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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. 371/08-09/B/WZ/2018-RA/6707

Date of Issue : 24/11/2022

ORDER NO. ³²⁶⁻³²⁷ /2022-CUS (WZ)/ASRA/MUMBAI DATED²² .11.2022 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. Hemant Kanayalal Suraiya

Respondent : Pr. Commissioner of Customs, CSI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-In-Appeal No.
MUM-CUSTM-PAX-APP-718 & 719 / 17-18 dated
14.11.2017 issued on 20.11.2017 through F.No. S/49-
75 & 76 (Stay)/2014 passed by the Commissioner
of Customs (Appeals), Mumbai -III.

ORDER

This revision application has been filed by Shri. Hemant Kanayalal Suraiya (herein referred to as the Applicant) against the Orders-In-Appeal No. MUM-CUSTOM-PAX-APP-718 & 719 / 17-18 dated 14.11.2017 issued on 20.11.2017 through F.No. S/49-75 & 76 (Stay)/ 2014 passed by the Commissioner of Customs (Appeals), Mumbai -III.

2(a). Brief facts of the case are that on 03.02.2013, the applicant who had arrived at the CSMI Airport, Mumbai from London onboard Jet Airways Flight No. 9W-119 was kept under discreet surveillance by the Customs Officers as it was observed that he was carrying two JVC video cameras. The applicant after collecting his baggage approached the red channel counter for Customs clearance. Subsequent to his clearance, the applicant was intercepted at the exit gate of CSMI Airport. The total value of dutiable goods imported by him had been kept 'blank' in the gate pass. On being asked whether he was carrying any dutiable goods he had replied that he was carrying two JVC video cameras which had been carried by him from India to London and had been declared under Export Certificate (ExC) no. 270034 / 27.09.2011. The serial nos of the JVC video cameras appearing in the ExC were Q62G1284 and Q62G0590 both 'old and used' and valued at Rs. 55,000/- each. The applicant reiterated that he had already been cleared from the red channel. Examination of the two JVC video cameras was carried out. It was noticed that two detachable paper stickers were pasted inside the battery compartment of the 2 JVC video cameras which were matching with the serial nos appearing on the said ExC no. 270034 / 27.09.2011 while the sr. nos actually were 157M0152 and 157M0094 respectively. Applicant admitted that the JVC video cameras including its accessories and two Libec brand video camera tripods were new and had been purchased at London under invoice no 13059 /01.02.2013 of M/s. TNP Broadcast for £5850 equivalent to INR 5,20,945/-. Further, 11 nos of Export Certificates were recovered from the baggage of the applicant. The total value of the recovered goods i.e. 2 JVC video cameras

bearing serial nos. 157M0152 and 157M0094 alongwith accessories two Libec brand tripods, one media player 3D of 'Fantec' brand and one 22" Sandstrom brand LED TV, collectively valued at Rs. 5,50,000/- were seized.

2(b). In follow up investigations, the Customs, Rajkot, forwarded the details of two more Export Certificates which were recovered from the residence of the applicant.

2(c). The applicant in his statements recorded under Section 108 of the Customs Act, 1962 admitted that the serial nos of the 2 JVC video cameras had been added by him in his own handwriting in ExC no. 270034 / 27.09.2011 with identification nos. Q62G1284 and Q62G0590 and these nos had been pasted in the battery compartment of these 2 JVC video cameras.

2(d). 14 nos of Export Certificates (i.e. 12 nos including the extant certificate were recovered from possession of applicant and 2 nos from his residence) were verified with the duplicate copies maintained in the Records Section, CSMI Airport, Mumbai and the Prosecution Cell. It was noticed that out of the remaining 13 nos of Export Certificates (i.e. excluding extant ExC), 6 nos of certificates had been found to be tampered with, while the remaining 7 were found not tampered. Out of the 6 nos of tampered Export Certificates, 3 were in the name of the applicant and the remaining 3 were in the name of one Mr. Ramesh Kewalia. Investigation revealed that extra items had been added in these 6 nos of tampered Export Certificates.

2(e). In his further statements, the applicant admitted that the additions in the certificates had been made by him in his own handwriting and mostly second hand video cameras had been imported by him. He informed that Shri. Ramesh Kewalia was his friend working with him as a free lance photographer.

2(f). Statement of said Kewalia was recorded and he stated that whenever he had got assignments either in India or abroad, he used to carry the equipments owned by the applicant; that the 3 nos of Export Certificates were issued in his name during his departure to London; that after completion of assignment at London, he had handover the equipments along with the export certificates to the applicant at London itself and was not aware about what had happened subsequently.

