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SPEED POST



F.No.373/84/B/13-RA-Cus

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 29/3/16.....

ORDER NO. 33/2016-CUS DATED 22.03.2016 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/Air/190/2013 dated 01.05.2013 passed by
Commissioner of Customs (Appeal), New Delhi.

Applicant : Commissioner of Customs, IGI Airport, New Delhi

Respondent : Shri Raj Kumar Sabharwal

ORDER

This Revision Application is filed by Commissioner of Customs, IGI Airport, New Delhi (hereinafter referred to as Applicant) against the Order-in-Appeal No. CC(A)Cus/190/2013 dated 26.03.2013 passed by Commissioner of Customs, (Appeals) New Delhi, with respect to Order-in-Original No. 56/2012 ADC dated 08.08.2012 passed by Additional Commissioner of Customs, IGI Airport, New Delhi in respect of Shri Raj Kumar Sabharwal (hereinafter referred to as Respondent).

2. Brief facts of the case are that specific information was gathered that one passenger namely Shri Darshan Lal was coming from Hong Kong vide AI Flight No AI 315 on 05.01.2011 and was carrying memory cards in commercial quantity. A surveillance was mounted and the passenger was followed after his identification at the aero bridge. He was intercepted near the exit gate of the Customs arrival hall, after he had walked through the green channel of the IGI Airport. His identification was confirmed vide his passport bearing no H 2580525. On being asked whether he was carrying any contraband or any dutiable goods or anything to be declared to the Customs in his baggage or on his person, he replied in the negative. Being not satisfied with the reply of the passenger Shri Darshan Lal and as he had not declared anything in his disembarkation slip, he was diverted for scanning of the baggage through X-Ray machine situated at arrival hall. The passenger Shri Darshan Lal was carrying two checked in baggage i.e. one paper carton box and one black coloured stroller bag and one black coloured hand bag and one plastic hand carry bag. During the scanning, some suspicious items were noticed and the passenger was subjected to detailed examination of his luggage before two independent Panchas.

2.1. Thereafter, the black coloured hand bag was examined and was found containing three yellow coloured plastic coated envelopes and three Khaki coloured plastic envelopes duly sealed with adhesive tape. All six plastic coated envelopes were cut open and found to contain 13300 nos. micro SD cards of 2 GB capacity used in mobile phone. Further, on examination of the plastic hand bag, two bottles of Glenmorangi Signet Single Malt Scotch whisky 70 CL (700 ml) were also recovered. Thereafter, the Customs Officer scrutinized the recovered Baggage Tag No. 0098763479 & 0098763483 pasted on the back side of boarding pass vis-a-vis affixed on the checked-in-baggage (black coloured stroller bag & paper carton box) and found the same in order. On examination of both the bags, following items were found:

(i) Paper carton Box- B-Ultra Sound Diagnostic Equipment- Model No. C-100, Device No. DJ 101 B 2718, manufactured by Mastex Medical Equipments, Germany along with accessories.

(ii) Black coloured stroller bag - Used Clothes.

2.2. The officers asked the passenger Shri Darshan Lal to produce evidence or documents in support of the undeclared goods mentioned above brought by him and recovered from the handbag and in paper carton box, the pax failed to produce any such document or evidence.

2.3. The memory cards totaling 13,300 pcs. were valued at Rs. 21,94,500/- (as declared by passenger Shri Darshan Lal & NIDB data varies from Rs.158/- to Rs. 170/-per pc) were put into the black coloured stroller bag along with the hand bag and both bottles of Glenmorangi Signet Single Malt Scotch whisky 70 CL(700 ml) valued Rs. 14,720/- (as declared by passenger Shri Darshan Lal and also verified from Duty Free shop at IGI Airport) and sealed with Customs Seal No. 6 and were seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the same were smuggled into India and are, therefore, liable to confiscation under the Act *ibid*. Further, B- Ultra Sound Diagnostic equipment, Model No - C-I 00 Device No- OJ 101 B 2718, manufactured by Mastex Medical Equipment, Germany along with accessories valued at Rs. 4,28,390/- (value taken from internet of same machine) was put in the same paperbox sealed with Customs seal no 6 and were seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the same were smuggled into India and are, therefore, liable to confiscation under the Act *ibid*. Total value of the seized goods calculated was Rs. 26,37,610/-.

