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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. 371/154/B/2019-RA
F.No. 371/141/B/2019-RA

Date of Issue 23.10.2023

779 -
ORDER NO. 780/2023-CUS (WZ)/ASRA/MUMBAI DATED 19.10.2023
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 No 1 : Shri Vinay Kumar
Applicant No.2 : Shri Sanjay Agarwal

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

Subject : Revision Applications filed under Section 129DD of
the Customs Act, 1962 against the Orders-in-Appeal
Nos.MUM-CUSTM-PAX-APP-1060/2018-19 [S/49-
29/2016 AP] (pertaining to Applicant No. 1) and No.
MUM-CUSTM-PAX-APP-1059/2018-19[S/49-27/2016
AP] (pertaining to Applicant No.2) both dated
30.01.2019 [Date of issue: 05.02.2019] passed by the
Commissioner of Customs (Appeals), Mumbai Zone -
III.

ORDER

These separate Revision Applications have been filed by Shri Vinay Kumar and Shri Sanjay Agarwal (herein referred to as 'Applicant No.1' and 'Applicant No.2' respectively or 'Applicants' when referred together) against the Orders-in-Appeal Nos.MUM-CUSTOM-PAX-APP-1060/2018-19 [File No. S/49-29/2016 AP] (pertaining to Applicant No. 1) and No. MUM-CUSTOM-PAX-APP-1059/2018-19[File No.S/49-27/2016 AP] (pertaining to Applicant No.2) passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2.1 Brief facts of the case are that on 25.03.2014, on receipt of information that the Applicant No. 1, who had arrived by Air India Flight No AI- 984, was further travelling to Ahmedabad and was carrying gold jewellery in huge quantity, the Custom officers at Chatrapati Shivaji International Airport, Mumbai, followed the Applicant No.1 and saw that he entered the duty free shop located at the departure area of the CSI airport. Thereafter the Applicant No.1, was seen speaking to Applicant No. 2, his accomplice, who was holding a boarding card for a domestic sector. The Applicant No. 1 and 2 entered a toilet located at the departure hall and put their baggages side by side. The Applicant No. 2 then took out a packet from his stroller bag of make 'Delsey' and kept it on the bag. The Applicant No. 1 also took out one grey coloured pouch of 'Samsonite' make and kept it on his carry bag of 'ACE G ENE' make. When the Applicants were about to exchange their respective pouches and package, they were intercepted by the Custom officers.

2.2. The officers opened the transparent plastic box which was attempted to be exchanged in the toilet and found that the box contained imitation jewellery and belonged to the Applicant No. 2 and the grey

coloured pouch was found to contain two packets of jewellery and belonged to the Applicant No. 1. The officers recovered 3946.3 grams of jewellery of yellow metal from the transparent plastic box carried by Applicant No. 2 which was claimed to be imitation jewellery by him.

2.3. On opening the grey colour pouch belonging to Applicant No. 1, it was found to contain two transparent plastic pouches containing 74 gold chains totally weighing 7000 grams. The gold jewellery totally weighing and provisionally valued at Rs. 1,92,35,125/- (Final valuation: Rs. 1,88,29,006/-) and the imitation jewellery of yellow metal valued at Rs. 4,000/- were seized under the reasonable belief that the same were attempted to be smuggled into India in contravention of the provisions of the Customs Act, 1962.

2.4. The Applicant No. 1 in his statement stated that he arrived by Air India Flight No AI-984 from Dubai to Mumbai for onward journey to Ahmedabad and that he did not have a direct ticket from Dubai to Mumbai to Ahmedabad; that initially the airline staff were not ready to issue a boarding pass for the Mumbai to Ahmedabad from the International Transfer Desk as he did not have direct tickets for Dubai-Mumbai-Ahmedabad; that the airline staff issued a boarding pass to Ahmedabad on his repeated requests; that he opted for international transfer facility for onward journey to Ahmedabad to avoid checks by Customs at Mumbai and that he attempted to hand over the goods to his accomplice, in the toilet as the accomplice was a domestic passenger and would not have to pay duty on the said gold. He admitted knowledge, possession, carriage and non declaration of the impugned gold jewellery.

