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SPEED POST



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. 371/440/B/2019

589

Date of Issue ~~01.01.2023~~

01.02.2023

ORDER NO 66/2023-CUS (WZ)/ASRA/MUMBAI DATED 30.01.2023 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.

Applicant : Mr Pinakin Sodha

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP/312/19-20 dated 29.07.2019 [Date of issue: 31.07.2019] [S/49-518/2018/AP] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

**ORDER**

This Revision Application has been filed by Mr. Pinakin Sodha (herein referred to as "Applicant") against the Order-in-Appeal No. MUM-CUSTM-PAX-APP//312/19-20 dated 29.07.2019 [Date of issue: 31.07.2019] [S/49-518/2018/AP] passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. The Applicant, is an ex-employee of the CHA firm M/s Nandlal Dayabhai Masrani and a cousin of the partner of the CHA firm, and user of G-card of the CHA firm. Brief facts of the case are that the Officers of Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI) developed specific intelligence that a consignment of gold would be smuggled in from Sharjah by concealing the same in unaccompanied baggage, covered vide Baggage Declaration Form (BDF) No. 200892 dated 17.02.2017 filed in the name of one Ms. Usha Mudaliyar at Air Cargo Complex, Mumbai. Accordingly, the officers of DRI intercepted the said consignment consisting 10 cardboard boxes when the same was being loaded in a vehicle. On conducting a detailed examination of the said 10 cardboard carton boxes, 91 trousers containing total of 364 pieces of silver coloured gold in the form of hooks were recovered. The gold pieces collectively weighing 4202 gms valued at Rs. 1,14,04,228/- were seized under the reasonable belief that the same were smuggled into India in contravention of the provisions of the Customs Act, 1962. Further investigations in the case revealed that one Mr. Taher Patanwala based in Dubai used to send consignments containing chocolates and used clothes as unaccompanied baggage to India and his friend Mr. Yusuf Asgar Lokhandwala used to clear these consignments in India. Mr. Yusuf used to clear these consignments in the name of different persons using their passports which were arranged with the help of one Mrs. Durriya Esmail Soni. Mr. Yusuf also admitted that the

said consignments used to contain small/big hooks of gold or gold pieces concealed inside the hooks. The present and past consignments were cleared through Customs CHA Firm M/s Nandlal Dayabhai Masrani and the Applicant, ex-employee of the CHA firm, handled the clearances of all the consignments.

3. Pursuant to issue of show cause notice and following the process of law, Original Adjudicating Authority (OAA) viz: Additional Commissioner of Customs, CSI Airport, Mumbai, vide Order-in-Original No. ADC/AK/ADJN/188/2018-19 dated 08.08.2018 [S-14-5-49/2017-18 Adjn DRI/MZU/B/INT-38/2017], ordered absolute confiscation of the seized gold collectively weighing 4202 grams valued at Rs. 1,14,04,228/ under Section 111(d), (1) & (m) of the Customs Act, 1962 and confiscation of the 91 trousers used to conceal the gold in the form of hooks, under Section 119 of Customs Act, 1962. Penalties were also imposed on Mr Yusuf Asgar Lokhandwala, Ms Durriya Esmail Soni, Ms. Usha Mudaliyar and M/s N.D.Masrani, Customs broker and the Applicant under Section 112(a) & (b) and Section 114AA of the Customs Act, 1962. Personal penalty of Rs. 8,00,000/- under Section 112(a) & (b) of the Customs Act, 1962 and Rs. 5,00,000/- under section 114AA of the Customs Act, 1962 were imposed on the Applicant.

4. Aggrieved by this order, the Applicant filed an appeal with the Commissioner of Customs (Appeals), Mumbai Zone-III pleading for waiver/reduction of the personal penalty. The Appellate Authority (AA) vide Order-in-Appeal No. MUM-CUSTM-PAX- APP//312/19-20 dated 29.07.2019 [Date of issue: 31.07.2019] [S/49-518/2018/AP] rejected the appeal.

5. Aggrieved with the order of the Appellate Authority, the Applicant has filed this revision application against the imposition of penalty on him, inter alia on the grounds:

5.01. That the AA has passed a cryptic order without specifying the manner in which the Applicant who had no knowledge about the concealment of gold in the subject goods had aided and abetted the smuggling activities and has merely reproduced the findings in the Order-in-Original in a mechanical manner without considering the submissions of the Applicant and has not appreciated that the findings in the Order-in-Original are not sustainable on merit in the light of various submissions of the Applicant;

5.02. That the AA has erred in upholding the penalty of Rs. 8,00,000/- on the Applicant under Section 112(a) and (b) of the Customs Act, 1962 as the AA has not appreciated that the scope of Section 112(a) was different from the scope of Section 112(b) and has erroneously imposed penalty on the Applicant without specifying where the Applicant fitted under the respective sub-clauses of the section 112 of the Customs Act, 1962.

