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SPEED POST**



**F.No.380/34/B/13-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue.....*29/1/16*

**ORDER NO. 04/2016-CUS DATED 28.01.2016** 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, against the Order-in-Appeal No. CC(A)/CUS/ I&G/01-02/2013 dated 07.01.2013 passed by Commissioner of Customs (Appeal), New Delhi.

Applicant : Commissioner of Customs (Import & General), New Delhi.

RespondentNo.1 : Mr. Shamsuddin Malik  
Respondent No.2 : Shri Didar Singh

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**ORDER**

This revision application is filed by Commissioner of Customs (Import & General) New Delhi (hereinafter referred to as Applicant), against the Order-in-Appeal No. CC(A)/CUS/ I&G/01-02/2013 dated 07.01.2013 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi, with respect to Order-in-Original No.17/JC/SIIB/Shamsuddin/2012 dated 19.10.2012 passed by Joint Commissioner(SIIB), Customs, New Delhi in respect of Shri Shamsuddin Malik (hereinafter referred to as Respondent No. 1) and Shri Didar Singh (hereinafter referred to as Respondent No. 2).

2. On specific information that a passenger Shri Shamsuddin Malik would try to smuggle memory cards through un-accompanied baggage by declaring them as 'Personal effects/ household goods, the officers of SIIB Unit of Customs, intercepted the shipment arrived on 22.07.2011 at IGI Airport, New Delhi, under MAWB 09890373161, pertaining to Shri Shamsuddin Malik after he filed Baggage Declaration Form dated 23.07.2011, for clearance of his baggage and declared the goods as 'personal effects' valued only at Rs. 10,000/-. The said baggage was opened and examined in the presence of two independent witnesses and Shri Shamsuddin Malik. The following goods, collectively valued at Rs 31,07,178/- were recovered under the panchanama dated 23.07.2011:-

1. 2 GB Micro SD Cards (unbranded)	8300 pcs
2. 2 GB Micro SD Cards (Kingston Brand)	14000 pcs
3. Nikon Brand coolpix Digital Camera	02 pcs
4. Blackberry mobile phone 8100	01 pc
5. Apple Ipad 64 GB	03 pcs
6. Fabric (Suit length)	88.3 mtrs

2.1 The statement of Shri Shamsuddin Malik was recorded on 23.07.2011 under Section 108 of the Customs Act, 1962 as given in para 3 of the impugned Order-in-Original wherein he interalia stated that on the instructions from one Shri Didar Singh, who had promised him to give Rs. 3/- per memory card, he brought 22300 nos of memory cards alongwith other goods; that he met Shri Didar Singh approximately 2 months back in Gaffar Market, Delhi; that he used to talk to Shri Didar Singh often and he knew that Shri Didar Singh was dealing in memory cards and mobile phones; that Shri Didar Singh was working for one Shri Ranjit Singh of Hong Kong; that he was to deliver the goods after Customs clearance to Shri Didar Singh, who would meet him near metro pillar no. 578 near Janakpuri metro station, New Delhi; that he agreed to take the officers to metro pillar 578 where Shri Didar Singh was to arrive to collect the goods. He further stated that on his last visit, Shri Didar Singh made the payment for the shipment of goods to Shri Ranjit Singh of Hong kong but he did not bring the same alongwith him on his return; that after his return from Hong Kong, Shri Ranjit



Singh booked the said goods, and that he did not purchase the memory cards which belonged to Shri Didar Singh and on whose instructions, Shri Ranjit Singh booked these items in his name; that he was to get only carrying charges; that he declared the value of the goods in the Baggage Declaration Form on the instruction of Shri Ranjit Singh.

2.2 Thereafter, the Customs Officers accompanied Shri Shamsuddin Malik to metro pillar no. 578 near Janakpuri metro station where Shri Didar Singh was to take the delivery of the goods from him. When Shri Didar Singh came to take the delivery, the officers of the Customs apprehended him and served him the summons for his appearance on 23.07.2011 in SIIB Office, Air Cargo, IGI Airport, New Delhi and thereafter Shri Didar Singh accompanied the officers to Air Cargo, IGI Airport, New Delhi.

