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

F.No. 371/340/B/2018-RA / 885 : Date of Issue 24.01.2024

ORDER NO. 61/2024-CUS (WZ)/ASRA/MUMBAI DATED 19.01.2024
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

F.No. 371/340/B/2018-RA [DE NOVO]

Applicant : Shri. Pritpal Singh Kalsi

Respondent : Principal Commissioner of Customs, CSMI Airport,
Mumbai

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-637/18-19 dated 11.10.2018
issued through F.No. S/49-249/2016-17/AP passed by
the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application filed by Shri. Pritpal Singh Kalsi (herein referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-637/18-19 dated 11.10.2018 issued through F.No. S/49-249/2016-17/AP passed by the Commissioner of Customs (Appeals), Mumbai – III. This has been taken up for a fresh decision in deference to the Order dated 07.12.2023 of the Hon'ble High Court of Bombay passed in Writ Petition no. 4868 of 2023. This revision application is on the limited issue of imposition of penalty on the applicant.

2(a). Brief facts of the case are that on 19.05.2014, the Customs Officers at CSMI Airport, Mumbai had intercepted one passenger viz, Shri. Kunnil Abbas Muhammad (hereinafter referred to as the PAX) near the exit gate after he had cleared himself through the green channel. The said pax had arrived from Dubai onboard Jet Airways Flight No. 9W-537 / 18.05.2014. The pax had filed a nil Customs declaration form and had denied carrying any gold in his baggage. The metal detector when passed over the body of the pax indicated presence of metal on his person. Personal search of the pax led to the recovery of two heavy packets which had been wrapped with adhesive tape and stuck to the left and right front pockets of the jeans worn by him. On cutting open the packet recovered from the right pocket, two gold bars of 01 kg each were found and from the left side pocket one gold bar of 1 kg was found. Pax informed that same had been handed over to him at Dubai by Anwar with instructions to deliver it to someone inside the arrival hall. Further, the pax had informed that when he had landed at the airport, he had received a call from Ramesh who had instructed him to wait near Belt no 6 in the arrival hall and that someone would come to collect the gold before the Customs clearance. As nobody turned-up, he had called up Ramesh who further instructed him to clear Customs through green channel. Thereafter, he had then been intercepted by the Customs Officers. Subsequently, on the instructions from the Officers, he

had called Anwar and had informed him that he had still been waiting at the Customs Arrival Hall. Anwar had instructed him to continue waiting at belt no. 6 and told him that some person who would identify himself and address him as Raju would come to collect the gold. A person wearing Jet Airway Ground Staff uniform approached the pax and loudly called out the name Raju. This person was immediately intercepted by the Officers and he identified himself as Hameed Latif Mohammad and informed that he had come meet the pax and that he had been requested by the applicant who was his colleague.

2(b). The said 3 gold bars weighing 1 kg each, totally weighing 3 kgs (3000 gms) having foreign markings and bearing serial nos, valued at Rs. 76,44,720/- were seized.

2(c). In his statement recorded under Section 108 of the Customs Act, 1962, Shri. Mohammed Hameed Latif stated that he was working for Jet Airways and was posted at the baggage area to monitor off-loading of baggage at arrival area; that on 19.05.2014, he had received a call from the applicant who was Load Controller, Jet Airways and was instructed to help one of his guest passengers to which he had agreed; that the applicant had told him that the name of his guest was Raju and he was carrying some article on which Customs duty was applicable and requested to assist him; that he was not aware that the pax, viz, (Raju) was carrying gold; that at the request of the applicant he had agreed to assist the pax.

2(d). In his statement recorded under Section 108 of the Customs Act, 1962, the applicant admitted that he had instructed Mohammed Hameed Latif in his personal capacity. Applicant admitted that previously a case was booked by Customs, Chennai of smuggling 23 kgs of gold brought by his colleague and he was also a co-noticee in the same.

