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SPEED POST

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

F.No. 380/118-119/B/16-RA / 3525

Date of Issue

ORDER NO. ⁵⁹⁻⁶⁰ /2020-CUS (SZ)/ASRA/MUMBAI DATED 21/5/2020 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 : Commissioner of Customs, Cochin

Respondent -1: Shri K. C. S. Prasanth,
Respondent -2: Shri K. C. Prasannakumar

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
391/2015-16 dated 15.03.2016 & 392/2015-16 dated
08.03.2016 passed by the Commissioner of Customs
(Appeals), Cochin.

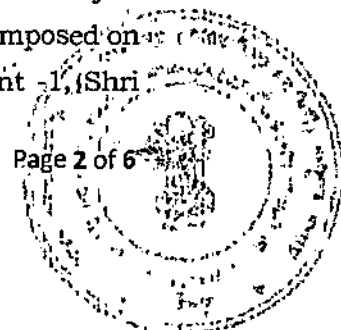


ORDER

This revision application has been filed by Commissioner of Customs, Cochin (herein referred to as Applicant) against the order no 391/2015-16 dated 15.03.2016 and 392/2015-16 dated 08.03.2016 passed by the Commissioner of Customs (Appeals), Cochin. As both these revision Applicants have been filed in respect of the same case, these Revision Applications are being disposed of together.

2. Based on an information received from DRI, Chennai, the officers of DRI Cochin examined a consignment of unaccompanied baggage which had arrived at Air Cargo Complex Cochin from Singapore the name of Shri Kareem Sadhik Basha, Chennai. The contents were declared in the Baggage Declaration as blankets, used clothes, books and assorted crockery, valued at Rs.1000/-, whereas on examination by DRI, the same was found to contain watches, cameras, handycams and lenses and accessories for camera. On the basis of the statements recorded from the importer Shri Kareem Sadhik Basha, CHA Shri Prince Joseph, their accomplices, and from the Customs officers deployed at the Air Cargo Complex, DRI registered a case for alleged smuggling of electronic items in the guise of bonafide baggage. One such consignment was also seized by DRI at Chennai. The investigations concluded that the respondent-1, while working in the capacity of Superintendent in charge of Air cargo complex, Nedumbassery, has abetted and actively participated in the smuggling of high value electronic goods from Singapore to India via Cochin Air Cargo Complex in as much as he introduced the Customs Agent Prince Joseph to Abdulla, the mastermind behind these operations, coordinated with Prince Joseph so as to facilitate the clearance of the said consignments, and also instructed the Preventive Officers Shri. D. Surendran Pillai and Respondent-2, Shri.K. C. Prasannakumar not to examine the cargo in full, thereby instigated them to create a wrong inventory/assessment resulting in the large-scale evasion of customs duty. Revenue has relied primarily on the statements recorded from various persons under Section 108 of the Customs Act. Shri D. Surendran Pillai and K. C. Prasannakumar, Preventive Officers were also held responsible for facilitating clearance of the baggage without proper examination and assessment.

3. The case was adjudicated by the Original Authority vide Order in Original No. 04/2013 dated 23.01.2013, confiscating the goods, valued at Rs. 76,71,664/-. However, the goods were allowed to be redeemed on payment of Fine of Rs. 20,00,000/-. Penalty of Rs.18,00,000/- was imposed on Shri Kareem Sadhik Basha. Penalty was also imposed on other accomplices. Penalty of Rs.18,00,000/- was imposed on Respondent -1, (Shri



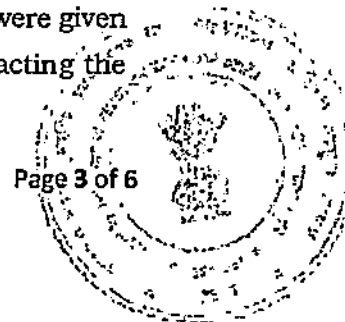
K.C.S. Prasanth, Supdt.(Customs) and Rs. 6,00,000/- each on Shri D. Surendran Pillai and Respondent-2, K. C. Prasannakumar, both Preventive Officers.

4. Aggrieved by the above order, both the respondents filed appeals before the Commissioner (Appeals). Commissioner (Appeals), vide the Order in Appeal No. 391 & 392 /2015-16 dated 15.03.2016 and dated 08.03.2016 has set aside the penalties imposed on the two respondents in the impugned Order-in-Original and allowed their appeals.

