

REGISTERED

SPEED POST



F. No. 380/56/B/2014-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.....

ORDER NO. 37/18-Cus dated 12-3-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P. SHARMA, ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

~~SUBJECT~~ : ~~Revision Application filed, under section~~
129DD of the Customs Act, 1962 against the
Order-In-Appeal No. CC(A)Cus/704/2013 dated
31.12.2013 passed by Commissioner of Customs
(Appeals), New Customs House, New Delhi.

APPLICANT : Deputy Commissioner, IGIA, T-3, New Delhi

RESPONDENT : Shri Kishore Kumar, A-3, Vishnu Garden, Sheetla
Mandir New Delhi.

ORDER

1. A Revision Application No. 380/56/B/2014-RA dated 03.04.2014 is filed by the Deputy Commissioner of Customs, IGIA, T.3, New Delhi (hereinafter referred as the applicant) against the Order-In-Appeal No. CC(A)CUS/704/2013 dated 31.12.2013 passed by the Commissioner of Customs (Appeals), New Delhi, whereby the appeal of Shri Kishore Kumar, the respondent in this case, has been allowed and the Order-In-Original of the Additional Commissioner imposing penalty on the respondent has been set aside.

2. The brief facts of the case are that the passenger, Shri Sanjay Nangia, had been intercepted at IGIA on 24.01.2011 and illegally imported goods of the value of Rs. 2697498/- were recovered from him. Accordingly, a case was booked against Shri Sanjay Nangia for evasion of customs duty on the smuggled goods. The respondent Shri Kishore Kumar is the brother of Shri Sanjay Nangia and he was also found available at arrival belt in the arrival hall on the day of incidence allegedly to aid and abet the illegal activities of Shri Sanjay Nangia. Hence, a case was booked against Shri Kishore Kumar also for imposition of penalty under Section 112 (a) 112 (b) for the Customs Act 1962. The show cause notice was adjudicated by the Additional Commissioner of Customs and a penalty of Rs. 200000 was imposed on Shri Kishore Kumar vide Order-In-Original No. 33/2013/AK/ADC/IGIA dated 03.05.2013. Being aggrieved Shri Kishore Kumar filed an appeal before the Commissioner (Appeals) with a request to set aside penalty on him and the same has been allowed vide above referred Order-In-Appeal. Consequently, present revision application has been filed by the applicant seeking revision of the Order-In-Appeal mainly on the grounds that Shri Kishore Kumar was also involved in smuggling of the goods alongwith his brother on 24.03.2011. Shri Sanjay Nangia and Shri Mohit Bhandari, the two main accused, in their statements have also stated that Shri Kishore Kumar was involved in the smuggling activities and thus the

Commissioner (Appeals) has committed error by dropping penalty on him.

3. A personal hearing was held in this case on 08.03.2018 and it was attended by Shri A.S. Hasija, consultant, for the respondent. He mainly contended that the order passed by the Commissioner (Appeals) is just and proper and it has been passed after taking into account all the relevant facts and evidences in the case.

4. On examination of the Revision Application and orders of the lower authorities, the Government has observed that the case against Shri Kishore Kumar is made by the Customs purely on the premises that he was present in the arrival hall of airport on 24.03.2011 and the two main accused, Shri Sanjay Nangia and Shri Mohit Bhandari, have also alleged that Shri Kishore Kumar was involved in the smuggling of the goods. But no direct evidence is found against Shri Kishore Kumar to establish that he was involved in any illegal activity with his brother on 24.03.2011. The Commissioner (Appeals) has examined the department's above charges against Shri Kishore Kumar in detail and concluded that his involvement in any illegal activity of his brother can not be proved on the basis of his mere presence at the airport and the statements of the two accused. The Government also finds that Shri Kishore Kumar never admitted any type of his involvement in the illegal importation of the goods by his brother and he had explained in the beginning itself that he had gone to the airport just to receive his brother on his arrival from Singapore without having any knowledge about the involvement of his brother in smuggling of goods. Shri Kishore Kumar is an employee of Air India and probably because of this fact he managed to go upto the Arrival Hall of the Airport. Except this fact, no other evidence has been adduced by the customs department to establish his involvement in the activity of his brother. The Government finds that the Commissioner (Appeals) has rightly held that mere presence of the respondent to receive his brother can not be considered as an evidence of his involvement. As regards statements of two main accused, the government agrees with the

"view of Commissioner (Appeals) that Shri Kishore Kumar cannot be held guilty only on the basis of their statements as these are not corroborated by any other evidence. In the Revision Application also, no new corroborative evidence has been produced to affirm the version of Shri Sanjay Nangia and Shri Mohit Bhandari that Shri Kishore Kumar was involved in the smuggling activities of his brother in any manner. Consequently, the Government does not find any reason to interfere with Order-In-Appeal of Commissioner (Appeals) on the basis of same charges which have already been considered by the Commissioner (Appeals).

5. In view of the above discussion, the Revision Application is rejected. ..

(Signature)
12.3.18

(RAJPAL SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

Deputy Commissioner
IGIA, Customs,
New Delhi.

ORDER No-37/2018-(w) dt-12-3-18

Copy to:-

1. The Commissioner of Customs, (Appeals), NCH, New Delhi.
2. The Commissioner of Customs, (I&G), NCH, New Delhi.
3. The Deputy Commissioner, IGIA, New Delhi.
4. Shri Kishore Kumar, A-3, Vishnu Garden, Sheetla Mandir New Delhi.
5. PS to AS(RA)
- ✓ 6. Guard File.
7. Spare

ATTESTED

(Signature)
12/3/18

(Nirmala Devi)

~~Sr. Technical Officer (R.A.)~~

Section