2.5. The Applicant No. 2 (accomplice) in his statement stated that he had arrived in Mumbai from Hyderabad on 24.03.2014 and marketed his imitation jewellery and he reached the airport for his journey to New Delhi by Flight No AI 348 and that he was intercepted when he and the Applicant No.1 were to exchange the packet of gold and imitation jewellery carried by him. He also admitted that the seized gold was to be sold in the local market for a profit and that he attempted to clear the seized golds through the domestic route to avoid payment of customs duty.

Both the Applicants retracted their statements on 26.03.2014 stating that they were falsely implicated in the case.

3. After due process of investigations and the law, the original adjudicating authority viz, Additional Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/ML/ADJN/203/2015-16 dated 30.10.2015 [Date of issue: 06.11.2015] [S/14-5-270/2014-15 Adjn (SD/INT/AIU/187/2014 AP 'A')], ordered for the absolute confiscation of the impugned totally weighing 7000 grams and valued at Rs. 1,88,29,006/- under Section 111 (d), (l) and (m) of Customs Act, 1962 and the imitation jewellery made of yellow metal valued at Rs. 4,000/- under Section 119 of the Customs Act, 1962, since it was used to exchange the same with the actual imported gold chains that was carried by the international passenger. Penalty of Rs. 15,00,000/- was imposed on the Applicant No. 1 and penalty of Rs. 3,00,000/- was imposed on Applicant No. 2, the accomplice under section 112(a) & (b) of the Customs Act, 1962.

4. Being aggrieved by the order, the Applicants filed appeals before the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide Orders-In-Appeal No. MUM-CUSTOM-PAX-APP-

1060/2018-19 [S/49-29/2016 AP] (pertaining to Applicant No. 1) and No. MUM-CUSTOM-PAX-APP-1059/2018-19 [S/49-27/2016 AP] (pertaining to Applicant No.2) both dated 30.01.2019 [Date of issue: 05.02.2019] upheld the Orders-in-Original and rejected the appeal.

Aggrieved with the above order, the Applicants have filed the separate applications on the following grounds:

5. GROUNDS OF APPLICATION FILED BY APPLICANT NO. 1

5.01. That the impugned order is bad in law, unjust and is a cryptic order and not a reasoned order and has been passed without application of mind;

5.02. That the AA has not dealt with any of the contentions of the applicant pertaining to the request for conducting cross examination of the panchas and the officers and pertaining to the challenge to the seizure panchanama;

5.03. That the statement recorded on 25.03.2014 was retracted contending that the Applicant was *falsely implicated* and statement was taken under coercion, duress and force;

5.04. That the non consideration of the reply filed by the Applicant tantamounts to visible bias and predetermined mind and thus the order is not a reasoned order or speaking order;

5.05. That the *CCTV footage shown to the Applicant* shows that the Applicant was misbehaved with and the AA has not unraveled the course of events by examining the CCTV footage to arrive at an unbiased and fair judgement;

5.06 That perusal of the CCTV footages will substantiate the claim of the Applicant about *falsification of the story* in the panchanama;

5.07. The Applicant has relied upon the case of *Shalu Chadha vs Additional Commissioner* [2018(359) E.L.t. 28(Bom)]

5.08. That in the entire show cause notice there is no evidence brought on record to prove that the goods seized from the Applicant were liable to be confiscated;

5.09. That the Applicant was in possession of necessary and mandatory documents and the Applicant was inclined to pay the customs duty without any mens rea and/or malafide intention to evade the same at Ahmedabad Airport;

5.10. That to substantiate his bonafides, the Applicant had submitted proof of the document which justified the genuineness of his claims and contentions of the Applicant that the gold was never smuggled as falsely alleged but genuinely sourced;

5.11. that the gold was not concealed in any manner;

5.12. That as per the EXIM policy, personal carriage of jewellery parcels are allowed

Under the circumstances the Applicant has prayed for the OIA to be set aside and proceedings be remanded back and the Applicant be given an opportunity to cross examine the panchas and officers and gold weighing 7000 grams which was confiscated absolutely be allowed to be redeemed and the imitation jewellery be released unconditionally and personal penalty of Rs. 15,00,000/- be set aside.