5. The Applicant department has thus filed this Revision application alongwith a prayer for condonation of delay for 10 days interalia on the following grounds that;

5.1 Appellate Authority has erred in arriving at the conclusion that the case against petitioner was based solely on statements recorded under Section 108 of Customs Act, 1962. The investigation commenced with a seizure effected by DRI, Kochi on 1.10.2010 at Air Cargo Complex, Kochi which followed a seizure effected by DRI, Chennai of a consignment of goods which was cleared earlier from Air Cargo Complex, Kochi. The Baggage Declaration 2609/1.10.2010 filed had declared blankets, used cloths etc., valued at Rs. 1000/- while on examination of goods by DRI actual value of goods was estimated as Rs. 76,71,664/-. It was also found during investigation that 20 similar consignment, mis-declared as old and used items of low value, but actually containing new electronic and consumer goods of high value, had been imported and cleared through Air Cargo Complex, Kochi in the past. The 21st consignment was seized at Chennai and 22" at Kochi. Thus the evidences against petitioner are not limited to statements recorded under Sec. 108 of Customs Act, 1962, but also includes goods seized under mahazar at Kochi on 1.10.2010, and details of earlier consignments of similar nature cleared by mis-declaration through Air Cargo Complex, Kochi.

5.2 The Appellate Authority had erred in holding that imposition of penalty based on statement of co-noticees is unsustainable and would not stand the list of established principles of law. Appellate Authority had also observed that co-noticees had retracted their statements during cross examination as being given under coercion and threat. In this regard it is observed that statements of co-noticees, S/Shri D. Surendran Pillai and K.C. Prasannakumar were recorded under Sec. 108 of Customs Act, 1962, on 5.10.2010. The said two co-noticees had not filed any retractions till the issue of show cause notice on 28.3.2011. It was only during cross examination by counsel of petitioner on 10.05.2012 that both officers chose to retract their statements given earlier stating that they were given under threat of arrest. The lapse of a period of 31 months before retracting the



statements itself indicates that this was an afterthought made by said officers to escape from penal provisions of law that these actions warranted.

5.3 It is further observed that in the instant case the deviation from statements are the result of cross examination and not a voluntary act of retraction. Cross examination is a formal process of ascertaining of evidentiary worth of statements made prior and any distinctions brought out during the course of a cross examination may have to be mated differently from a mere act of retraction.

5.4 Further them am plethora of judgements by courts of law regarding validity of retraction of statements made under, Sec. 108 of Customs Act, 1962, which state that a retraction becomes valid only if the person making it is able to prove that original statements was recorded under threat, coercion etc.,.

5.4 The Revision Applicant cited various case laws in support of their case and prayed for setting aside the order of the Appellate authority and restore the order in original or any other order as deemed fit.

6. A personal hearing in the case was held on 22.01.2020, the Advocate for the respondent Shri M. S. Sajeevkumar and respondent-1 attended the said hearing and submitted written submissions in the case. He further stated that Respondent-1 did not participate in the examination, No vigilance case has been initiated against him, and that he has been exonerated in the Chennai case. The Revision Application has been filed on the same set of evidences and that there was no corroboration of evidence. Nobody from the department attended the personal hearing.

7. In their written submissions at the time of hearings the Respondents submitted that,

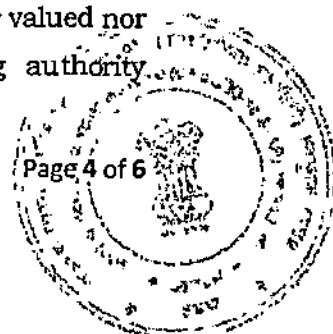
7.1 The seizures at Kochi and Chennai were adjudicated separately but on the same set of evidences relied upon in both cases. While he has been penalized in Kochi by the Original Adjudicating authority, he has been exonerated in Chennai.

7.2 The goods seized at Kochi were not examined by the Respondent, therefore this Respondent has not done any act rendering the goods liable to confiscation.

7.3 The Original Adjudicating authority has imposed a penalty of Rs.18,00,000/- higher than the penalty imposed on the importer.

7.4 All the three other noticee's have gone back from their statements which were coerced under the threat of arrest under COFEPOSA.

