

REGISTERED
SPEED POST



F.No. 380/94/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...26/3/18

ORDER NO. 44/2018-Cus dated 23-03-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER 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/519/2014 dated 29.05.2014, passed by the
Commissioner of Customs (Appeals), New Custom House,
New Delhi.

APPLICANT : Commissioner of Customs, New Custom House, New Delhi.

RESPONDENT : Mr. Ram Awadh Singh

ORDER

A Revision Application No. 380/94/B/2014-R.A.Cx dated 23.09.2014 is filed by the Deputy Commissioner of Customs, IGI Airport, New Delhi (hereinafter referred to as Applicant) against Order—In—Appeal No. CC(A)Cus/519/2014 dated 29.05.2014, whereby the appeal of the respondent, Shri Ram Avadh.Singh, has been allowed and the order of the original adjudicating authority imposing penalty of Rs. 50,000/- on the respondent has been set aside.

2. The brief facts of the case are that one passenger named Shri Sanjay Nagia arrived on IGI airport from Singapore on 24.03.2011 and a trolley loaded with his baggages was brought by the respondent, a loader on the Airport, directly from arrival area to departure hall with the help of Shri Mohit Bhandari, Sub Assistant Commercial Officer of Air India, Shri Kishor Kumar, an employee of Air India. The tags of the baggages were changed to project as if the passenger had missed flight and had to exit from airport. However, before they could exit from the airport, they were intercepted by CISF officers on suspicion and they were handed over to Custom Authorities along with the baggage brought by Mr. Nagia. Several foreign goods were recovered from the baggages and after carrying out required investigation, proceedings were initiated against Mr. Sanjay Nagia, Mr. Mohit Bhandari, Mr. Kishor Kumar, the respondent and a common OIO dated 03.05.2013 was passed by the Additional Commissioner of Customs confiscating all imported goods absolutely and imposing personal penalties. A personal penalty of Rs.50,000/- was imposed on the applicant under the said Order against which the applicant filed appeal before the Commissioner(Appeal) and the same was disposed off by directing

the adjudicating authority to look into this matter in the light of his observations in the Order—In—Appeal.

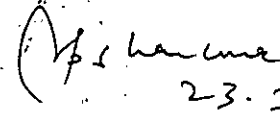
3. Present Revision Application has been filed mainly on the grounds that inspite of respondent's active involvement in the case the Commissioner(Appeal) has wrongly exonerated him and as per Section 128A(3) of the Customs Act, 1962 the Commissioner(Appeals) does not have power to remand back the case to original authority.

4. Personal Hearings were offered in this case on 08.09.2017 and thereafter on 08.03.2018 by me. However, no one appeared for the hearing for the applicant or for the respondent. Further no reason for non availment for the hearing and no request for any other date of hearing is received from which it is implied that they are not interested in availing in personal hearing.

5. On examination of the Revision Application and the Orders of the lower authorities, the government has noticed that despite Commissioner(Appeal)'s clear observations in his Order that he does not find any reason to consider the role of the applicant in connection with the smuggling activities, he has remanded the case back to the additional commissioner of customs to relook in the matter without specifying what else the adjudicating authority was required to relook and why he did not pass the final order at his end itself when he was of the view that the respondent had no adverse role in this case. Moreover, in the light of the case records, statements of the respondent and the Order-In-Original, the government has found that the Commissioner(Appeal)'s findings that the applicant did not play any role in abetting the smuggling of goods is not based on objective appreciation of materials available against the applicant evidencing he carried the clearly smuggled

goods of Mr. Nagia from Arrival Area to the Departure Area and changed the tags of the baggages to show off as if the passenger had been off loaded from the departing flight, inspite of knowing fully well that Mr. Nagia had come along with several baggages from Singapore and he was not authorized to go to the departure area along with baggages of foreign goods. Being a loader at the international Airport, he was fully aware about evasion activities of Mr. Nagia passengers and he had all the more reasons to suspect the activities of Mr. Nagia as Mr. Mohit Bhandari had asked him to divert the imported goods from Arrival Hall to the Departure Area on payment of money and he had done such job even earlier at the behest of Mr. Bhandari as per his own statement given before the Custom Officers. Thus, he played an important role as a loader in connection with the wrong activities of Mr. Nagia and is liable for penalty under Section 112 of the Customs Act. Apparently all these facts have not been considered objectively by the Commissioner(Appeal). As regards the point whether the Commissioner(Appeal) is empowered to remand the case back to original authority, the government agrees with the applicant that Commissioner(Appeal) does not have power to remand the case under Sub Section 3 of Section 128A of the Customs Act. Hence the government set aside the Order—In—Appeal. However, considering the fact that the respondent is a loader only and his role was limited to shifting the baggages within the Airport only by taking a paltry amount of just Rs.200/-, the government reduces the penalty from Rs. 50,000/- to Rs. 10,000/- on the respondent.

6. Accordingly, the Revision Application filed by the revenue is allowed.


23.3.18

(R.P.Sharma)

Additional Secretary to the Government of India

The Commissioner of Customs,
New (Import & General),
New Customs House, IGI Airport
Complex, New Delhi - 110037

ORDER NO. 44/2018-Cus dated 23-3-2018

Copy to:

1. Mr. Ram Awadh Singh, Shavada, Muhavadpur, Gali No. 3, New Delhi-110061
2. The Commissioner of Customs (Appeals), New Customs House, Near I.G.I. Airport, New Delhi - 110037.
3. The Deputy Commissioner O/o The Additional Commissioner of Customs, New Customs House, Near I.G.I. Airport, Terminal-3, New Delhi-110037
4. PA to AS(RA)
5. Guard File
6. Spare copy

ATTESTED

(Debjit Banerjee)
STO (RA)