

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/294, 295 & 337/B/WZ/2018-RA/ : Date of Issue

28/11/2022

6909

ORDER NO. ³³⁴⁻³³⁶ /2022-CUS (WZ)/ASRA/MUMBAI DATED 23.11.2022
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.

- (i). **F.No. 371/294/B/WZ/2018-RA.**
Applicant No. 1: Ms. Pooja P. Sonwalkar,
(ii). **F.No. 371/295/B/WZ/2018-RA.**
Applicant No. 2: Ms. Riddhi Mahesh Saraiya &,
(iii). **F.No. 371/337/B/WZ/2018-RA.**
Applicant No. 3: Ms. Mamta Miten Shah

Respondent : Principal Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal Nos.
MUM-CUSTM-PAX-APP-454 to 456 dated 28.08.2018
issued on 06.09.2018 through F.No. S/49-456,457 &
430/2017 passed by the Commissioner of Customs
(Appeals), Mumbai - III.

ORDER

These three revision applications have been filed by (i). Ms. Pooja P. Sonwalkar, (ii). Ms. Riddhi Mahesh Saraiya and (iii). Ms. Mamta Miten Shah [hereinafter referred to as the Applicants or alternately as Applicant no. 1 (A1), Applicant no. 2 (A2) and Applicant no. 3 (A3) resp.] against the Orders-In-Appeal Nos. MUM-CUSTOM-PAX-APP-454 to 456 dated 28.08.2018 issued on 06.09.2018 through F.No. S/49-456,457 & 430/2017 passed by the Commissioner of Customs (Appeals), Mumbai – III. Government notes that though the applicants have filed separate revision applications, they pertain to the same case and the above stated OIA is common to the three. Further, these appeals are on the limited issue of penalties imposed on the applicants. Hence, the case is taken up for a common decision.

2(a). Brief facts of the case are that the Customs Officers of the Air Intelligence Unit (AIU) of CSMI Airport, Mumbai had a specific input that a passenger would arrive by Kuwait Airways Flight No. KU-301 on 26.11.2014 and would attempt to smuggle gold by handing over the same to a lady staff working at CSMI Airport. Accordingly, when the said Kuwait Airways flight arrived, the passenger viz Ms. Rubina Salim Mansuri (hereinafter referred to as the passenger) was identified discreetly by her boarding card. The passenger went to the ladies toilet located at the Immigration Hall, Terminal – 2 of the CSMI Airport. At the same time, a lady (A1) wearing staff uniform of M/s. CelebiNas also entered the toilet. The said passenger handed over a packet wrapped in black coloured cellophane tape to A1, when they were both were intercepted by the Customs Officers. A1 admitted that she had received a packet from the passenger and that the same contains gold bars. The passenger too confirmed that she had handed over a packet containing gold bars to A1. The said packet was cut open and 9 FM gold bars of 10 totals each were recovered. Thereafter, A1 informed that A2 was to receive the said packet and would be waiting outside the arrival hall of CSMI Airport in the ladies toilet located at Parking Lot, Level-6, CSMI Airport. Thereafter, A2 too was intercepted. 9 FM gold bars of 10 tolas each, of 24 Kts purity, totally weighing 1045 grams, valued at Rs. 24,72,763/- were

recovered from the passenger along with a new Dell Inspiron Laptop and a new Samsung Note-3 mobile phone, valued at Rs. 40,000/- each.

2(b). The passenger in her statement recorded under Section 108 of the Customs Act, 1962 stated that she had handed over the packet containing the gold to A1 in the toilet at CSMI Airport; that she was working in a beauty parlour at Dubai and its owner had given her contact details to one person named Zubair who had called her; that this was the second occasion when she had carried gold to India; that her air tickets to Dubai on both the occasions had been handed over by A3; that A3 was working for Zubair; that she had carried the gold for a monetary consideration.

2(c). The statement of A1 was recorded under Section 108 of the Customs Act, 1962 and she confirmed that she met the passenger in the toilet at the airport and had collected a packet containing gold bars; that the packet was supposed to be handed over to A2 who was waiting for her in the washroom outside the arrival hall; that she received a text from Zubair with whom she used to chat and he had offered her to work for him; that she had agreed to take gold from the incoming passenger and hand over the same to the person waiting outside the CSI Airport; that she agreed to do this for a monetary consideration; that initially, she started with 2 gold bars of 10 tolas each; that later she felt confident and comfortable and gold bars varied from 05 to 09; that she had collected gold on two occasions from the passenger at instance of Zubair; that she handed over the gold to A3; that in the last one month, she had handed over gold to A3 on 7 occasions; that prior to this, Zubair himself used to collect the gold; that she had indulged in this gold smuggling for almost 20 times and had successfully cleared almost 150 tolas of gold i.e approx. 17.40 Kgs of gold; that she had earned around Rs. 3,00,000/- and had deposited the amounts received in Canara Bank, Kalina Branch; later investigations were carried out and a lien on withdrawals was put on her bank account.