6. GROUNDS OF APPLICATION FILED BY APPLICANT NO. 2

6.01. That the order passed by the lower authority was not in conformity with the spirit of the Baggage Rules, 1998 and deserves to be set aside;

6.02. That the Applicant No.2 should not have been served with the show cause notice as he had no concern with the gold under seizure and was falsely implicated in the case and had totally denied his statement dated 25.03.2014 in the Court by an affidavit;

6.03. That the applicant No. 2 had no professional or business connections with the international passenger (Applicant No. 1);

6.04. *That the whole case had been fabricated and he has given a time stamped chain of the Applicants' version of the events and his actions at various periods of time on 25.03.2014;*

6.05. That he had stated before the Court that he was in no way concerned with Shri Vinay Kumar, the said international passenger and the statement of Shri Vinay Kumar where he had mentioned the Applicants involvement in the case cannot be relied upon and had no *relevance in law and it is not corroborated by any other independent evidence;*

6.06. That there is no transparency in the Panchanama which has infirmities and manipulations and is defective and thus the whole case is to be treated as null and void;

6.07. That the Applicant No.2 deserves utmost leniency as he has been wrongly implicated and he had no knowledge or any guilt and was *innocent and hence not liable to penalty;*

6.08. That no chance for cross examination of the officers, panchas and Mr Vinay Kumar was given to the Applicant No. 2 though it was demanded by him;

Under the circumstances the Applicant No. 2 has prayed to be given a chance to cross examine the officers, panchas etc or in the alternative, the case be remanded to the lower authority, the imitation jewellery be *released unconditionally and personal penalty of Rs. 3,00,000/- be waived/reduced.*

7. The Respondent-department, vide letter dated 16.07.2020 (received on 29.07.2020) filed their written submissions to the Revision Application filed by Applicant No.1. The Respondent-department whilst reiterating

the facts of the case as per the OIO, prayed that the appeal filed by the Applicant be rejected and the OIA passed by the Appellate Authority be upheld, on the following grounds:

7.01. That the Applicant was an international passenger and had a E-ticket from Dubai to Mumbai and he did not have a direct ticket from Dubai to Ahmedabad and his contention that he was a transit passenger is false;

7.02. That the Applicant did not declare the gold on his own and the gold was detected only after he was intercepted by the officers of Customs and personal search of the Applicant resulted in the recovery of gold;

7.03. That had the Applicant had not filed any declaration and had he not been intercepted while exchanging the gold, he would have made good with the gold;

7.04. That the offence was committed in a premeditated manner which clearly indicates mensrea and the Applicant had deliberately not declared the gold to Customs in order to evade customs duty;

7.05. That the Applicant admitted to possession, non-declaration, carriage and recovery of seized gold and was attempted to be cleared without having been declared before customs, and when offending goods are seized along with inculpatory statement, the statement has to be relied upon;

7.06. The Respondent-department relied upon the following case laws and circulars in support of their contention:

- (i) Surjeet Singh Chhabra vs. UOI [1997 (89) ELT 646(SC)]
- (ii) K.I Pavunny vs. Asst. Collector (HQ), Central Excise Collectorate, Cochin [1997(90) ELT 241(SC)]
- (iii) Abdul Razak vs UOI [2012(275) E.L.T 300(Ker) (DB)]
- (iv) Decision of the Hon'ble Madras High Court in the case of CC (Air) vs. P Sinnasamy.
- (v) Om Prakash Bhatia vs. CC, Delhi [(2003)6 SC 161]
- (vi) Board's Circular No 495/5/92-Cus.VI dated 10.05.1993