2.3 The statement of Shri Didar Singh dated 23.07.2011, was recorded under Section 108 of Customs Act, 1962 wherein he interalia stated that he was constantly in touch with Shri Shamsuddin Malik through his mobile phone and reached metro pillar no. 578 to take the delivery of memory cards; that he knew Shri Shamsuddin Malik for the last three months; that Shri Ranjit Singh booked approximately 23000 nos of SD memory cards in the unaccompanied baggage of Shri Shamsuddin Malik; that he was shown the statement dated 23.07.2011 of Shri Shamsuddin Malik and he signed the same in token of having seen it and accepted the same and admitted that approximately 23000 nos of SD Memory Cards valued at Rs. 28,00,000/- belonged to him and he was to pay Rs. 5,000/- to Shri Shamsuddin Malik as carrying charge; that this was first the time when he ordered for memory cards. Call details procured from the service provider by the investigating authority also proved that Shri Didar Singh made 20-25 times call to Shri Shamsuddin Malik in and around Customs House, New Delhi.

2.4 After due process of law, the adjudicating authority decided the case vide Order-in-Original dated 19.10.2012 wherein he ordered as below:-

- (a) Ordered for the absolute confiscation of the goods collectively valued at Rs. 31,07,178/- in terms of provisions of Section 111 (i), (l) & (m) of the Customs Act, 1962 as the owner of the goods did not claim the goods
- (b) Imposed a penalty of Rs. 10,00,000/- (Rs. Ten lacs only) on Shri Shamsuddin Malik in terms of section 114 AA of the Customs Act, 1962.
- (c) Imposed a penalty of Rs. 15,00,000/- (Rs. Fifteen lacs only) on Shri Didar Singh in terms of Section 114 AA of the Customs Act, 1962.

3. Being aggrieved by the said Order-in-Original, respondents filed appeal before Commissioner (Appeals) who modified the Order-in-Original and allowed the impugned



goods to be released to Shri Shamsuddin Malik for home consumption on payment of Rs. 1,00,000/- (one lacs) as redemption fine. Penalty imposed upon him was reduced from Rs. 10,00,000/- (Ten lacs) to Rs. 1,00,000/- (One Lac) and penalty imposed on Shri Didar Singh was reduced from Rs. 15,00,000/- (Fifteen lacs) to Rs. 2,00,000/- (Two lacs).

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

4.1 That the Commissioner (Appeal) has erred in holding that the impugned goods were not prohibited when the goods, which were not in the nature of bonafide baggage were being attempted to be imported as baggage. Prohibited goods have been defined in Section 2 (33) of Customs Act, 1962 as

*"any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with".*

Conversely, therefore, if the conditions subject to which the goods are permitted to be imported are not met, they become prohibited goods. Goods are permitted to be imported as baggage provided they constitute bonafide baggage of the passenger in terms of para 2.20 of Exim Policy, 2009-14. Therefore if goods have been imported in commercial quantity as baggage, in violation of the above condition they become prohibited goods as per definition reproduced above.

4.2 That the Commissioner (Appeals) has erred in releasing the smuggled goods on payment of redemption fine. In the statement recorded before the investigating officer the passenger Sh. Shamsuddin Malik had clearly deposed under Section 108 of Customs Act, 1962 that he was acting only as a carrier and that the goods did not belong to him. It is a settled position of law that seized goods cannot be released to the person who has admitted to not being the owner of said goods. The adjudicating officer in this regard had correctly confiscated the goods absolutely by placing reliance on the judgment of the Tribunal in the case of GV Ramesh vs Commissioner of Customs Chennai 2010(252)ELT(tri-che.) and UOI vs Mohd. Aijaj Ahmed 2009(244)ELT 49 (Bom.). Commissioner (Appeals) failed to appreciate that the subsequent act of Shri Didar Singh giving no objection to release of goods to Shri Shamsuddin Malik was an afterthought and could not be taken cognizance of in face of the categorical admission as a carrier of the impugned goods by Shri Shamsuddin Malik in his statement recorded under Section 108 of Customs Act, 1962. Assuming, had Shri Shamsuddin Malik had not admitted to the fact of being carrier of the goods in his statement, the goods could be released on redemption fine, then the



Commissioner (Appeals) has erred in imposing low redemption fine of Rs. 1,00,000/- considering the value of goods involved and gravity of the offence.