2(d). Statement of A2 was recorded under Section 108 of the Customs Act, 1962 and she stated that she had come to the CSI airport to meet A1 in the washroom and to collect a packet of gold from her; that she received instructions from Zubair in this regard; that she agreed to do this for a monetary consideration; that she had met A1 on 7 occasions in the same washroom during last one month and each time she had collected a packet containing gold which she handed over to Zubair; two photographs shown to her were identified as that of A3 and her daughter.

2(e). Statement of A3 was recorded on 06.01.2015 under Section 108 of the Customs Act, 1962 and stated that she was aware of the seizure of 9 gold bars; that she identified the photograph of Zubair Masalawala.

2(f). Investigations of the call data records (CDR) of the passenger, A1, A2, A3 and Zubair Masalawala were carried out and it was seen that they had made phone calls between them.

3. After due process of law, the Original Adjudicating Authority (OAA) i.e. Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/RR/ADJN/70/2017-18 dated 22.05.2017 issued through S/14-5-323/2015-16/Adjn) (SD/INT/AIU/810/2014'A)] ordered for (i). the absolute confiscation of the 09 gold bars of 10 tolas each, totally weighing 1045 grams, valued at Rs. 24,72,763/- under Section 111 (d), Section 111(1) and Section 111(m) of the Customs Act, 1962, (ii). absolute confiscation of One new Dell Inspiron Laptop valued at Rs. 40,000/- and a new Samsung Note-3 mobile phone valued at Rs. 40,000/- under Section 111 (d), Section 111(1) and Section 111(m) of the Customs Act, 1962 and imposed a penalty of (a) Rs. 1,00,000/- on the passenger under Section 112(a) and (b) of the Customs Act, 1962, (b). Rs. 1,00,000/- on A1 under Section 112(a) and (b) of the Customs Act, 1962, (c). Rs. 1,00,000/- on A2 under Section 112(a) and (b) of the Customs Act, 1962 and (d). Rs. 25,000/- on A3 under Section 112(a) and (b) of the Customs

Act, 1962. Further, the amount in the savings account maintained in Canara Bank, Kalina Branch by A1 which had been frozen was confiscated under Section 121 of the Customs Act, 1962, as sales proceeds of the smuggled goods.

4. Aggrieved by the imposition of penalty in the said OIO, the applicants i.e. A1, A2 and A3 filed appeals before the Commissioner (Appeals), Mumbai – III (AA). These appeals had been filed by the applicants only on the issue of penalties imposed on them and confiscation of the amount lying in the savings bank account of A1, The AA in his Orders-In-Appeal No. MUM-CUSTOM-PAX-APP-454 to 456 dated 28.08.2018 issued on 06.09.2018 through F.No. S/49-456,457 & 430/2017 observed that the passenger viz Rubina Salim Mansuri had neither filed a reply to the SCN nor made any defense submissions or attended the hearing before the lower authority and no appeal on behalf of passenger had been filed. The AA in the said OIA passed the order as under;

(a). penalty imposed on A1 under Section 112(a) and (b) of the Customs Act, 1962 was upheld.

(b). penalty imposed on A2 under Section 112(a) and (b) of the Customs Act, 1962 was upheld.

(c). penalty of Rs. 25,000/- imposed on A3 under Section 112(a) and (b) of the Customs Act, 1962 was reduced to Rs. 15,000/-.

(d). the confiscation of account was set aside except appropriation of amount of penalty imposed on A1.

5. Aggrieved with the above order, the applicants have filed these revision applications.

(I). Main grounds of the application filed by A1 and A2 through Shri. Prakash K. Shingrani, Advocate are as under;

5.01. A1 and A2 have now stated that the facts as recorded by Customs was different; that they did not know the passenger; that the OIA's were not orders on merits and not speaking orders; that a panchnama drawn on a computer cannot be considered as drawn on the spot; that the CDRs cannot be relied upon in terms of 65B of the Indian Evidence Act, 187 and a certificate had not been produced; that no case could be

substantiated based on mere statement of the co-noticees and without cogent corroborative evidence;