3. After, due process of law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/RR/ADJN/320/2015-16 dated 09.02.2016 issued through F.No. 14-5-427/2014-15 Adjn [SD/1NT/AIU/345/2014-AP'A'] ordered the absolute confiscation of the 3 gold bars, totally weighing 3000 gms and valued at Rs. 76,44,720/-(LMV) under Section 111(d), (1) and (m) of the Customs Act 1962 and imposed a penalty of Rs. 4,00,000/-each under Section 112(a) and (b) of the Customs Act, 1962 on (i) the pax, (ii). the applicant and (iii). Hameed Latif Mohammed (co-accused).

4. Aggrieved by this Order-In-Original, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who vide his Order-in-Appeal No. No. MUM-CUSTOM-PAX-APP-637/18-19 dated 11.10.2018 issued through F.No. S/49-249/2016-17/AP did not find it necessary to interfere in the Order passed by the OAA.

5. Aggrieved by the above said Order-in-Appeal dated 11.10.2018, the applicant had a filed a revision application only on the limited issue of penalty imposed on him. Revisionary Authority vide Order no. 291/2022-CUS dated 18.10.2022 issued on 20.10.2022 had dismissed the revision application filed by the applicant.

6(a) Aggrieved by this Order dated 18.10.2022 passed by the Revisionary Authority, the applicant filed Writ Petition no. 4868 of 2003 before the Hon'ble High Court, Bombay.

6(b). On the prayer made by the applicant that the Revisionary Authority had dismissed their revision application without granting an opportunity of hearing as the notice of hearing had been addressed to erstwhile advocate even when the newly appointed advocate had been intimated, the Hon'ble High Court of

Bombay in its Order dated 07.12.2023 set aside the Revision Order dated 18.10.2022 passed by the Revisionary Authority with directions to pass a fresh decision after granting an opportunity of hearing to the applicant.

7. The grounds of revision which was submitted by the applicant in their Revision Application are as under;

7.01. that the case was based on the basis of statements of co-noticee, that statement of the co-noticee cannot be relied upon as he had kept on changing his statement and had given contradictory statements; that summons issued to co-accused viz Hameed Latif Mohammed was dated 18.05.2014 whereas, the seizure had taken place on 19.05.2014; that the seizure panchanama and all other incidents were shrouded in doubt and suspicion; that statement of applicant was recorded on 04.09.2014 while the summons is dated 12.11.2014; that the applicant has been falsely implicated in the case; that applicant had nothing to do with this case and ought not to have been penalised; that applicant relies upon the Tribunals order in the case of Vikram Singh Dahiya vs. Commr. Of Customs (Export), New Delhi [2008-223-ELT-619-Tri-Delhi wherein it was held that statement of co-noticee without any corroborative evidence cannot be taken up as an evidence to impose penalty; that there was no corroborative evidence against the applicant; that cross-examination had not been granted,

7.02. that the statement of applicant was recorded on 21.05.2014 in which he had stated that on 18.05.2014 duty hours allocated to his as per Jet Airways duty roster was from 07:00 Hrs to 15:00 Hrs and he was off duty after 15:00 Hrs on 18.05.2014; that next duty allocated to him as per Jet Airways duty roaster was from 15:00 Hrs to 23:00 Hrs on 19.05.2014; that he admitted calling Hameed Latif Mohammed around 11:15 PM on 18.05.2014 and had requested him on personal capacity to facilitate one passenger by name Mr. Satinder Singh departing to Singapore by flight 9W-012 dated 18.05.2014; that he admitted calling Hameed Latif Mohammed repeatedly from 11:15 PM on 18.05.2014 to 01:50 AM on 19.05.2014 to enquire about one platinum voucher which Hameed Latif Mohammed had misplaced.

The applicant has prayed to the Revision Authority, Mumbai that the penalty imposed on the applicant be set aside.

