



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 371/08/B/15-RA / 5505

Date of Issue 22.11.19

ORDER NO. 15/2019-CUS (WZ)/ASRA/MUMBAI DATED 14.11.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Kuldip Singh

Respondent : Principal Commissioner of Customs (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-540 & 541/14-15 DATED 17.11.14 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Kuldeep Singh (herein after referred to as the Applicant) against the order in appeal MUM-CUSTOM-PAX-APP-540 & 541/14-15 dated 17.11.14 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 21.03.2010, Shri Rajinder Singh, passenger Delhi-Mumbai domestic sector on arrival by Air India's International flight No. AI-Hongkong-Delhi-Mumbai, was intercepted by the Customs officers the C.S.1. Airport, Mumbai. Search of his person resulted in recovery of three pouches containing 6000 pcs of micro SD cards, made in Korea and valued at 2,00,000, (CIF). Subsequently, Shri Balwinder Singh who had travelled from Hongkong to Mumbai on the same flight was also apprehended. Later, Shri Rajbir Singh was intercepted and in follow-action Shri Kuldeep Singh was also apprehended and search of their baggage resulted in the recovery of 16000 SD cards valued 40,00,000/-. Investigations revealed that Shri Balwinder Singh had brought the impugned goods from Hongkong and handed over the same to The Applicant who distributed the same to the other two accomplices who travelled on board of the same flight as domestic passengers from Delhi to Mumbai, to be cleared as domestic goods, thereby evading the payment of customs duty. The impugned goods were valued at Rs. 49,18,320/- ( Rupees Forty nine lacs Eighteen thousand Three hundred and twenty.

3. The Original Adjudicating Authority vide Order-In-Original No. 336/2014 AIU ordered absolute confiscation of the impugned goods under Section 111 (d) (i) and (l) of the Customs Act,1962, and imposed penalty of Rs. 10,00,000/- ( Rupees Ten Lacs ) on Shri Balwinder Singh, a penalty of Rs. 5,00,000/- ( Rupees Five Lacs ) on Shri Kuldeep Singh, a penalty of Rs. 2,50,000/- (Two lacs Fifty thousand ) each on Shri Rajinder Singh and Shri Rajbir Singh under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant, Shri Kuldeep Singh filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-540 & 541/14-15 dated 17.11.14 rejected the appeal of the applicant.

5. Aggrieved with the above order the Applicant, has filed this revision application inter alia on the grounds that;

5.1 The Commissioner ( Appeals) failed to appreciate that the Appellant and his co-noticees had retracted their statements dated 21.03.2010 on the first available opportunity when he was produced before Ld. A.C.M.M. Esplanade Mumbai. The Ld. Commissioner of Customs (Appeals) Mumbai further erred by considering the further statement dated 09.4.2004 of the appellant without considering the retraction filed by the appellant.; the version of the department regarding the

recovery of memory cards from the person of Rajinder Singh and from the black coloured bag of Shri Kuldip Singh is absolutely false and concocted as it is stated in para 41 of the order in original that two red coloured suitcases used for carriage and concealing the dutiable goods i.e. memory cards are also liable to for confiscation. This clearly shows that the version of the department regarding the recovery is absolutely false and the impugned order of the Commissioner of Customs (Appeals) Mumbai, is liable to be set aside as no prima facie case is made out at the appellant.; The Ld. the Commissioner of Customs (Appeals) Mumbai, failed to appreciate that the appellant has been falsely implicated in the above mentioned case. Shri Kuldip Singh fell ill and he was taken to the Hospital after reaching Delhi and his baggage as per version of the department remained with the uniformed officer till the alleged recovery. Thereafter, after discharge Shri Kuldip Singh went to the Hotel for rest and from there he was picked up by the Custom Officers and was falsely implicated in the above mentioned case. Therefore, on this ground also the impugned order is liable to be set aside.; The Ld. the Commissioner of Customs (Appeals) Mumbai, erred while rejecting the appeal of the appellant as he is not in a position to deposit balance amount of Rs. 4,70,000/- due to his poor financial condition and due to the fact that he is sole bread earner for his family and is suffering from TB and diabetes and is a Heart patient.

5.2 The Applicant prayed for setting aside the order in Appeal and thus render justice.

6. A personal hearing in the case was scheduled on 28.08.2019, 17.09.2019 and 11.10.2019, however the Applicant did not appear for the hearing. Nobody from the department also attended the hearing, therefore the case is being decided exparte on merits.

7. The Government has gone through the facts of the case. The Applicant has contested the imposition of penalty on grounds that his statement recorded by the Customs officers was retracted by him before the Ld. A.C.M.M. Esplanade Mumbai. In addressing the issue the Appellate order has observed that the Applicant and his co-noticees, after retracting their initial statements have again admitted their offence in the subsequent statements. The issue of black /red strolley bags has also been suitably addressed by the Commissioner (Appeals) in his order, it appears to be a typing error and the allegation of concoction of evidence is baseless.

8. The investigations carried out by the officers clearly bring out the role played by the main accused Shri Malkit Singh, Shri Kuldip Singh and Shri Balwinder Singh in the smuggling operation. The statements of Shri Rajinder Singh reveal that he was asked to

carry some goods given to him by Shri Kuldip Singh, for a monetary consideration of Rs. 5,000/- and hand over the same back to Shri Kuldip Singh outside Mumbai Airport. Similarly, in his voluntary statement, Shri Rajbir Singh states that he was given three packets, of memory cards by Shri Kuldip Singh in the Aircraft, enroute to Mumbai from Delhi and admitted to have handed it back to Shri Kuldip Singh in Mumbai. He has submitted that he agreed to accompany Shri Kuldip Singh for a consideration of "to and fro air ticket" from Delhi to Mumbai. In his statement Shri Kuldip Singh has admitted that Shri Malkit Singh who is stationed in HongKong sent the memory cards through Shri Balwinder Singh. The cards were then distributed to Shri Rajinder Singh and Shri Rajbir Singh, who were domestic passengers enroute to Mumbai from Delhi inflight. The impugned memory cards were then to be cleared as domestic goods without the payment of duty. The investigations conducted reveal that the entire operation appears to have been planned and carried out by Shri Malkit Singh in Hong Kong and Shri Kuldip Singh using Shri Balwinder Singh. Shri Kuldip Singh also revealed that Shri Kuldip Singh owned 50 % of the consignment, the other 50% belonged to Shri Malkit Singh, however he disowned the same after they were seized at the Airport. These facts suggest that Shri Kuldip Singh and Shri Malkit Singh were the ultimate beneficiaries of the duty sought to be evaded.

8. In view of the above the order in Appeal is liable to be upheld. Government therefore upholds the Order in Appeal No. MUM-CUSTM-PAX-APP-540 & 541/14-15 dated 17.11.14 passed by the Commissioner ( Appeals) Mumbai.

9. Revision Application is dismissed.

10. So ordered.

( SEEMA VARORA )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 45/2019-CUS (WZ) /ASRA/

DATED 14.11.2019

To,

Shri Kuldip Singh  
R/o Anup Nagar, Awas Corporation Point, Ward No. 3, Gannaur Mandi, Sonapat,  
Haryana.

Copy to:

1. The Principal Commissioner of Customs (Airport), Mumbai.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.