2(g). Enquiries were made with Sony India, Mumbai who gave the details of the brands, their value etc.

2(h). Investigations had also revealed that some of the equipments which were shown as old and used were infact, brand new. Besides, the extant export invoice pertaining to 2 nos of JVC video cameras, scrutiny of the 6 export certificates were carried out and investigations revealed that 4 export invoices had been tampered with. In these 4 Export Certificates, the applicant had imported and cleared 6 cameras of Sony brand and 4 JVC video cameras, totally valued at Rs. 24,81,252/- having duty component of Rs. 8,94,492/- by tampering the Export Certificates and by suppressing the facts. The applicant in his statement had confirmed this fact.

3(a). The Original Adjudicating Authority (OAA) viz, Addl. Commissioner, Customs, CSMI Airport, Mumbai vide his Order-in-Original no. ADC/ML/ADJN/62/2013-14 dated 31.12.2013 issued on 07.01.2014 through F.No. SD/INT/12/2013-AP'B' [S/14-4-17/2013-14 ADJN] ordered for the confiscation of 2 nos of JVC video cameras and accessories, totally valued at Rs. 5,50,000/- which had been recovered when the applicant had been intercepted on 03.02.2013 at CSMI Airport and granted an option to redeem the same on payment of redemption fine of Rs. 2,00,000/-.

3(b). The goods cleared earlier by the applicant during his earlier trips pertaining to the 4 tampered Export Certificates, totally valued at Rs. 24,81,252/- having duty liability of Rs. 8,94,492/-, though not available for confiscation, were confiscated and the duty of Rs. 8,94,492/- was confirmed under the extended period of Section 28(1) of the Customs Act, 1962 alongwith applicable interest from the date of import.

3(c). Further, a penalty of Rs. 8,94,492/- was imposed on the applicant under the provisions of Section 112(a) & (b) and Section 114AA of the Customs Act, 1962 for alleged tampering the Export Certificates.

4. Aggrieved with this Order, the applicant preferred an appeal before the Appellate Authority viz, AA i.e. Commissioner of Customs (Appeals), Mumbai who vide his Orders-In-Appeal No. MUM-CUSTOM-PAX-APP-718 & 719 / 17-18 dated 14.11.2017 issued on 20.11.2017 through F.No. S/49-75 & 76 (Stay)/2014 did not find any reason to interfere in the order passed by the OAA and hence, rejected the appeal.

5. Aggrieved with the above order of the Appellate Authority, the Applicant has filed this revision application on the following grounds;

5.01. that the AA had erred in law and facts and had simply relied upon 14 nos of Export Certificates seized from applicant; that the applicant had never imported any additional goods; that out of 6 export certificates, 3 export invoices had been issued in the applicant's name and the remaining 3 had been issued in his friend's / employee's name; that Export Certificates are issued to passengers departing from India with their high value goods which they intend to bring back; that the certificate was a proof that the goods brought back were not new; that before issue of export certificate, the goods are examined; that in respect of the 3 export invoices issued to his friend, it was not known as to how the department had accepted the export certificates issued in the name of a different passenger for clearance without payment of duty; that the applicant had never used the export certificates for import of any additional items as alleged in the SCN; that no goods were found during

the search of his house; that the fraud of tampering with the export certificates had not been proved; that no witness was examined by the department to substantiate that additional entries had been interpolated in the export certificates; that it was a settled law that the prosecution was required to prove its case; that the investigating agency has raised wrong presumptions and assumptions against the applicant; that no penalty can be imposed on the applicant; that in the absence of any material indicating the required intention or knowledge on the part of the applicant in making a forged document or using the same with the required knowledge, criminal proceedings against the applicant would amount to abuse of the process of law; that the materials on record placed by the investigating agency even if taken at face value and accepted in entirety did not prima facie, implicate the applicant; on this issue they have relied upon the following case laws;

- (a). Orissa High Court in the case of Sukanti Choudhury vs. State of Maharashtra dated 08.02.2013,\
- (b). Calcutta High Court in Emperor vs. Surendra Nath Gosh dated 04.10.1910,
- (c). Delhi District Court in Shri. K.P Panually, Asstt. Director (Examinations), Rastriya Sanskrit Sansthan, Delhi vs. Satyawan and 6 otrs,
- (d). Apex Court in A.S Krishnan vs. State of Kerala dated 17.03.2004 on the issue of forgery.

Under the circumstance, the applicant has prayed to the Revision Authority for dropping the demand of duty alongwith interest on goods alleged to have been imported by him on tampered / interpolated export certificates and imposition of penalty.