8. The undermentioned grounds have been raised by the applicant in the Writ Petition no. 4868 of 2023 filed before the Hon'ble High Court of Bombay against the Order dated 18.10.2022 (impugned order) passed by the Revisionary Authority,

8.01. that the impugned order was not a speaking order as the factual and legal submissions had not been appreciated; that the revisional authority being a quasi-judicial body was duty bound to pass a detailed and reasoned order wherein all the aspects of the case, including facts, submissions and grounds are required to be discussed and then pass an order giving cogent reasons; that they have relied upon the case of (i). Kranti Associates Private Limited and Anr vs. Masood Ahamed Khan and ors [(2010) 9 SCC 496] and have reproduced para 47 of the said judgement passed by the Apex Court; (ii). Sai Raj Enterprises vs. Addl. Dir. Of Foreign Trade [2019 (365) ELT 283 (Bom)] and have reproduced para 5 of the said judgement passed by Hon'ble Bombay High Court.

8.02. that the statement of co-noticee had been relied upon to impose penalty without any corroborative and independent evidence, which was illegal; that statement of Hameed had been relied upon and no independent or corroborative evidence had been brought on record to prove that applicant was in any way concerned with the alleged smuggling of goods; that they have relied on the case of (i). Commr. Of Customs, Export vs. Vikram Singh Dahiya passed by Tribunal and maintained by the Delhi High Court [2010-260-ELT-180-DEL]; (ii). Ashwini Kumar Tandon vs. Commr. Of Customs (Preventive) [2014-305-ELT-350-BOM]; (iii). Commr. Vs. Sushil Kumar Kanodia [2015-319-ELT-A73-Mad];

8.03. that the statement of the co-noticee was not reliable and was contradictory to the confrontation panchanama; that on the issue they have relied on the case of J.K.S Air Travels vs. Chief Commissioner of Cus., Chennai - I [2016-331-ELT-173-Mad]

9(a). High Court vide its order dated 07.12.2023 directed that "Revisionary Authority shall grant an opportunity of hearing to the petitioner through his advocate and proceed to pass an appropriate order in accordance with the law, and such order shall be passed withing^g four weeks of hearing".

9(b). In deference to the Order dated 07.12 2023 of the Hon'ble High Court of Bombay in Writ Petition no. 4868 of 2023, the personal hearing was held on 08.12.2023.

9(c). Shri. K.P Singh, Advocate appeared on behalf of the applicant and informed that High Court vide Order dated 07.12.2023 has set aside instant RA Order and directed for fresh personal hearing. On his request, personal hearing was conducted.

9(c). Personal hearings in the case to the respondent was scheduled for 15.12.2023 and 09 01.2023. However, nobody attended on behalf of the respondent.

9(d). Advocate of the applicant submitted that applicant has been wrongly fastened with penal liability in the case in which he had nothing to do. He further submitted that there is not direct or indirect evidence against the applicant. He also submitted that applicant was not on duty on the day of seizure, his call to his company colleague has been clearly explained on the first statement recorded immediately after the seizure. He further stated that in absence of any evidence against applicant, penalty imposed is required to be set aside.

10. Government has gone through the facts of the case and the case papers available on records Government finds that this application is only on the limited issue of imposition of penalty on the Applicant for the allegation that he attempted to help the main accused who was found carrying gold which has been absolutely confiscated.

11.01. Government notes that on the day of the seizure, the applicant was not on duty. He had admitted that he had contacted Hameed Latif

Mohammed who was his colleague. Government notes that only the statements of the co-noticee had been relied upon. No independent investigations on the involvement of the applicant had been carried out. No evidence revealing role of the applicant or any financial flowback, etc to him is available. CDR relied upon only brings out that the applicant was in touch with the co-noticee who was his colleague and does not bring out any evidence of involvement. As colleagues, it is bound that there will be some calls / contact. Applicant had explained the reasons for his calls to the co-noticee. Government notes that the name of some other person named Ramesh has been referred to in the case. However, investigations do not appear to have brought out anything further on this aspect.