8.1 Personal hearing in respect of Applicant No. 1, was initially scheduled for 06.12.2022 or 20.12.2022. Shri Vinay M. Advani, Advocate for the Applicant No. 1 submitted a letter dated 16.12.2022 requesting for adjournment stating that the proceedings in the panchanama were disputed by them and they had requested the Hon'ble Trial court to call for CCTV footages of the incidents at the relevant time on 25.03.2014 and on the said CCTV footage being deposited in the trial court, they had moved an application for furnishing a copy of the CCTV footage which would take 6-8 weeks time. Subsequently, personal hearing was rescheduled for 10.02.2023 or 17.02.2023. Shri N.J. Heera and Shri V.M.Advani, both Advocates appeared for the Applicant No. 1 on 17.02.2023. They submitted that the Applicant was in the business of jewellery and he brought gold jewellery from Dubai for which he had a valid invoice, he was to declare the same at Ahmedabad when going out of customs area. He further submitted that the CCTV footage makes it clear that Panchanama does not correctly record events. He requested to allow the application and requested two weeks time for making additional submissions.

8.2. Personal hearing in respect of Applicant No. 2 was scheduled for 22.08.2022. Shri O.P. Rohira, Advocate appeared for the hearing on the scheduled date, on behalf of Applicant No. 2. He reiterated his earlier submissions and that Applicant No.2 had been penalized heavily for carrying imitation jewellery and submitted that the Applicant No. 2 had nothing to do with the case and requested for waiving the penalty.

9. The Respondent-department was also given opportunity of personal hearing on each of the dates mentioned in Para 8.1 and 8.2 above. However, neither any officer represented the Respondent-department nor any written request/submission was received.

10.1. The Applicant No. 1 made additional submissions vide letter dated 28.02.2023. In the additional submissions, Applicant No. 1 has submitted that *prima facie in the instant case the Panchnama dated 25.03.2014 is unreliable on multiple grounds ; that both passengers (Applicants) made a complaint before the Ld. Magistrate when they were produced and an application for furnishing the CCTV footage was made and the trial Court granted permission to view the CCTV footage and they filed a detailed affidavit describing the detailed sequence of events in the Trial Court; that the inculpatory statements were retracted at the first available opportunity; that Applicant No. 1 does not know the co-noticee, Sanjay Agarwal (Applicant No. 2) and there was no direct circumstantial evidence to prove that the Applicant No 1 was knowing Applicant No. 2; that the contention of the department was based on assumptions and presumptions; that the applicant was intercepted in the transit area of the airport and transit passenger is not required to pass through the Customs barrier of check post and he was not required to declare the contents while waiting in the transit area; that the Applicant No.1 was pre-maturely intercepted as he intended on filing customs declaration form once he arrived at the final destination; that the Applicant No. 1 had invoice and purchase bill of the said gold jewellery, which was purchased on credit purchase; that except the retracted confessional statements, the entire case rests on circumstantial evidence; that the Applicant No. 1 had no past criminal antecedents; that cross examination of panchas were not conducted ; that the Applicant No. 1 has been falsely implicated in the case; that the seizure panchanama is based on the assumption that the two passengers were about to exchange their pouches whereas the admitted position is that nothing was exchanged and the custom officers presumed that the pouches were to be exchanged*

10.2. The Applicant No. 1 in the additional submissions prayed that the Customs Department be directed to produce the CCTV footage before the Revisionary Authority and that the analysis of the CCTV footage will reveal 3 different possibilities i) if the CCTV footage reveals that the two passengers never entered the toilet together, the entire story put up in the seizure panchanama falls to the ground (ii) if the CCTV footage reveals only one person went inside the toilet, the entire story put up in the seizure panchanama falls to the ground and (iii) whether the versions as put in the Affidavits by the Applicant No. 1 and 2 coincide with the events as seen in the CCTV footage