2.4. Further, the statement of Shri Darshan Lal was recorded under Section 108 of the Customs Act wherein he has, *inter alia*, voluntarily stated that he has -studied upto class 12th and has good knowledge of Hindi and English language; that he is living at 16/785, Bapa Nagar, Military Road, Karol Bagh, New Delhi-5 along with his younger brother and family of his elder brother; that the said premises is in name of his elder brother who expired about six years back; that the name of younger brother is Raj Kumar and he is married and is running a tea stall in Tilak Nagar; that he is married and has four kids and his wife's name is Gurjeet Kaur and is a house wife; that he came to IGI Airport from Hong Kong by Air India Flight No AI 315; that he was carrying two checked in baggage bearing Tag No 0098763479 & 0098763483 and two hand baggage; that after immigration clearance and collecting his checked in baggage, he walked through the green channel when he was intercepted by the Customs officer and his baggage was examined; that on examination of his baggage, 13,300 memory cards micro SD 2GB were recovered from his hand bag and one ultrasound machine B -ultrasound diagnostic equipment Model No C-100 was recovered from his checked in baggage; that the said 13300 memory cards and the ultrasound machine were seized by the Customs officer as shown in panchnama dated 05/06.01.2011 as he did not have valid import documents for import of same and he did not declare the same at the Customs Counter; that before this trip, he used to bring readymade garments from Hong Kong and sell them in Gaffar Market, Karol Bagh ; that since he was working for a long time in Gaffar Market, he realised that there is a huge grey market for memory cards in Gaffar Market and so he thought of making some quick profit by bringing memory cards; that he went to a shop named M/s Armco International in Hong Kong which is dealing in memory cards and bought six thousand memory cards for 10,000 US\$; that

the owner of M/s Amco International, Hong Kong proposed him to carry another 6000 pcs of memory cards to India and to pay him Rs 4 per pcs as carrying charges; that since he wanted to make a quick profit, he agreed to the proposal; that further the owner of AMCO International took his mobile no and told him that someone will contact him at the Airport and collect the memory cards from him after he gets out of the Airport; that the owner of AMCO did not tell him the name of person nor gave him any contact no; that he was to get his carrying charges after handing over the memory cards; that he was to sell the memory cards which he bought on his own in the local market i.e Karol Bagh and Gaffar Market; that he stayed in Kamal Guest House in Hong Kong; that Kamal Guest House is in Chun King Mansion; that a person named Deepak contacted him in Kamal Guest House and asked him to carry one ultrasound machine B -ultrasound diagnostic equipment Model No. C-100 against the payment of Rs.5,000/- as carrying charges for carrying the same to India; that on his earlier visits also Deepak gave him readymade garments for carrying to India and paid him carrying charges, so he agreed to his proposal; that as per his knowledge Deepak stays in Hong Kong only; that he does not know the cost of ultrasound machine B - ultrasound diagnostic equipment Model No C- 100; that Deepak gave him the machine at the Hong Kong Airport and told him that someone will collect it from him in India at the Airport; that Deepak did not give him the name of the person nor he gave him any contact no; that he was to get the carrying charges for the machine after handing it over in India; that he bought the two whisky bottles i.e. Signet-Glenmorangie from Hong Kong Airport for US\$ 342 ; that he was to sell the whisky bottles in Gaffar Market for about Rs.10,000/- per bottle as there is readily available market for this kind of whisky in Gaffar Market; that at the time of his departure from India to Hong Kong, he used to carry confectionary items which he sold in Indian departmental stores in Hong Kong after making some profit which helps in recovering of cost of the ticket; that during his current visit, he took about US\$ 10000 and Rs 5000/- along with him; that the money was taken by him on loan from friends and he was to return the money after selling the memory cards; that two Mobile Phones which were recovered by the Customs Officer from his possession have nos. 9582865940 the other mobile has sim card of Hong Kong and he does not remember its number that for the first time, he had brought memory cards and on earlier occasion, he used to bring readymade garments; that there is a very thin margin of profit in memory cards and if he declared the goods to the Customs, his profit margin would have been reduced and so that he did not declare the goods to the Customs; that he did not declare the foreign currency 10000 US\$ to the Customs at the time of departure; that he had worked in Gaffar Market for 8-10 years and he knows that number of people are dealing in memory cards and he was to sell the memory cards to the person where he will get the best price; that he had purchased the memory cards @ Rs.165/- per pc.; that he bought the seized memory cards from M/s Amco International, Chukung Mansion, 14th Floor in front of Tasirn Sha Shu station, Hong Kong and he knows Shri Asim who works there at M/s Amco International and his phone no. is