5.02. Reliance is placed on the following decisions primarily on the issue of natural justice.:

- (a). Liberty Oil Mills Vs. Union of India
- (b). CL Tripathi Vs. State Bank of India
- (c). Pitchaiah Vs. Andhra University
- (d). A.K.Kraipak Vs. Union of India
- (e). ChintamoniPadhan v. PaikaSamal
- (f). CESTAT, New Delhi in M/s Sahara India TV Network Vs CCE, Noida.
- (g). Joint Commissioner of Income Tax, Surat vs. Saheli Leasing & Industries Ltd., reported in 2010 (253) ELT 705 (S.C.),
- (h). CESTAT, New Delhi M/s. Vikas Enterprises vs CCE, Allahabad.
- (i). M/S Sharp Carbon India Vs Commissioner of Central Excise, Kanpur
- (j). Gujarat High Court -Union of India vs Sri Kumar Agencies on 1 December, 2010
- (k). M/s.International Woolen Mills Ltd Vs. M/s. Standard Wool (UK) Ltd.,
- (l). Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan(Citation:- 2011 (273) ELT 345 (SC)
- (m). M/s. Mahabir Prasad Santosh Kumar vs. State of U.P and others, AIR 1970 SC 1302
- (a). M/s. Travancore Rayons Ltd. vs. The Union of India and others, AIR 1971 SC 862
- (n). M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union and another, AIR 1973 SC 2758.
- (a). Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India and another, AIR 1976 SC 1785
- (o). Gujarat High Court in the case of Teststeels Ltd. vs Desai (N.M.) on 5 April, 1968
- (p). SSE Hari Nagar Sugar Mills Ltd., v. ShyamSundar Jhunjhunwala (A.I.R. 1961 S.C. 1669]
- (q). Bhagat Raja case [A.I.R. 1957 S.C. 1606]

Under the circumstances, A1 and A2 have prayed to the Revision Authority to set aside the OIA and the savings account of A1 may be ordered to be fully de-frozen.

(II). Main grounds of the revision application filed by A3 through Shri. Rajendra Sahasane, Advocate is as under;

5.03. that the allegations in the SCN for imposition of penalty under Section 112 (a) and (b) of the Customs Act, 1962 was baseless, devoid of merits and illegal; that the department had failed to investigate the facts of the case in proper prospective; that A3 had neither dealt with nor played any role in the alleged smuggling and attempt to clear the said gold bars

out of the C.S.I. Airport, Mumbai; that the statements of accused persons cannot be relied upon; that department had failed to bring the cogent evidence A3 on her involvement in or in relation to the goods under confiscation; that they relied on the judgment in the case of Akhtar Badruddin Jiwani Vs Collector of Customs as reported in 1990 (47) ELT161(SC), wherein it is held that Mensrea' has to be established for imposition of penalty; that no case can be substantiated based on mere statements of the co-noticees and without cogent corroborative evidence; that the exact role of A3 had not been investigated and hence, imposition of penalty was bad in law; that role played by A3 was merely to hand over the ticket to the passenger and the statement is silent on this aspect; that A3 had not been aware of the statement given by passenger and had not been identified by her; that the CDRs did not have material evidence against A3;

5.04. A3 has relied upon the following judgements;

(a). Delhi High Court in Vinay Jain vs State & Anr. on 13 February, 2015

(b). Jagannath Premnath Vs Commissioner of Customs, Mumbai as reported at -2001 (198) ELT 104 (Tri-Del)

(c). Birendra Kumar Singh Vs Commissioner of Customs, Lucknow as reported at-2006 (198) ELT460 (Tri-Del)

Under the circumstances, A3 has prayed to the Revision Authority to set aside the OIA and the penalty imposed on her be quashed and to pass any such order as deemed fit.

6. Personal hearings in the case through the online video conferencing mode in respect of A1 and A2 was scheduled for 03.08.2022 and in respect of A3 were scheduled for 04.08.2022 and 26.08.2022.

6.01. In respect of F.No. 371/294/B/WZ/2018-RA, Shri. Prakash Shingrani, Advocate and A1, appeared for personal hearing on 03.08.2022 and submitted that applicant was not aware about the content as she was informed that packet contains mobile phone. They requested to drop the penalty against the applicant.

6.02. In respect of F.No. 371/295/B/WZ/2018-RA, Shri. Prakash Shingrani, Advocate stated that applicant was not aware about the contents as she was informed that packet contains mobile phone. He requested to drop the penalty against the applicant i.e. (A2).

6.03. In respect of F.No. 371/337/B/WZ/2018-RA, Shri. Rajendra Sahasane, Advocate for A3 appeared online on 18.08.2022 and reiterated earlier

submissions. He contended that penalty on applicant is required to be dropped as there is no independent evidence against the applicant.