6. Personal hearings through the online video conferencing module was scheduled for 03.08.2022. Shri. Prakash Shingrani, Advocate appeared for personal hearing and reiterated earlier submissions. He requested to reduce the penalty and RF.

7. The Government notes that the applicant had not made a true and correct declaration. Though he had approached the red channel, it was based on the altered Export Certificate which got detected when he was intercepted

at the exit gate. The 2 JVC video camera had serial nos whereas, the serial nos mentioned on the export certificate no. 270034 / 27.09.2011 had been mentioned on detachable paper stickers and pasted inside the battery compartment of the two JVC video cameras. On being questioned about the discrepancy, the applicant had mentioned that the 2 JVC video cameras including its accessories had been newly purchased and the serial numbers were added by him in the ExC in his own handwriting and pasted inside the battery compartment to evade Custom duty. The applicant had mis-declared to Customs and had cleared the 2 cameras from the red channel on the basis of the fraudulent ExC. A true and correct declaration as required under Section 77 of the Customs Act, 1962 had not been submitted to the Customs at the airport, therefore, confiscation of the 2 JVC cameras alongwith the other accessories was justified.

8(a). Government notes that more export certificates were recovered from the possession of the applicant and also from his residence. Investigations were carried out and it was noticed that the applicant had tampered with 4 Export Certificates viz bearing nos. (a). 264129/04.03.2010, (b). 270025 /25.09.2011, (c). 271740 / 10.12.2011 and (d). 274635 / 28.04.2012. The applicant had admitted that extra items had been added in these 4 Export Certificates.

8(b). Government finds that the investigating agency had verified the export certificates recovered from the applicant with the records available in the Records Section and Prosecution Cell. Further, the investigating agency had made enquiries with the Sony India, Mumbai and ascertained the model nos and its value, etc.

8(c). The applicant had not controverted the investigations that had been carried out where the additions in the export certificates had been pointed out to him. When he was confronted with the tampering that had been carried

out and the similarities in the handwritings, the applicant had admitted that the additions had been made by him in his own handwriting.

8(d). Applicant had admitted to having altered the export certificates which had been issued in the name of his friend / employee. Applicant when confronted with this fact had admitted that the equipment belonged to him and had also used his friend / employee and altered the export certificates which were issued in his name.

8(e). Government notes that contemporaneous prices have been taken by the investigating agency to arrive at the value of the goods and a rebate on the value too had been considered.

8(f). Government notes that Section 28 had been rightly invoked by the investigating agency for the tampering carried out in the export certificates and the consequent clearance of the goods without payment of duty. Government notes that the investigating agency had demanded the duty short paid by resorting to fraudulent methods and this demand was based solely on incontrovertible evidence recovered from the applicant.

9. The applicant had found a novel and ingenious method to evade payment of Customs duty. The applicant was clearing cameras on the strength of the export certificates issued by Customs and was altering the same to hoodwink the Customs and evade payment of customs duty. Government finds that the investigating agency had made a fair scrutiny and 4 out of the 13 export certificates (or 5 out of the 14 including the extant ExC) were found to have been altered. Further, the Government notes that the investigating agency had valued the cameras based on the details received from the India office of the overseas manufacturers.

10. Government notes that in respect of the extant ExC, the OAA had ordered for the confiscation of the goods and allowed the same to be redeemed on payment of a fine of Rs. 2,00,000/- under Section 125 of the Customs Act,

1962. In respect of the goods that were cleared on the basis of tampered export certificates, the duty demand had been made relying on contemporaneous value sourced from the India based manufacturers of the overseas brands. Government finds that the OIO passed by the OAA is legal and proper and the same has been upheld by the AA. Government is in agreement with the AA and is inclined to uphold the same.

11. The penalty equal to the duty evaded imposed on the applicant is as per the provision of law and commensurate with the omissions and commissions committed.

12. For the aforesaid reasons, Government does not find any valid reason to interfere in the OIA passed by the AA and the revision application filed by the applicant fails.

14. Accordingly, the Revision Application is dismissed.


(SHRAWAN KUMAR)

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

326-327

ORDER No. /2022-CUS (WZ) /ASRA/MUMBAI DATED 22.11.2022

To,

1. Shri. Hemant Kanayalal Suraiya, Vikram Sinhji Road, Moti Bazar, Gondal, Rajkot, Gujarat - 360 311.
2. Principal Commissioner of Customs, Chhatrapatti Shivaji International Airport, Terminal - 2, Level - 2, Sahar, Andheri East, Mumbai - 400 099.

Copy to:

3. Shri. Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai - 400 051.

4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy,
6. Notice Board.