5.03. That the AA had not appreciated that the live consignment or the past consignments have not become liable for confiscation under Section 111 of the Customs Act, 1962 due to any act omission of the Applicant as he had only filed the Baggage Declaration Form (BDF) received from the passengers (or through the known intermediaries) as per normal business practice and the Applicant was not responsible for the declaration by the passengers and did not know about the concealed gold.

5.04. That the AA had failed to take note that the manner of 'aiding and abetting' in clearance of gold by concealing in the unaccompanied baggage is not specified in the show cause notice (SCN)/ OIO. The Applicant has relied upon the following case laws in support of the contention

- (i) CC, Mumbai vs. M Vasi [2003(151)E.L.T.312 (Tri-Mum)]

(ii) Amritlakshmi Machine Works vs. CC(Import), Mumbai [2016(335) E.L.T. 225(Bom)]

5.05. That the Applicant had no role or knowledge of the concealment of gold as he had filed the BDF on the basis of the documents received from the passengers through intermediaries and these persons had not indicated any role of the Applicant

5.06. That neither Yusuf Lokhandwala or Duriya Soni or the passenger had in their statements alleged against the Applicant that the misdeclaration was due to the advice by the Applicant and that the Applicant was handling the clearance work on the basis of the original passport, proper authorization and other documents signed by the passenger

5.07. That the Applicant had not admitted to any role in the smuggling of gold in a concealed manner in the live consignment or past consignments

5.08. That the SCN or OIO does not make a case against the Applicant that he shared the wrongful gains arising from smuggling of gold

5.09. That the AA and the OAA had not appreciated that the Applicant, though surprised and suspicious about the declared value, could not be in the knowledge of the concealed gold in the consignments and that the value of personal effects imported under unaccompanied baggage was only notional not being liable to duty.

5.10. That the clearance charges were normal, being in the nature of convenience or facilitation charge, not linked to the value of the imported goods and that the subject Consignments (like the past consignments) were examined by the Customs Officers and were also screened in X-ray machines and that any inference about knowledge of the Applicant of smuggling of gold was presumptive at its best.

5.11. That the Applicant had a limited role and was not responsible for packing the goods, its transportation or preparing the clearance documents. The imposition of penalty on the Applicant is speculative of its role in the mis-

declaration and therefore cannot be sustained. The Applicant has relied upon the following case laws:

- (i) Deepankar Sen Vs. CC, Kolkata [2003(159) E.L.T. 260 (Tri-Kolkata)]
- (ii) Saffire Lithographers vs. CC, Tuticorin [2007( 215) E.L.T. 210 (Tri-Chennai)]
- (iii) CC. Tuticorin vs. Morkis Shipping and Trading Pvt Ltd [2008(227) E.L.T. 577(Tri Chennai)]
- (iv) Akanksha Enterprises vs, CC, Mumbai -I [2006 (203) E.L.T. 125(Tri Del)]
- (v) Vetri Impex vs. CC. Tuticorin [2004 (172) E.L.T (Tri-Chennai)]
- (vi) GM Enterprises vs CC (Export), Nhava Sheva [2010(262) E.L.T. 796 (Tri-Mumbai)]
- (vii) Prime Forwarders vs. CC, Kamdla [2008 (222) E.L.T. 137 (Tri-Ahd)]
- (viii) Success Engineering vs. CC. Kandla [2007 (215) E.L.T. 220 (Tri-Ahd)]

5.12. That there is no bar under the Customs Act, 1962 of the CBLR, 2013 to obtain the documents through an intermediary and the Applicant could not be faulted for receiving the documents through an intermediary as long as the authenticity of the documents was not doubted;

5.13. That Original passport presented to the customs for verification lent authenticity to the documents and genuineness of the passengers. The Applicant has relied on the following case laws in support of their contention:

- (i) K.S.Sawant & Co. vs. CC (Gen), Mumbai [2012 (284) E.L.T. 363 (Tri-Mum)]
- (ii) CC, Mumbai vs. Chhaganlal Mohanlal and Co [2006(203) E.L.T. 435 (Tri-Mum)]
- (iii) P.P.Dutta vs. CC, New Delhi [2001(136) E.L.T. 1043 (Tri-Del)]
- (iv) Krishan Kumar Sharma vs. CC, New Delhi [2000(122) E.L.T. 581(Tri)]

5.14. That though the Applicant continued to operate on Customs Broker license of M/s Nandlal Masrani even after he ceased to be an employee of the firm, violation of the CBLR 2013 cannot be grounds for imposing penalty under Section 112(a) and (b) of the Customs Act, 1962;

5.15. That the Applicant did not misuse the Custom Broker license No 11/301 for clearance of unaccompanied baggage and was working as a family member being the cousin of the partner of the CB firm;