9343131; that Sh. Asim is about 35 years old and his height is approximately 5'6"; that he got the reference of Shri Asim and M/s Amco International from one of the waiter of Kamal Restaurant, Chunking Mansion, Ground Floor; that he is a regular visitor of this restaurant as during his Hong Kong visit, he stays at Kamal Guest House, 6th floor, Chunking Mansion and Himalaya Guest House, 7th floor, Chunking Mansion; that during his last visit, he stayed at Room No. 10/18 of Kamal Guest House and the Room Rent is 100 \$ HK per day; that he used to purchase readymade garments from the cloth market situated near Sham Shai Pur Station from Shri Jai Pal, who is a local resident and resides in Chunking Mansion; that he does not know his exact address; that the contact nos. of Jai Pal are 51269596, 90474653 & 51782421; that he used to book air tickets from Travel & Style, Karol Bagh, Arya Samaj Road and used to travel mostly from Air India Airlines; that during his last travel to Hong Kong from 23rd to 25th December, 2010, he purchased readymade garments from the above mentioned address and one turning machine was given to him by one gentleman who introduced himself as Shri Deepak and who had promised him to pay some charges for the delivery of the same machine at the Airport in New Delhi to the person who will approach him at the airport itself referring him; that after his delivery of the turner machine at the airport, the person gave him Rs. 3,000/-; that sometimes he used to receive money through M/s Singh Money changer, Chunking Mansion, 15th floor, Hong Kong against the money which was handed over to some person near town hall, Chandni Chowk and he does not know the exact address of the person of Chandni Chowk; that the phone no. of his son Nikhil is 9250757955; that he has two connections in Hong Kong and the numbers are 92764173 and 68083324.

2.5. Further, on enquiry from the mobile company M/s Vodafone, it has been informed vide letter dated 27.01.2011 that the mobile no. 9582865940 was allotted to Shri Vijay, C/o Mangat Ram, H. No. 16/785, Bapa Nagar, Military Road, Karol Bagh, New Delhi, however the photograph appearing on the subscription form, has been found to be of Shri Darshan Lal.

2.6. Further, in his statement dated 05.03.2011 recorded under Section 108 of the Customs Act, 1962, Shri Darshan Lal has inter alia, stated that he had applied for the said connection and the said number 9582865940 was allotted in his name; that he had gone through the said prepaid application form which carried his photograph, whereas the name of the applicant is mentioned as Mr. Vijay; that he does not know any person namely Mr. Vijay and he has no idea how such things have occurred; that the exact name of the issuing shop is not known to him; that the mobile number 9711457642 belongs to his friend namely Raj Kumar who is a property dealer and resides at Harsh Vihar, Pitampura, Delhi and he does not know his exact address; that he had contacted Raj Kumar after his arrival from Hong Kong regarding fixing of dinner; that he and Raj Kumar, do not have any common business interest and in a week, they generally meet 2- 3 times in the evening; that they talk to each other on phone on regular basis; that he does not know the name and address of the person holding the mobile number 9871011781 and he had not contacted on this mobile number; that he has gone through the call details of his mobile number 9582865940 where in from the sl. no. 1082, 1083 and 1084, it appears that he has made three calls to this number on 04.01.2011 and conversation

