detailed order analysing the roles played has been passed. Government finds that the lower authorities have passed a reasoned, legal and judicious order.

8. On the limited issue of the penalty of Rs. 4,00,000/- under Section 112(a) & (b) of the Customs Act, 1962, imposed on the applicant which has been agitated in this revision application on the grounds that there are inconsistencies in the investigations. Government finds that this aspect has been looked into in great detail by the lower authorities while rejecting his appeal.

9. The Government notes that all aspects of the case have been looked into by the appellate authority. The applicant has not been able to counter the serious charges levelled and could not bring any contrary evidence. Government observes that the order of the appellate authority confirming the penalty imposed on the

applicant is proper and judicious. Moreover, the records indicate that the applicant being an employee of an Airlines was also previously involved in another case where huge amount of gold had been recovered. This indicates that the applicant is a habitual offender especially considering that being a staff of an airline, he had access to the sensitive area of the airport and had been indulging in aiding and abetting the smuggling of gold. The applicant has aided and abetted the smuggling operation and was part of a syndicate involved in smuggling of gold. Government finds that the penalty of Rs. 4,00,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed. The Government finds no merit in the revision application filed by the applicant and does not find it necessary to interfere with the order of the appellate authority.

10. Accordingly, the revision application is dismissed.


(SHRAWAN KUMAR)

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

ORDER NO. 29\ /2022-CUS (WZ)/ASRA/MUMBAI DATED 18.10.2022

To,

1. Shri. Pritpal Singh Kalsi, S/o. Shri. Jaswant Singh, Akal B-2, Flat No. 105, J.B Nagar, Andheri East, Mumbai – 400 059.
2. Pr. Commissioner of Customs, Level – II, Terminal – 2, Chhatrapati Shivaji Maharaj International Airport, Mumbai – 400 059.

Copy to:

1. Sachwani, Advani, Heera & Shah, Advocates, Nulwalla Building, Ground Floor, 41, Mint Road, Opp. G.P.O, Fort, Mumbai – 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.