4.3 That the Commissioner (Appeals) has erred in reducing the penalty on both the appellants imposed under the adjudication order for smuggling of goods valued at Rs. 31,07,178/- by way of outright concealment and mis-declaration as part of unaccompanied baggage. The adjudicating officer had rightly confiscated the goods absolutely and imposed penalty of Rs.10,00,000/- on Shri Shamsuddin Malik and Rs. 15,00,000/- on Shri Didar Singh respectively under Section 114AA of Customs Act, 1962. That this has been reduced by Commissioner (Appeals) to Rs.1, 00,000/- and Rs.2, 00,000/- on Shri Shamsuddin Malik and Shri Didar Singh respectively. That the penalty has been modified/reduced to an unjustifiable low level. It has repeatedly been held by the Tribunal that quantum of penalty should be such that it act as deterrent for other recalcitrant importers.

(a) That the Commissioner(Appeals) has erred in deciding that the baggage rate of duty in itself has inbuilt component of penalty because it is multiple times of normal rate of duty, therefore, there is case of imposition of reasonable fine in lieu of confiscation and reduction of penalty, as the goods are freely importable. That in this case the goods were attempted to be smuggled into India through baggage clearance mode with outright mis-declaration to avoid Customs Duty and penalty on non bonafide baggage as the goods on examination were found to be in commercial quantity.

(b) That the quantum of Redemption Fine imposed cannot be indexed to the rate of duty applicable to regular imports as the person has not adopted such route. That it is a case of outright smuggling as proved on the basis of investigation and evidences on record. Though the goods are freely importable, the 'PAX did not choose the proper channel i.e. Air Cargo by filing Bill of Entry where normal rate of duty is less than baggage but required legal documentation i.e. IEC No., purchase/sale records, bank account, foreign remittance for purchase, filing of Sales Tax return and filing of ITR etc. to out pass all these settled legal systems for import of commercial goods through baggage with declaration of "Personal effects/household goods" valued only at Rs. 10,000/- for one package. That on examination of his baggage, goods collectively valued at Rs. 31, 07,178/- were recovered. That the baggage route is adopted for smuggling not just with a view to evade Customs Duty but also to escape several other important complications including those relating to foreign exchange remittance, income tax, IPR regulations etc.

(c) That on the basis of evidences against Shri Shamsuddin Malik and Shri Didar Singh both were arrested under Section 104 of Customs Act, 1962. Order-in-Appeal calls for soft approach which is not legal in such type of outright smuggling cases. Keeping in view the scale and magnitude of the smuggling operation wherein



commercial goods valued at Rs. 31,07,178/- were attempted to be smuggled through baggage route, the quantum of penalty imposed by the adjudicating officer was appropriate for meeting ends of justice and should have been upheld.

4.4 Further the Department Applicant has prayed to the Revisionary Authority the following:-

(i) That in view of the above facts and circumstances, evidence on record and on ground of appeal of the case, the above mentioned Order-in-Appeal No.CCA/I&G/01-02/2013 dated 07.01.2013, passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi should be set aside and Order-in-Original is restored/upheld.

(ii) or pass such order as the Government of India, may deem fit, proper and appropriate in the light of facts and circumstances of the case.

5. A Show Cause Notice was issued to the respondents under Section 129 DD of Customs Act, 1962 to file their counter reply but no reply was received in this regard from the respondents.

6. Personal hearing in this case was fixed on 16.03.15, 08.04.15, 21.04.15, 13.05.2015 and 09.09.2015. Hearing was attended by Shri P.K. Srivastava, Superintendent, Customs (SIIB) on behalf of the applicant who reiterated the grounds of revision application. Neither the respondents nor their authorized representative attended the personal hearing granted from time to time by Revisionary Authority nor sought any adjournment. Hence Government proceeds to decide the case on the basis of available case records pertaining to the case.

7. Government has carefully gone through the relevant case records available in the case files, oral & written submission and perused the impugned Order-in-Original & Order-in-Appeal.