lasted almost 104 sec, 89 sec. and 211 sec; that he had not talked to anyone on this number, however his family member might have done it; that he had purchased 6000 pcs of memory cards only and the rest were given to him by Shri Asim of M/s Amco International to hand over those at Delhi IGI Airport; that for purchasing the 6000 pcs of memory cards, he had given 10000 US \$ to M/s Amco International and they had given him the credit of the rest of the amount due to the assurance given by M/s Singh Money Exchange Chungkung Mansion, Hong Kong.

2.7. To get the subscriber's details of mobile nos 9811528834, 9711457642 and 9871011781 the mobile company was contacted and it informed vide letter dated 11.03.2011 the details of subscriber of the mobile no 9811528834 as Baljeet Singh, B-3/24, 2nd Floor, Sector-16, Rohini, Near Sardar Bus Stand, New Delhi and 9711457642 as Trilochan Singh, WZ-H-118, Sant Nagar Extn. Delhi whereas Shri Darshan Lal had given the detail of holders of these mobile no.9811528834 as Jassi of M/s Simran Collection and of 9711457642 as Raj Kumar.

2.8. Shri Raj Kumar in his statement dated 16.05.2011 recorded under Section 108 of the Customs Act,1962 stated, that his education qualification is 12th from Modi College Punjab and he was working with AI Mrorian Dubai till 2008 and afterwards he has shifted to Delhi and is running property dealer firm namely M/s Jagdama Property, 60 Harsh Vihar, Pitampura, New Delhi-88; that his residence is situated at 1st floor, 60 Harsh Vihar, Pitampura, New Delhi -88 and it is owned by him and he along with his family comprising his wife, mother and two children reside there; that around three years back, he came in touch with Shri Darshan Lal who used to come at motor repairing shop of his relative situated at Rama Market, Pitampura, New Delhi; that Shri Darshan Lal owned one shop cum flat situated at the same place at Rama Market, Pitampura, New Delhi but now he has sold the same flat; that during the conversation with Shri Darshan Lal, it was revealed that Shri Darshan Lal engaged in the business of cloths and electronic items and in this regard, he used to travel abroad frequently most likely to Bangkok and Hong Kong; that he did not have any business relationship with Shri Darshan Lal; that Shri Darshan Lal wanted to sell his shop cum flat and in this respect he had taken some loan about Rs. 1.25 lacs after handing over the shop cum flat paper; that Shri Darshan has taken property papers back at the time of selling his flat, but the amount has not been returned by Shri Darshan Lal as yet; that the mobile number 9871011781 belongs to his wife Rekha Sabharwal; that he does not know anything about the mobile no. 9711457642 and it does not belong to him or any of family members; that he has gone through the statement dated 05.03.2011 of Shri Darshan Lal wherein he has stated that the mobile number 9711457642 belongs to Raj Kumar and he has put his dated signature in token of having seen the same; that the number does not belong to him and he will find in common friend circle about the subscriber of the same number; that he used to contact Shri Darshan Lal on his mobile number i.e. 9899044710. In response to summons dated 17.06.2011, Shri Raj Kumar Sabharwal again appeared on 21.06.2011 and in his statement recorded under Section 108 ibid, he stated, inter alia, that he has enquired about the said number 9582865940 and it belongs to Shri Darshan Lal; that on enquiry in respect of mobile number 9711457642, it has been found that

the said number belongs to Shri Anil Raj Pal who is a friend of Darshan Lal and he does not know the address of Shri Anil Raj Pal.