11. The Government has gone through the facts of the case, Orders-in-Original, Orders-in-Appeal and submissions of the Applicants. From the available records of the case, it is seen that case of the department is that the Applicant No. 1 was an international passenger and had carried the gold jewellery and attempted to give it in the toilet to his accomplice (Applicant No.2) who was a domestic passenger (Applicant No.2) to carry it with him to evade payment of duty when he was intercepted with Applicant No.2. The Applicant No. 1 in his statement dated 25.03.2014 has stated that he did not have direct tickets from Dubai to Ahmedabad and was thus not a transit passenger and was bound to declare the gold at the CSI Airport. Department alleged that the Applicant No.1 did not intend to declare the gold jewellery in his possession to Customs and the Applicant No.1 had meticulously planned to give the gold jewellery to Applicant No. 2, who was a domestic passenger to take out the gold jewellery without any duty being paid on the huge quantity of gold jewellery. Accordingly, Department further alleged that had they not been intercepted, the Applicant and his accomplice would have gotten away with such a large quantity of gold jewellery. Based on these allegations,

Original and Appellate authorities concluded that though the Applicant No. 1 has claimed ownership of the gold jewellery, it is crystal clear from the records that the attempt to smuggle the gold by handing it over to a domestic passenger by exchanging the same with imitation jewellery was very much the plan by the Applicant No. 1 and 2 and confiscation of the gold is therefore justified and both the Applicants had rendered themselves liable for penalty for their omissions and commissions.

12. Government has gone through the Panchanama dated 25.03.2014 and the copies of the Affidavits dated 21.04.2014 submitted by both the Applicants before the Court as per the events recorded in the CCTV cameras. It is noted that the version of events on the date of seizure of both the Applicants are diametrically opposite to the contention/allegations of the Respondent-department. The Applicants have gone to great lengths to validate their contention that Applicant No. 1 was a transit passenger in Mumbai and was to pay the customs duty at his final destination which was Ahmedabad. The point when customs declaration was to be made was yet to be crossed by the Applicant No. 1. The Applicants have also taken legal recourse of filing complaints before the Ld. Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai that the statements recorded were not voluntary in nature and have challenged the seizure panchanama dated 25.03.2014.

13.1. Further, the Applicants have claimed that on the basis of the order passed by the Ld. Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai, the Applicants had viewed the CCTV footage of the airport cameras and had filed separate affidavits dated 21.04.2014 showing the time lined details of the CCTV footage of various cameras. Further, in separate affidavits, the Applicant No. 1 and 2 have averred

that the time lined details of the CCTV footage falsifies the happenings as portrayed in the Panchnama and vindicated their individual stand of being falsely implicated in the case.

13.2. In order to appreciate the facts, contents of the Affidavit filed by the Applicants are reproduced as under:

AFFIDAVIT FILED BY APPLICANT NO.1

"IN THE COURT OF LEARNED ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE'S, 8TH COURT, AT ESPLANADE, MUMBAI

CASE NO R. A. No. 103 OF 2014

Shri Vinay Kumar

Applicant/Accused No. 1

V/s

1. Customs (AIU),
CSI Airport, Mumbai.

2. The DIG,
CSI Airport, Mumbai

Respondents

AFFIDAVIT PLACING RELEVANT FACTS ON RECORD

MAY IT PLEASE YOUR HONOUR

I Shri Vinay Kumar, S/o, Balkishan, R/o, 1-2-593/17, Domalguda, Hyderabad; do hereby by state the following facts on solemn affirmation:

1. I say that I visited the office of CISF Control Room, T-2 Terminal, CSI Airport, Mumbai on 02-04-2014.
2. I furnished the copy of the order dt: 28-02-2014, passed by the Hon'ble Additional Chief Metropolitan Magistrate, 8th Court Esplanade, Mumbai, In RA.No: 103/2014 to the of the CISF at the control room on the level one of the T2 Terminal, CISF Airport, Mumbai and requested for being shown the relevant CCTV footage.
3. I obtained a MIAL pass and was escorted by a jawan of the CISF to the CC TV room situated in the same terminal.
4. In the CC TV room on my request, I was shown the below mentioned CCTV footage of the cameras, the details of which are as follows:

S.L.No	CAMERA No	DATE	TIMING
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1	87	25-03-2014	05:55AM to 6.30AM
2	88	Do	06:15AM to 6.30AM
3	189	Do	05:30AM to 6:00AM
4	238	Do	06:45AM to 7:00AM
5	262	Do	04:00AM to 7:15AM
6	299	Do	04:30AM to 5:00AM