11.02. Government notes that it is well settled position of law that mere confession made by co-noticee is not enough to hold charges against another co-noticee and that the same must be corroborated or backed up by other independent and cogent evidences which substantiates the involvement of such co-noticee and brings out his role. There are a catena of judgements on the issue; a few are discussed hereunder:

(a). PRASANTA SARKAR Vs. COMMISSIONER OF CUSTOMS (PREV.), MUMBAI - {Final Order Nos. A/1326-1328/2006-WZB/C-II/(C.S.T.B.), dated 15-11-2006 in Appeal Nos. C/491, 549, 574/96} - [2007 (209) E.L.T. 220 (Tri. - Mumbai)]

*6. In view of the above, we do not find sufficient material evidence on record to impose penalties upon the appellants. It is well settled law that uncorroborated statements of the co-accused cannot be made the basis for penalizing the noticees. Admittedly, there are no recoveries of any contraband goods from the present appellants. The Tribunal in the case of **Orient Enterprises v. Collector of Customs - 1986 (23) E.L.T. 507 (Tri.)** has held that exculpatory statement of co-accused or co-conspirator is always tainted with falsehood because he twists the story or colours the version in a way so as to show himself innocent and paints his companion as the perpetrator of the crime. The statement of such a person loses its evidentiary value and is unworthy of credence against the co-accused. The said decision*

was subsequently upheld by the Hon'ble Supreme Court as reported in 1997 (92) E.L.T. A69 (S.C.).

(b). SHAKIL PATEL Versus COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI {Final Order No. A/85519/2018-WZB, dated 9-3-2018 in Appeal No. C/1080/2009-CU(DB)} - [2018 (361) E.L.T. 382 (Tri. - Mumbai)]

3.It is well-settled law that such statement of the co-noticee cannot be made the sole basis for penalizing a person.

4. As such, in the absence of any other corroborative evidence, we find that the penalty imposed by the appellant is unsustainable. We, accordingly, set aside the same and allow the appeal with consequential relief to the appellant, if any, in accordance with law.

(c). COMMISSIONER OF CUSTOMS, LUCKNOW Vs. SANJAY SONI - {Final Order Nos. A/70071-70074/2022-SM [BR], dated 10-2-2022 in Appeal Nos. C/70031, 70067, 70083/2020 & 70258/2021 with Customs Stay Application No. 70027 / 2020} - [2022 (381) E.L T. 509 (Tri. - All.)].

28.1.Penalty cannot be imposed only on the basis of hearsay evidence, or the incriminating statement of one of the co-accused in absence of other corroborative evidence, as has been held by Hon'ble Supreme Court in the case of *Vinod Solanki v. Union of India* [2009 (233) E.L T. 157 (S.C.)].

12. Government notes that it is alleged that applicant was found involved in a previous case. It was submitted that the applicant was still in the service of the airline inspite of such charge. It was further submitted that the case is still under litigation.

13. Applicant had pointed out certain discrepancies in the dates of the summons issued, panchanama etc. These have not been refuted by the respondent. However, the same are clerical in nature where certain errors might have crept in. These errors do not vitiate the proceedings.

14. In view of the foregoing paras, Government finds that the charge alleged on the applicant has not been substantiated with sufficient evidence. The charge of aiding and abetting in smuggling is a serious charge and it was imperative that the same is substantiated with corroborative evidence. In the absence of the same, Government notes that the allegation on the applicant is on weak footing and the charge is not sustainable. Under the circumstances mentioned in the foregoing paras, Government is inclined to set aside the penalty imposed on the applicant.

15. Accordingly, Government modifies the Order-in-Appeal dated 11.10.2018 and the penalty imposed on the applicant is set aside

16. Revision application is allowed.


(SHRAWAN KUMAR)

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

ORDER NO. 61/2024-CUS (WZ)/ASRA/MUMBAI DATED 17.01.2024

To,

1. Shri. Pritpal Singh Kalsi, S/o. Shri. Jaswant Singh, Akal B-2, Flat No. 105, J.B Nagar, Andheri East, Mumbai – 400 059.
- 2 Pr. Commissioner of Customs, Level – II, Terminal – 2, Chhatrapati Shivaji Maharaj International Airport, Mumbai – 400 059.

Copy to

1. Mr. Krishna Pratap Singh, Advocate, 71, 7th Floor, C-Wing, Mittal Court, Nariman Point, Mumbai – 400 021.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.