2.9. From the above facts it appeared that Shri Raj Kumar Sabharwal is also involved in the smuggling activities of Shri Darshan Lal in as much as:

(i) Since the departure of Shri Darshan Lal on 04.01.2011 for Hong Kong till his landing at IGIA on 05.01.2011, the passenger was in constant touch with the mobile number 9711457642 (Sr. No 1086 on 04.01.2011- 17.53 hrs, Sr.No 1088 on 04.01.2011 -18.59 hrs, Sr.No 1089 on 04.01.2011-19.48hrs, Sr.No.1091-on 04.01.2011 - 22.47 hrs, Sr.No.1093 on 05.01.2011- 21.34 hrs).

(ii) Shri Darshan Lal in his statement dated 05.03.11 and 27.06. 2011 had accepted that the said mobile no. belongs to Shri Raj Kumar whereas Shri Raj Kumar has denied that this number belongs to him.

(iii) As per Vodafone, the said number belongs to a third person Shri Trilochan Singh and the summon issued on this address, has been returned back with the remark 'no such person' which indicates that the mobile was being used for some illegal activities i.e. smuggling activity.

(iv) Shri Darshan Lal had accepted that he had taken loan from friends to purchase 6000 memory cards from Hong Kong and simultaneously Shri Raj Kumar has also accepted that he has given Rs. 1.25 lakh as loan to Shri Darshan Lal against property papers. On further enquiry, Shri Raj Kumar has stated that he has returned the property papers without taking back the loan which does not seem to be acceptable. His intense involvement with the passenger at the time of departure and arrival, indicates that there must be his business interest with the passenger.

(v) Shri Raj Kumar in his statement dated 21.06.2011, had stated that the mobile no 9711457642 belongs to Shri Anil Raj Pal, a friend of Shri Darshan Lal whereas Shri Darshan Lal again in his statement dated 27.06.2011, has stated that this number belongs to Raj Kumar and he does not know any Anil Raj Pal.

2.10. It further appeared from the above mentioned facts and circumstantial evidences that Shri Darshan Lal, Shri Raj Kumar Sabharwal and Shri Baljeet Singh are involved in the smuggling activities and by their above mentioned acts of omission and commission had rendered themselves liable to penal action under Section 112 of the Customs Act, 1962.

2.11. A Show Cause Notice vide VIII(AP) 10/P&1/02A/2011 dated 02.07.2011 was issued to Shri Darshan Lal, Shri Raj Kumar Sabharwal, Shri Baljeet Singh alleging therein as to why the seized Memory cards - 2 GB 6000 nos. and two bottles of Glenmorangi Signet Single Malt Scotch whisky 70 CL (700ml), valued at Rs.10,04,720/- should not be confiscated under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962; the seized memory cards 2GB 7300 and one

Ultra Sound Machine valued at Rs. 16,32,890/- should not be confiscated absolutely under Section 111 (d), 1 (i), (l) and (m) of the Customs Act, 1962 as no one has claimed the ownership of the said goods; Customs duty amounting to Rs 3,80,447/- in respect of the 6000 memory cards and two bottles of Glenmorangi Signet Single Malt Scotch whisky 70 CL (700ml) should not be demanded and recovered from them under Section 28 of the Customs Act, 1962; interest should not be recovered from them under Section 28 AB of the Customs Act, 1962; black coloured hand bag, black coloured stroller bag and the paper box used for concealing the aforesaid goods should not be confiscated under Section 118 read with Section 119 of the Customs Act, 1962; why penalty should not be imposed upon Shri Darshan Lal, Shri Raj Kumar Sabharwal, Shri Baljeet Singh and any other person who claims the ownership of the said goods later on, under Section 112 of the Customs Act, 1962 for the various acts of omission and commission, as brought out in the body of Show Cause Notice.