5. I say that the following facts were clearly visible from the CCTV footage viz :

SL.No	TIMINGS & DATE	DETAILS
1	About 5.00 AM 25/03/2014	Sanjay Agarwal checking in at the counter of Air India near entry gate no: 4
2	About 5.20 AM 25/03/2014	AIU officers misbehaved with Vinay Kumar near Costa Coffee Toilet and Vinay Kumar shouted Help-Help, upon which Sanjay Agarwal went and intervened with the AIU officers and AIU officers also abused and misbehaved with Sanjay Agarwal.
3	About 5.30 AM 25/03/2014	AIU officers grabbed Vinay Kumar by his collar and took him to the information desk, wherein some other AIU officers came and Sanjay Agarwal also followed Vinay Kumar. Sanjay Agarwal asked the AIU officers to produce their ID card and upon their refusal Sanjay Agarwal requested the AIU officer to come to the CISF desk and the AIU officer refused to come.
4	About 5.40 AM 25/03/2014	Sanjay Agarwal was frisked by AIU officers and was allowed to go
5	About 6.00 AM 25/03/2014	Sanjay Agarwal came to the information counter and called the Air India staff to complain about the misbehavior of the AIU officers. The staff accompanied Sanjay Agarwal to CISF counter and then to the Customs office situated at the back of the Immigration counter. The Customs Officers informed that the persons being complained about do not belong to the customs department and requested

		Sanjay Agarwal to approach the CISF commandant and obtain CCTV footage and identify the said persons so that the CISF will take action.
6	About 6:10 AM 25/03/2014	Sanjay Agarwal requested Air India staff to offload himself as he wished to meet the CISF commandant and make complaint against the d persons for abusing him and misbehaving with him.
7	About 6:20 AM 25/03/2014	Air India staff made entry regarding offloading Sanjay Agarwal in the CISF register and cancelled the security stamp on the boarding card of Sanjay Agarwal and took Sanjay Agarwal back to the check in counter at gate no: 4 for getting him offloaded.
8	About 6:40 AM 25/03/2014	AIU officers came and took Sanjay Agarwal back by saying that Suptd. Of Customs wants to speak to him

6. I say that the above Incidents as personally witnessed by me from the CCTV footage of the relevant date and timings in the office of CISF CCTV recording room on 02-04-2014 at approximately 11.30 AM, clearly falsify the story as tried to be portrayed in the seizure panchanama dt: 25-03-2014 drawn in the office of AIU.

7. I say that the entire case as put up by the department is totally false and the CCTV footage clearly vindicates my stand that I have been falsely implicated by the department, in spite of the fact that I had proper documents for import of gold and was a transit passenger to Ahmadabad.

8. I say that this affidavit may kindly be taken on record.

Solemnly affirmed at Mumbai this 21st day of April 2014

S/d

Identified by me

DEPONENT
BEFORE ME

S/d 21-4-2014

Advocate High Court

G. K. WADHWA
NOTARY GR. MUMBAI
321, HIMALAYA HOUSE
PALTON ROAD,
MUMBAI 400 004

Sr. No.135/2014 In the Notarial Register*

13.2. The contents of the Affidavit filed by Applicant No. 2 is as under:

*"IN THE COURT OF LEARNED ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE'S, 8TH COURT, AT ESPLANADE, MUMBAI*

CASE NO R. A. No. 103 OF 2014

Shri Sanjay Agarwal

Applicant/Accused No. 2

V/s

*1. Customs (AIU),
CSI Airport, Mumbai.*

*2. The DIG,
CSI Airport, Mumbai*

Respondents

AFFIDAVIT PLACING RELEVANT FACTS ON RECORD

MAY IT PLEASE YOUR HONOUR

*1. Shri Sanjay Agarwal, S/o, Ashok Agarwal, R/o, Villa No; 306, Palm Meadows,
Hyderabad; do hereby by state the following facts on solemn affirmation:*

*1. I say that I visited the office of CISF Control Room, T-2 Terminal, CSI Airport,
Mumbai on 02-04-2014.*