5.16. That presuming that the license was misused, the goods had not become liable for confiscation for the said reason, so as to attract penalty under Section 112 and if there is any misuse of CB license, the action lies under the CBLR, 2013, which is in progress against the Customs Broker;

5.17. That penalty was not imposable under Section 114AA of the Customs Act, 1962 as the Applicant had not 'knowingly' and 'intentionally' used false documents or declarations to clear the goods, which was pre-requisite for imposing penalty under Section 114AA of the Customs Act, 1962;

5.18. That the total penalty of Rs. 13,00,000/- imposed on the Applicant was very harsh and needs to be reduced, especially when the passenger who lent her passport was imposed with a much lesser quantum of penalty;

5.19. That proper opportunity for personal hearing was not offered to the Applicant.

In view of the above submissions the Applicant prayed to set aside the OIA in question and also set aside/reduce the penalty imposed under Section 112(a) and (b) of the Customs Act, 1962 and also under Section 114AA of the Customs Act, 1962

6. Personal hearing in the case was scheduled for 10.08.2022 or 24.08.2022. Shri Prashant Patankar, Advocate, appeared online for the personal hearing on 24.08.2022, on behalf of the Applicant. He submitted that

the Applicant worked with a Customs Broker firm and cleared unaccompanied baggage. He submitted that he was not contesting the confiscation of the concealed goods which the Applicant was not aware of and that Section 112 of the Customs Act, 1962 was not applicable to the Applicant and hence no penalty can be imposed. He further submitted that penalty under Section 114AA is also not imposable and that action under CBLR, if at all warranted, should not influence the decision under the Customs Act, 1962.

7.1. The Government has gone through the facts of the case. The issue involved in the instant application is the imposition of penalty under Section 112 and Section 114 AA of the Customs Act, 1962 on the Applicant, who as the ex-employee of the custom broking firm, handled the clearance of the consignments from which gold was smuggled by concealment in goods cleared as unaccompanied baggage.

7.2. Government observes that it is on record and admitted by the Applicant that he handled a total of 43 consignments, on a regular basis for a considerable period of time for Mr. Yusuf Asgar Lokhandwala and that the original passports of different persons were handed over to the Applicant by the other accused, Mr. Yusuf Asgar Lokhandwala /Mrs. Durriya Esmail Soni and the same was used by the Applicant for the clearance of goods with the concealed gold. It is also on record that the Applicant had not met the passport holders at the time of obtaining signatures on the BDF and about whom no due diligence regarding the genuineness had been exercised by the Applicant. It is also on record that the goods cleared by the Applicant had been delivered to Mr. Yusuf Asgar Lokhandwala and not to the persons whose passports and address were used in filing Baggage Declaration Form and getting the gate pass and the vehicle entry permit issued. Government observes that the Applicant had ensured and in some cases personally escorted the goods to the premises of Mr. Yusuf Asgar



Lokhandwala, the kingpin in the smuggling racket. Further the Applicant was aware that the declared value of each consignment was abysmally low and that the remuneration received by the Applicant was in excess of the value of the goods declared in the BDF. These facts bring out that the Applicant was doing more than what a broker does and was aiding and abetting the activities of the main accused.

7.3. For a better understanding of the issue, the provisions of the Customs Brokers Licensing Regulations, 2018 need to be elaborated. Rule 10 of the CBLR, 2018 specified the obligations of the Customs Broker and the relevant obligation are reproduced as under

*10. Obligations of Customs Broker - A Customs Broker shall —*

*(a).....;*

*(b).....;*

*(c).....;*

*(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*

*(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;*

*(f).....;*

*(g).....;*

*(h).....;*

*(i).....;*

*(j).....;*

*(k).....;*

*(l).....;*

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

(o).....;

(p).....; and

(q) .....

7.4. Government notes that the Applicant being a trusted employee of the CHA firm and experienced in handling the clearance of consignments ought to be well-aware of all the provisions relating to him including the CHA's obligations as enshrined under Rule 11 of Customs Brokers Licensing Regulations, 2013 and is duty-bound to advise the client to comply with the provisions of the Act and the regulations diligently ensuring the imparting of correct/relevant information to the client for clearance of cargo or baggage.

7.5. The CHA firm and the employee handling the clearances also was duty bound to have brought the non-compliance by the client, which were at various levels in the instant case, to the attention of the Deputy or Assistant Commissioner. It is his fiscal accountability that he must promptly pay the Government all moneys received from the client for duties and taxes. Also, any money received from the client or from the Government should be promptly and fully accounted to the client. The CHA and its employee are duty bound to deliver goods to the passenger after completing necessary export formalities with the Customs.