8. On perusal of records, Government observes that Shri Shamsuddin Malik filed the Baggage Declaration (BD) dated 23.07.2011 in respect of the unaccompanied consignment arrived at IGI Airport New Delhi on 22.07.2011 by flight no. AI 317 dated 21.07.2011. In the baggage declaration the goods were declared as "personal effects" totally valued at Rs. 10,000/-. On examination of the baggage 22300 nos. of memory cards of 2 GB valued at Rs 28 lacs and miscellaneous electronic goods and fabric valued at Rs 3,07,178/- were recovered. The goods being mis-declared and in commercial quantity and in the baggage declaration were placed under seizure under Section 110 of Customs Act, 1962. In the statement of Shri Shamsuddin Malik recorded on 23.07.2011 under Section 108 ibid wherein he ineralia admitted that he had imported the goods on the instructions of one Shri Didar Singh for which he was



to get carrying charges; that he did not purchase the goods which belonged to Shri Didar Singh; and on whose instructions, Shri Ranjit Singh booked these in his name; upon clearance he was to deliver the goods to Shri Didar Singh at metro pillar no. 578 Near Janakpuri Metro Station, New Delhi. Shri Didar Singh in his statement dated 23.07.2011 admitted he had given the said address to receive the goods; that Shri Ranjit Singh booked the goods in the unaccompanied baggage of Shri Shamshuddin Malik for which he was to pay him carrying charge. A Show Cause Notice was issued to both Shri Shamshuddin Malik and Shri Didar Singh which was adjudicated by the adjudicating authority ordering absolute confiscation of the impugned goods as owner of the goods as owner of the goods did not claim the goods; imposed penalty vide Section 114 AA ibid of Rs. 10,00,000/- on Shri Shamshuddin Malik and Rs. 15,00,000/- on Didar Singh. The Commissioner (Appeals) vide impugned Order-in-Appeal allowed release of goods to Shri Shamshuddin Malik on payment of duty and fine of Rs. 1,00,000/- under Section 125 ibid and reduced penalty on Shri Shamshuddin Malik to Rs. 1,00,000/- and Shri Didar Singh to Rs. 2,00,000/-. Aggrieved by the order of Commissioner (Appeals), Department has now filed Revision Application on grounds stated in para 4.

9. Government observes that the issue to be decided in revision is whether the impugned goods as held by the adjudicating authority liable for absolute confiscation have been rightly allowed to be released on payment of redemption fine and penalty by the Commissioner (Appeals) and whether penalty imposed on the respondents been rightly reduced or not.

10. Government notes it is an undisputed fact on record that the impugned goods totally valued at Rs. 31,07,178/- are in commercial/trade quantity and do not constitute bonafide personal effects under Section 79 ibid read with the EXIM policy in force and the passenger neither made a true declaration of the goods nor declared true quantity and value. Therefore, he contravened the provisions of Section 77 and 79 of the Customs Act. In terms of CBEC's Circular No. 29/2000-Cus dated 11.04.2000 import of goods in commercial quantity would not be permissible within the scope of baggage rules, even on payment of duty. Reliance is also placed on decision of Hon'ble Apex Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi 2003(155)ELT 423(SC) wherein it is held that the goods which can be imported subject to certain conditions and if conditions not fulfilled, it has to be treated as prohibited goods. The respondent was not eligible to import the impugned goods and were imported in gross violation of the provisions of the Customs Act and Foreign Trade (Development and Regulatory) Act and would appropriately constitute prohibited goods liable for confiscation under Section (i), (l) & (m) ibid. Therefore, Government upholds Department's contention that absolute confiscation is legally warranted keeping in view the facts and circumstance of the case.



