



सत्यमेव जयते

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

F.No. 371/09/B/15-RA / 5510

Date of Issue 28.11.19

ORDER NO. 17/2019-CUS (WZ)/ASRA/MUMBAI DATED 17.11.2019 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 Rajbir 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-CUSTM-PAX-APP-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 Rajbir Singh (herein after referred to as the Applicant) against the order in appeal MUM-CUSTOM-PAX-APP-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 also intercepted. 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 other three 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 and Shri Kuldeep Singh filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-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 Kuldeep 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 Kuldeep 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 Kuldeep 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. 2,35,000/- due to his poor financial condition. The appellant is a very poor person and is hardly able to earn enough to support and sustain his family.

5.2 . . The Applicant contested the imposition of penalty and prayed for setting aside the Appellate and thus render justice.

6. A personal hearing in the case was scheduled in the case on 01.10.2019, the Applicant appeared and contested the imposition of penalty and sought relief submitting that he does not even have a passport. Nobody from the department attended the hearing.

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.

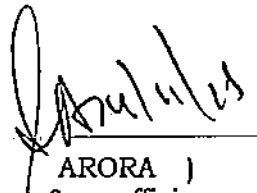
8. The investigations carried out by the officers clearly bring out the role played by the main accused Shri Malkit Singh, Shri Kuldeep Singh and Shri Balwinder Singh in the smuggling operation. The statements of Shri Rajinder Singh reveal that he was asked to carry some goods given to him by Shri Kuldeep Singh, for a monetary consideration of Rs. 5,000/- and hand over the same back to Shri Kuldeep Singh outside Mumbai Airport. Similarly, in his voluntary statement, the Applicant, Shri Rajbir Singh states that he was

given three packets, of memory cards by Shri Kuldeep Singh in the Aircraft, enroute to Mumbai from Delhi and admitted to have handed it back to Shri Kuldeep Singh in Mumbai. He has submitted that he agreed to accompany Shri Kuldeep Singh for a consideration of "to and fro air ticket" from Delhi to Mumbai. The investigations conducted by the officers do not in any way reveal that the Applicant and Shri Rajinder Singh were fully aware that they are being involved in a well laid out plan to smuggle the goods into India. Except the statements recorded there are no evidences brought out by the investigation officers to conclude that the Applicant was fully aware that he was getting trapped in a smuggling racket. The entire operation appears to have been planned and carried out by Shri Malkit Singh in Hong Kong and Shri Kuldeep Singh using Shri Balwinder Singh and the facts suggest that these two were the ultimate beneficiaries of the duty sought to be evaded. The investigations conducted also allude to the fact that both the Applicant and Rajinder Singh agreed to accompany Shri Kuldeep Singh on the domestic leg of the journey not fully understanding the larger aspect of smuggling plan. Had they been aware they would have the option not to get involved in the smuggling operation. The statements of the two main accused ie Shri Balwinder Singh and Shri Kuldeep Singh also do not reveal that the Applicant was aware of the smuggling operation.

8. In view of the above facts, the imposition of Rs. 2,50,000/- (Rupees Two lacs Fifty thousand) as personal penalty on the Applicant appears to be too high and unjustified. Government therefore reduces the penalty imposed to Rs. 50,000/- (Rupees Fifty thousand). The Order in Appeal No. MUM-CUSTOMS-PAX-APP-541/14-15 dated 17.11.14 passed by the Commissioner (Appeals) Mumbai is partially modified as above.

9. Revision Application is partially allowed.

10. So ordered.


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

ORDER No. 17/2019-CUS (WZ) /ASRA/

DATED 14.10.2019

To,

Shri Rajbir Singh
 R/o Anup Nagar, Awast 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.