7.6. Government observes that The High Court of Kolkata in the case High Court of Delhi in *Ashiana Cargo Services v. Commissioner of Customs*, [2014

(302) E.L.T. 161 (Del.)), in a case pertaining to exports, has held that the role of CHA does not come to an end till the goods are stuffed and the containers got sealed. His responsibility comes to an end only when the sealed containers are moved out of his supervision. *'In the given circumstances, I opine that the Commissioner (Appeals) has rightly held about the appellant's plea to be nothing but an eye-wash. The appellant's plea that he was never concerned with the goods illegally exported, being merely an agent of the exporter is nothing but an eye-wash keeping in view the obligations of the CHA as enshrined in Rule 11 of the Regulations 13 of the Regulations' 2013, it is crystal clear that no inferior quality goods can be exported and imported, that too, for a period of more than two years continuously without the knowledge of the CHA.'*

Government notes that the ratio the case is applicable as the role and the indiscretions of the CHA/employee of the CHA firm are applicable to the facts and are similar to the fact and circumstances of the instant case.

8. Government observes that in the instant case, the ingredients of Section 112(a) has been brought out with clarity, so that the penalties can be imposed on the Applicant. Section 112(a) of the Customs Act, 1962 stipulates that a person shall be liable to penalty, who, in relation to any goods does or omits to do any act, which act or omission would render such goods liable to confiscation under Section 111 or abets the doing or omission of such an act. In the instant case, the Applicant, an ex-employee of CHA, dealt with the documentation and processing of the goods being cleared to the main accused 43 times. The Applicant never met the passport holders and never delivered the goods to the persons mentioned in the passport. Thus he was actively involved in the activities of the main accused. The Applicant has lacked in doing due diligence and not taken more precautions particularly in view of the declared value of the goods being abysmally low and his remuneration for the clearance being considerably higher than the declared value of the goods cleared. The Applicant

has acted on the basis of the documents and details provided not by the purported passenger but by the alleged kingpin/aide of the smuggling racket. The *bona fide* existence of the passport holders had not been verified by the Applicant and the Applicant has merely acted on the documents provided by other accused involved in the smuggling racket and also delivered the smuggled goods to the premises of the other accused, using the passports of the persons whom did never met, to file declarations and obtain clearance documents. Government notes that the said act was not in respect of a one off clearance but all through the 43 consignments admitted by the Applicant to have been cleared by him, over a considerable period of time till the smuggling racket came to light. This make it crystal clear that the Applicant had the prior knowledge illicit nature of the clearances and regarding violation of the provisions of Customs Act, bringing in penal consequences under Section 112(a) and thus establishing the positive act of mala fide/abetment for imposition of penalty under the Customs Act, 1962.

9. As regards the imposition of penalty under Section 114AA of the Customs Act, 1962, Government observes that the penalty under the said section can be invoked only on establishment of the fact that the declaration, statement or document made/ submitted in transaction of any business for the purpose of the Act, is false or incorrect. In the instant case it is evident that the Applicant being the person entrusted with the job of clearance of the goods, submitted the Baggage Declaration Form which contained information and other particulars of the goods which were false and incorrect to facilitate the other accused in the smuggling of the gold on a regular basis. Government opines that in view of the same the imposition of penalty on the Applicant under Section 114AA of the Customs Act, 1962 is justified.

10. In view of the above discussions, Government observes that the it is clear

that the Appellant had been in know of the concealment and smuggling of the gold and does not appear to be innocent. Government observes that the Applicant acted in cahoots with the other accused to avail of gains for each other and thus penalty imposed on the Applicant is confirmed. Government also observes that the Applicant being an accomplice, the quantum of penalty imposed is excessive and reduction of penalty would be considered fair in the circumstances of the case and the nature of indiscretions of the Applicant and thus the revision appeal filed by the Applicant is allowed partially.

11. In view of the above, the Government reduces the penalty imposed on the Applicant in the impugned Order under Section 112(a) & (b) of the Customs Act, 1962 from Rs. 8,00,000/- to Rs. 6,00,000/- (Rupees Six Lakhs only) and the penalty imposed under Section 114AA of the Customs Act, 1962 from Rs. 5,00,000/- to Rs. 3,00,000/- (Rupees Three lakhs only)

12. The Revision Application is disposed of on the above terms.

  
( SHRAWAN KUMAR )

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

ORDER No 66/2023-CUS (WZ) /ASRA/

DATED 30-01-2023

To,

1. Mr. Pinakin Sodha, Flat No 601, Express Tower, Opp Diamond Cinema, Lokmanya Tilak Road, Borivali (West), Mumbai 400 092  
**Address No. 2:** B-1803, Kandivali Kesar Ashish, Padma Nagar, Next to Phoenix Hospital, Mahavir Nagar, Kandivali (West), Mumbai 400 067
2. Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-Zone III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.

Copy to:

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Exchange Road, Panvel (Old), Navi Mumbai 410 206.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Noticeboard.