11. Government further notes that under Section 125 ibid wherein confiscation of any goods is authorized by the Act, the officer adjudging may give to the owner of the goods or where the owner is not known, the person from whose possession or custody such goods have been seized an option to pay fine in lieu of confiscation. In this case, it is an admitted fact that the owner of the goods is Shri Didar Singh and Shri Shamsuddin Malik is a conduit through whom the goods have been illegally attempted to be imported in the country. It is an admitted fact on record that Shri Shamsuddin Malik imported the goods on behest of Shri Didar Singh. Statement of Shri Shamsuddin Malik was recorded on 23.07.2011 under Section 108 of Customs Act, 1962, wherein he inter-alia stated that on the instructions of one Shri Didar Singh, who had promised him to give Rs. 3/- per memory card as carrying charge, he brought 22,300 nos. of memory cards along with other goods, that he brought the goods for Shri Didar Singh, who was to meet him at metro pillar No. 578 to take the delivery of memory cards after clearance from Customs. Shri Didar Singh who was apprehended by Customs Officers at the delivery site in his voluntary statement dated 23.07.2011 admitted to the fact that impugned goods belonged to him which corroborates to the voluntary statement dated 23.07.2011 tendered by Shri Shamsuddin Malik. The goods thus belonged to Shri Didar Singh and under no circumstance were the bonafide baggage of Shri Shamsuddin Malik. He also admitted to the fact that he made payment for booking the impugned goods to one Shri Ranjit Singh of Hong Kong who in turn booked the goods in the name of Shri Shamsuddin Malik after he left Hong Kong. Therefore, the goods cannot be released to Shri Shamsuddin Malik. Government notes that the appellate authority had completely ignored the fact that Shri Shamsuddin Malik was the carrier of the impugned goods and he brought the goods on behalf of Shri Didar Singh for monetary gain. The no objection given by Shri Didar Singh to Shri Shamsuddin Malik was nothing but an afterthought to escape from the penal action at the hands of Customs Authorities. Government, therefore, holds that in the present case the goods imported by the passenger as a carrier are liable for absolute confiscation as rightly pleaded by the Department.

12. Government's views as above also find support in the decision of Hon'ble Supreme Court in the case of Mohammad Aijaj Ahmed 2010 (235) ELT E83 (SC) wherein it has upheld order of Mumbai High Court wherein release of gold to passenger who acted as carrier was not allowed and absolute confiscation was upheld. Further the Hon'ble High Court of Chennai in the case of S. Faisal Khan vs. Joint Commissioner of Customs (Airport) Chennai 2010 (259) ELT 541 (Mad) upheld absolute confiscation of goods carried on behalf of someone else for a monetary consideration. In the case of Ram Kumar vs. Commissioner of Customs 2015 (320) ELT 368 (Del) also the Hon'ble High Court of Delhi has held that carrier is not entitled to benefit of Section 125 of Customs Act, 1962.



13. In view of above, Government holds that the original adjudicating authority has rightly ordered absolute confiscation of the impugned goods and that the Commissioner (Appeals) has erred in allowing releasing of the impugned goods on payment of redemption fine and reduced penalty.

14. Government further notes that Commissioner (Appeals) in his order dated 07.01.2013 held that since the baggage rate of duty was levied on the impugned goods which inbuilt contains the provision of penalty also, it justifies the reduction of penalty amount imposed by the adjudicating authority. Government is not inclined to accept the averments of appellate authority as the baggage was cleared under Rule 9 of Baggage Rules, 1998 as amended which deals with the provision for clearance of unaccompanied baggage wherein the baggage rate of duty is leviable which was a statutory requirement under the Customs Act, 1962. Government further observes that facts on record clearly established the collusion in outright smuggling activities by Shri Didar Singh with Shri Shamsuddin Malik (main accused) and his abetment of such actions and both have indulged in smuggling of goods by way of outright concealment and mis-declaration as part of unaccompanied baggage. Therefore, the justification of appellate authority in reducing the penalty is not tenable and Government restores the penalty amount as imposed by the original authority on both the respondents.

15. In view of the above findings and discussions Government sets aside the impugned Order-in-Appeal as illegal and improper and upholds the Order-in-Original in toto.

16. Revision Application is allowed as above.

17. So ordered.

  
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

The Commissioner of Customs(I&G),  
New Customs House, Near IGI Airport(T-3),  
New Delhi.

  
Attested

श्रीकान्त अली  
Shrikanth Ali  
जॉइंट सेक्रेटरी (ए. ए. सी.)  
Joint Secretary (A. A. C.)

**ORDER NO. 04/2016-CUS DATED 28.01.2016**

Copy to:

1. Shri Shamsuddin Malik, Y-107, Mangalpuri, Delhi-110083.
2. Shri Didar Singh, 54/108, 1st Floor, Old Mahaveer Nagar, Tilak Nagar, New Delhi.
3. The Commissioner of Customs, (Appeals), New Customs House, Near IGI Airport, New Delhi.
4. The Additional Commissioner of Customs (SIIB), NCH, New Delhi.
5. Guard File.
6. PA to JS (RA).
7. Spare Copy.

ATTESTED



(ShaukatAli)  
Under Secretary (RA)

श्री शाकत अली  
अधीन सचिव (रा)  
नया दिल्ली