3. The Show Cause Notice was adjudicated by Additional Commissioner of Customs (IGI) Airport, New Delhi who vide Order-in-Original No.56/2012 dated 08.08.2012 ordered:-

- (i) confiscation of the seized Memory cards - 2 GB 6000 nos. and two bottles of Glenmorangi Signet Single Malt Scotch whisky 70 CL (700ml), valued at Rs. 10,04,720/- under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962 with option to redeem the same on payment of redemption fine of Rs. 3,00,000/- (Rs. Three lakhs only).
- (ii) absolute confiscation of the seized memory cards 2GB 7300 and one Ultra Sound Machine valued at Rs. 16,32,890/- under Section 111 (d), (i), (l) and (m) of the Customs Act, 1962 as no one has claimed the owner ship of the said goods;
- (iii) recovery of Customs duty amounting to Rs 3,80,447/- in respect of the 6000 memory cards and two bottles of Glenmorangi Signet Single Malt Scotch whisky 70 CL (700ml) under Section 28 of the Customs Act, 1962 along with appropriate Interest under Section 28 AB of the Act *ibid*.
- (iv) confiscation of black coloured hand bag, black coloured stroller bag and the paper box used for concealing/ keeping the aforesaid goods under Section 118 read with 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).
- (v) imposed penalty of Rs. 3,00,000/- (Rs. Three lakhs only) upon Shri Darshan Lal under Section 112 of the Customs Act, 1962 for the various acts of omission and commission as brought out above.
- (vi) imposed penalty of Rs.2,00,000/- (Rs. Two lakhs only) upon Shri Raj Kumar Sabharwal under Section 112 of the Customs Act, 1962 for the various acts of omission and commission as brought out above.

3.1. Aggrieved by the said order, the respondent filed appeal before the Commissioner of Custom(Appeals), who vide Order-in-Appeal No.CC(A)Cus/190/2013 dated 26.03.2013, modified the Order-in-Original to the extent of reducing the penalty imposed on the applicant from Rs. 2,00,000/- to Rs. 19,000/-.

4. Being aggrieved by the impugned Order-in-Appeal, the department applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds:

4.1. That Shri Raj Kumar Sabharwal has been admittedly in constant communication with the smuggler i.e. Shri Darshan Lal since the departure for Hong Kong till his landing at the airport; and has been incriminated by Shri Darshan Lal, the penalty has been reduced from Rs.2,00,000/- to Rs. 19,000/-.

4.2. That where department has proved that respondent was in constant touch with the smuggler, the onus to prove his innocence is on the respondent not on the department and such act of smuggling should be dealt sternly, no leniently and such a lenient view in spite of evidence on record will encourage smuggling activities.

5. An application for condonation of delay in filing Revision Application is also filed by the applicant on the following grounds:-

5.1. That the Revision Application against Order-in-Appeal No. CC(A)Cus/Air/190/2013 dated 26.03.2013 in respect of Shri Raj Kumar Sabharwal passed by the Commissioner of Customs (Appeals), New Delhi has been filed on 29.08.2013 i.e. after lapse of three months time as prescribed under Section 129 DD (1A). That the date of filing of this application is within the condonable period of further three months time as prescribed under proviso of Section 129 DD(2).

5.2. That the said Order-in-Appeal was dispatched from the office of the Commissioner of Custom (Appeals) New Delhi on 01.05.2013 and was received in the office of the Commissioner of Customs, New Customs House, New Delhi on 01.05.2013.

5.3. That the last date for filing the revision application by the department was due on or before 31.07.2013 i.e. within three months from the date of communication of the order.