7. The Government has gone through the facts of the case. Government notes that passenger viz, Ms. Rubina Salim Mansuri who had brought the gold had not filed an appeal before AA. Hence, the OIO dated 22.05.2017 passed by the OAA wherein the 9 gold bars of 10 tolas each, totally weighing 1045 grams valued at Rs. 24,72,763/- alongwith the laptop and mobile phone has gained finality in terms of the absolute confiscation of goods, as the appeal period is over. Hence, the Government does not find it necessary to go into the issue of absolute confiscation of these goods.

8. The applicants have filed these 3 revision applications for limited purpose of setting aside the penalties imposed on them.

8.01. A perusal of the grounds of revisions filed by A1 and A2 indicates that their main plea was that they were not aware of the contents in the packet and this issue has been dealt with by the OAA while rejecting their plea for a cross examination. The CDR also shows that A1 was in touch with Zubair and Zubair was in touch with the passenger, A2 and A3. Also, A2 was in touch with the passenger, Zubair and A3. It is a fact that A1 and A2 were privy to certain details which were known only to them and which they had narrated in their statements. The Officers who had recorded the statements were not privy to the same. This indicates that a voluntary statement had been given by them and hence, the averments that their statement were not voluntary is an afterthought and much credence cannot be given to the same. The grounds of revision filed by A1 and A3 are similar to those filed before the AA who has dealt with the same in great detail. Government does not find it necessary to delve on the same.

8.02. With respect to A3, the CDR indicates that she was in touch with the passenger and A2. The statements of the passenger, A1 and A2 had

corroborated her role. The averment made by the A3 that there was no independent evidence against her is negated by the fact that the passenger and A2 were in touch with her.

9(a). Government finds that the AA had taken a holistic view of the facts and had reduced the penalty imposed on A3 and also, lifted the moratorium imposed on the Bank account of A1. While lifting the moratorium on the bank account of A1, AA had observed that there was nothing in the records to substantiate that the money in the account was sale proceeds of smuggled gold and hence, provisions of Section 121 of the Customs Act, 1962 were not attracted. Also, while reducing the penalty amount imposed on A3, the AA had done so holding that as the allegation of arranging and delivering the Air Ticket had not been corroborated and substantiated.

9(b). Government finds that the AA has passed a holistic order and the roles played by applicants were duly analyzed. However, Government finds that while placing the bank account of A1 under moratorium, the OAA while imposing the penalty had also considered and taken into account the role played by A1 on previous occasions. This moratorium on the bank account has been rightly set aside by the AA as it was held that the evidence that the money found in the bank account were from sale proceeds of smuggled gold had not been revealed in the investigations. AA had reduced the penalty of A3 on the express grounds that the evidence against her had not been corroborated. Similarly, Government finds that the role played by A1 and A2 on the previous occasions had not been corroborated during the investigations. Therefore, Government finds that the quantum of penalty imposed on A1 and A2 is therefore, harsh and unreasonable and not commensurate with the omissions and commissions committed and the same is required to be reduced.

10. Government finds that the OIA passed by the AA is legal and proper. However, for the aforesaid reasons, Government reduces the penalty imposed on A1 and A2 as follows;

(a). the penalty of Rs. 1,00,000/- imposed on A1 under Section 112(a) and (b) is reduced to Rs. 50,000/- (Rupees Fifty Thousand only).

(b). the penalty of Rs. 1,00,000/- imposed on A2 under Section 112(a) and (b) is reduced to Rs. 50,000/- (Rupees Fifty Thousand only).

11. For the aforesaid reasons, Governments modifies the OIA passed by the AA and the penalties imposed on the applicants are reduced as stated above.

12. Accordingly, the Revision Applications filed by A1 and A2 are decided on the above terms and the Revision application filed by A3 is dismissed.


(SHRAWAN KUMAR)

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

334-336

ORDER No. /2022-CUS (WZ)/ASRA/Mumbai

DATED 23.11.2022

To,

1. Ms. Pooja P. Sonwalkar, R.No. 6, 6th Floor, Ambika Nagar, Nr. Malhar Gym, Dattivali, Diva (E), Dist. Thane.
2. Ms. Riddhi Mahesh Saraiya, Room No. 26, 5/3, Dhanbhuwan, Gazdhar Street, Chira Bazar, Kalbadevi, Mumbai – 400 002.
3. Ms. Mamta Miten Shah, W/o. Miten Shah, Room No. 22/24, 1st Floor, Godawarisadan, 11, Gazdhar Street, Girgaum Road, Chira Bazaar, Kalbadevi, Mumbai – 400 002.
4. Principal Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

5. Mr. Prakash K. Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai – 400 051.
6. Mr. Rajendra Shahasane, 63, 19/21, Bombay Mutual Chambers, Next to Bombay Stock Exchange, Ambalal Doshi Marg, Mumbai – 400 001.
7. Sr. P.S. to AS (RA), Mumbai.
8. File Copy,
9. Notice Board