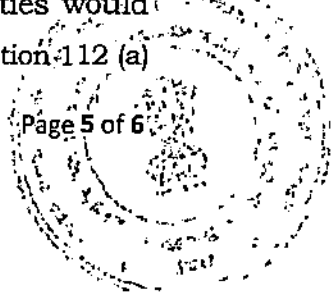
7.5 The earlier consignments were neither identified, quantified nor valued nor available for confiscation and therefore the Original Adjudicating authority refrained from holding the goods liable for confiscation.



7.6 Statements of Co-noticee's alone cannot be a sole criterion to impose penalty. The cross examinations of the co-noticees established that the inculpatory portions were not voluntary. The deviation from statement in the cross examination cannot be treated as a voluntary act of retraction.

7.7 The Appellate authority has held that even if weightage is given to the statements of the co-noticees recorded under section 108 of the Customs Act 1962, there are no independent corroborative evidences available on records to establish links between the Respondents and the smugglers.

8. The Government has gone through the facts of the case. It is noted that there were two seizures with respect to this case. One consignment was seized by DRI, Chennai, at the outskirts of Chennai and second consignment was seized by DRI, Cochin at the ACC at Cochin. The consignment seized by DRI Chennai at the outskirts of Chennai has been adjudicated and the Order in Original has exonerated both the Respondents in the case. In the consignment seized at the Air Cargo Complex at Kochi it is observed that the said consignment was taken over by the Investigating Agency immediately after filing of the Baggage declaration and therefore the Respondents had no role in the clearance of this baggage. Further, Government notes that the Applicant department has relied solely on the statements recorded from Shri.Prince Joseph, CHA, Shri D. Surendran Pillai and Shri. K. C. Prasannakumar both Preventive Officers to establish that the respondents, while working in their capacity as officers posted at ACC have abetted and actively participated in creating a wrong inventory and assessment, on the informal directions of the Respondent-1 and have thus abetted the smuggling of high value electronic goods. These three noticees in their cross examinations by the Respondent-1 have retracted their statements as being given under duress and threat. In this regard the Appellate authority notes that " *Revenue has argued that belated retractions have no value as these can only be considered as an afterthought to steer clear of the charges. Even if the contention of the Revenue is accepted, they have failed to bring forth any independent evidence on record to corroborate charges against the accused. To impose penalty on the appellant merely on the statements of a few co-noticees is unsustainable and will not stand the test of established principles of law. I find that neither has Revenue been successful in adducing any cogent evidence to establish any link between the appellant and the smuggling racket nor has been able to corroborate the offence committed by the appellant*" The Government is in full consonance with the observations of the Appellate authority. To impose penalty on Respondents without any cogent evidences is unsustainable in law. Further the imposition of penalty higher than that of the main offenders is erroneous and without any reasonable basis. If the entire conspiracy was allowed to take place before the investigating agencies had conducted the seizure of the goods, penalties would have become applicable. In view of the above the government holds that section 112 (a)



cannot be invoked in the case and penalty is not imposable. The Appellate authority has rightly held that penalty is therefore not imposable and has set aside the penalties imposed on the Respondents.

11. The Appellate Authority has also noted that " *Though I agree with the Original Authority that the standard of proof required in a quasi-judicial proceeding is only preponderance of probability and there is no need to prove beyond reasonable doubt, as in a criminal case, nonetheless the basic evidentiary requirements has to be met for imposing such huge penalty on the appellant. Circumstantial evidence alone cannot, be a basis for penalizing a person without some amount of corroborative evidence demonstrating linkage between the goods and the individual in terms of smuggling or attempting to smuggle, which the manner of investigation has failed to establish.*" The Government also agrees with the above observances in the Order of the Appellate authority therefore opines that it does not warrant any interference, and is therefore liable to be upheld. Both the Revision Applications are therefore liable to be dismissed.

12. The impugned Revision Applications are accordingly dismissed.

13. So, ordered.

(SEEMA ARORA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁵⁹⁻⁶⁰ /2020-CUS (SZ) /ASRA/MUMBAI

DATED 21/5/2020

To,

The Commissionaer of Customs, Custom House, Cochin.

Copy To,

1. Shri K.C.S. Prasanth, Saya 2/246-G, Sankar Nagar, Maradu, P.O. Cochin-682 304.
2. Shri K. C. Prasanna Kumar, Kaithavalappil House, Vallarpadam P.O., Panambukkad, Cochin, 682 504.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