5.4. That the delay is due to inadvertent mistake of law and is not intentional, genuine and bonafide.

6. Personal hearing was scheduled in this case on 04.08.2015, 02.09.2015 & 15.09.2015. Nobody attended the hearing.

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

8. Government first takes up the application for condonation of delay in filing the Revision Application by the applicant after a delay of 32 days. The applicant vide their letter C.No. VIII(AP)10/P&I/28-A/2011/Pt-II/8851 dated 14.11.2013 has submitted that the said Order-in-Appeal was dispatched from the office of the Commissioner of Custom (Appeals) New Delhi on 01.05.2013 and was received in the office of the Commissioner of Customs, New Customs House, New Delhi on 01.05.2013. That the last date for filing the revision application by the department was due on or before 31.07.2013 i.e. within three months from the date of communication of the order. That the delay is due to inadvertent mistake of law and is not intentional, genuine and bonafide.

8.1. As such, the applicant filed this revision application in 32 days after initial 90 days period, which falls within condonable limit of 90 days. Hence, Government condones the said delay.

9. Government now proceeds to examine the case on merits. On perusal of records, Government observes that the case is based on specific information about the passenger Shri Darshan Lal that he would be carrying the impugned goods on flight no. AI 315 on 05.01.2011 and was carrying memory cards in commercial quantity. He was intercepted near the exit gate of the Customs arrival hall after he had walked through the green channel of the Airport. On being asked whether he was carrying any contraband or any dutiable goods or anything to be declared to the Customs in his baggage or on his person, he replied in the negative. The pax Shri Darshan Lal was carrying two checked in baggage. During the scanning, some suspicious items were noticed and the passenger was subjected to detailed examination of his luggage before two independent Panchas. The memory cards totaling 13,300 pcs valued at Rs. 21,94,500/- and two bottles of Glenmorangi Signet Single Malt Scotch Whisky 70 CL (700 ml) valued Rs.14,720/- were seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the same were smuggled into India and are, therefore, liable to confiscation under the Act *ibid*. The original adjudicating authority *inter alia* ordered confiscation of 6000 memory cards and 02 bottles of Whisky with the option to redeem on payment of fine, absolute confiscation of 7300 memory cards and the ultra sound machine, imposed penalty of Rs.2,00,000/- on Shri Raj Kumar Sabharwal and Rs.3,00,000/- on Shri Darshan Lal. The impugned Order-in-Original was modified by the impugned Order-in-Appeal to the extent of reducing penalty imposed upon Shri Raj Kumar Sabharwal to Rs.19,000/-. Now the Department has filed this Revision Application on grounds mentioned in para 4 above.

10. Government observes that the applicant's main contentions are that Shri Raj Kumar Sabharwal has colluded with Shri Baljeet Singh and abetted the passenger Shri Darshan Lal in his attempt to clear the impugned goods in a clandestine manner, with an intention to smuggle the said goods as detailed in panchnama dated 05/06.01.2011; that the passenger was in constant touch with the mobile number 9711457642 of Shri Raj Kumar Sabharwal; that it was confirmed by Shri Darshan Lal that this mobile belongs to the respondent; that the pax had accepted that he had taken loan from friends to purchase 6000 memory cards from Hong Kong and simultaneously Shri Raj Kumar has also accepted that he has given Rs. 1,25,000/- as loan to the pax against property papers; that on further enquiry Shri Raj Kumar has stated that he has returned the property papers without taking back the loan which does not seem to be acceptable; that his intense involvement with Shri Darshan Lal at the time of departure and arrival indicates that there is business interest between him and the passenger.

11. Government notes that in his voluntary statement tendered by Shri Raj Kumar Sabharwal on 16.05.2011 and 21.06.2011, he admitted that around 03 years back, he came in touch with Shri Darshan Lal; that he did not have any business relationship with Shri Darshan Lal; that Shri Darshan Lal wanted to sell his shop cum flat and in this respect he had taken some loan of about Rs. 1.25 lacs after handing over the shop cum flat papers; that the mobile number 9871011781 belongs to his wife Rekha Sabharwal; that he does not know anything about the Mobile no. 9711457642; that on enquiry in respect of mobile number 9711457642, it was found that the said number belongs to Sh. Anil Raj Pal who is a friend of Shri Darshan Lal.

12. Government further observes that the statements of Shri Darshan Lal and Shri Raj Kumar Sabharwal clearly indicate that Shri Raj Kumar Sabharwal is also involved in the smuggling activities of Shri Darshan Lal in as much as since the departure of Shri Darshan Lal on 04.01.2011 for Hong Kong till his landing at IGIA on 05.01.2011, he was in constant touch with the mobile number 9711457642 of Shri Raj Kumar Sabharwal. Shri Darshan Lal in his statement has confirmed that this mobile belongs to Shri Raj Kumar Sabharwal. As per Vodafone, the said number belonged to a third person Shri Trilochan Singh. However, the summon issued on the address of Shri Trilochan Singh, were returned with the remark 'no such person' which indicates that the mobile was being used for some illegal activities i.e. smuggling activity. Shri Darshan Lal had accepted that he had taken loan from friends to purchase 6000 memory cards from Hong Kong and simultaneously Shri Raj Kumar has also accepted that he has given Rs. 1.25 lakh as loan to Shri Darshan Lal against property papers. On further enquiry, Shri Raj Kumar Sabharwal stated that he has returned the property papers without taking back the loan which does not seem to be acceptable. His intense involvement with the passenger at the time of departure and arrival, indicates that there is business interest between him and the passenger.

13. Government notes that the statement of Shri Darshan Lal recorded under Section 108 of the Customs Act, 1962 is a corroborative evidence that the respondent is associated in a case of smuggling activity with the accused as much as calls had been made by him to the pax at the time coinciding with the smuggling event. Government finds that the Commissioner (Appeals) has basically relied only on the lack of evidence without taking into consideration the statement of Shri Darshan Lal, the main accused and ignoring that statement recorded under Section 108 before a Customs Officer has evidentiary value and is binding. Moreover, the statements have not been retracted at any stage.

14. Government also places reliance on the following judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

14.1. 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 inculpating 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.

14.2 In the case Collector of Customs, Madras and Ors vs D. Bhoormull-1983(13)ELT 1546(S.C.) the Hon'ble Supreme Court has 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.

14.3. 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.

14.4. Hon'ble High Court decision in the case of Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.) wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement and was not influenced by threat, duress or inducement etc. is a true one'.

14.5. In the case of Govind Lal vs. Commissioner of Customs Jaipur {2000(117) E.L.t. 515(Tri)}- wherein Hon'ble Tribunal held that—' Smuggling evidence-statement-

retraction of confessional statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value.'

14.6. In the case of Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC. Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

15. Government thus notes that the plea of the department that there is enough evidence to establish Shri Raj Kumar Sabharwal has willingly colluded with Shri Darshan Lal in abetting and facilitating the smuggling of the impugned goods, has force. Considering the gravity of the offence and value of the smuggled goods the Commissioner (Appeals) has erred in reducing the quantum of penalty upon the respondent from Rs. 2,00,000/- to Rs. 19,000/- only.

16. In view of the above facts and discussions Government sets aside the impugned Order-in-Appeal as illegal and improper and restores the Order-in-Original imposing penalty of Rs. 2,00,000/- (Rs. Two lakhs) on Shri Raj Kumar Sabharwal under Section 112 of the Customs Act, 1962.

17. Revision Application is allowed as above.

18. So ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

The Commissioner of Customs,
IGI Airport, Terminal 3,
New Delhi.

Attested

[Faint blue ink stamp and signature]

ORDER NO. 33/2016-CUS DATED 22.03.2016

Copy to:-

1. The Commissioner of Customs , IGI Airport , Terminal -3, New Delhi-110037.
2. Mr. Raj Kumar Sabharwal, R/o 60, Harsh Vihar, Pritam Pura, Delhi-110088.
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)