*2. I furnished the copy of the order dt: 28-02-2014, passed by the Hon'ble
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footage of the cameras, the details of which are as follows:*

<i>S.L.No</i>	<i>CAMERA No</i>	<i>DATE</i>	<i>TIMING</i>
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5. I say that the following facts were clearly visible from the CCTV footage viz.:

SL.No	TIMINGS & DATE	DETAILS
1	About 5.00 AM 25/03/2014	Sanjay Agarwal checking in at the counter of Air India near entry gate no: 4
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3	About 5.30 AM 25/03/2014	AIU officers grabbed Vinay Kumar by his collar and took him to the information desk, wherein some other AIU officers came and Sanjay Agarwal also followed Vinay Kumar. Sanjay Agarwal asked the AIU officers to produce their ID card and upon their refusal Sanjay Agarwal requested the AIU officer to come to the CISF desk and the AIU officer refused to come.
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6	About 6:10 AM 25/03/2014	Sanjay Agarwal requested Air India staff to offload himself as he wished to meet the CISF commandant and make complaint against the persons for abusing him and misbehaving with him.

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Solemnly affirmed at Mumbai this 21st day of April 2014

Identified by me
S/d
Advocate High Court

S/d
DEPONENT
BEFORE ME
S/d 21-4-2014

G. K. WADHWA
NOTARY GR. MUMBAI
321, HIMALAYA HOUSE
PALTON ROAD,
MUMBAI 400 004

Sr. No.134/2014 In the Notarial Register"

13.4 From the Affidavits dated 21.04.2014 filed by the Applicants, Government observes that the events that unfolded on the date of seizure in respect of the instant case, as affirmed by the Applicants, are out of sync with happenings as recorded by the Respondent-department in the

panchanama dated 25.03.2014, which has been relied by the Respondent-department in arriving at the conclusions in the Order-in-Original and in ascertaining the correct factual position of the case.

14. Government, in the efforts to ascertain the facts of the case and the view of the Respondent-department, had sought the CCTV footages from the Respondent-department, vide letters dated 26.04.2023, 05.06.2023, 11.07.2023 and 07.08.2023, which have been met with stoic silence from the Respondent-department. The Respondent-department has also not appeared on any of the dates of personal hearing to present their case. The chronological gist of the letters are as under:

14.1. Government observes that letter dated 26.04.2023 was issued to the Respondent-department requesting to submit the CCTV footage of various airport cameras which were shown to them on the directions of the Hon'ble Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai and informing that during the personal hearing, the Applicant No.1 had contended that the CCTV footage shows that the happenings of the events are in contradiction with the panchanama drawn and was insistent that the CCTV footage be viewed to bring out the facts of the case and further about his claim that he did not know the co-noticee, Sanjay Agarwal (Applicant No. 2) and that he was prematurely intercepted as he intended to file the Customs declaration on his arrival at his final destination. The Applicant No. 1 has also submitted that the CCTV was available with the office of the Respondent-department and Applicant No. 2 has also disputed the events as narrated in the Panchanama.

14.2. Government observes that as no reply/response was received from the Respondent-department, reminder letter dated 05.06.2023, enclosing

the copy of the letter dated 26.04.2023, was issued to the Respondent-department to expedite the submission of the CCTV footage as the decision on the Revision Applications were pending for want of the CCTV footage.

14.3 With no response forthcoming, another letter dated 11.07.2023 was issued to the Respondent-department re-iterating the requests made in earlier letters dated 26.04.2023 and dated 05.06.2023, for the details of the CCTV footage to ascertain the facts of the case and reply to the allegations of the Applicants that he was prematurely intercepted as he intended to file the customs declaration at the final destination and that the happenings were in contradiction with the events as recorded in the *panchanama*. The letter dated 11.07.2023 also sought the view/say of the Respondent-department. No reply was received from the Respondent.

14.4. In the interest of justice, another letter dated 07.08.2023 was issued to the Respondent-department informing that if no reply was received to the clarifications sought vide the earlier letters, the Revision Applications would be processed based on the available records and evidence.

14.5. In reply to the various letters mentioned at Para 14.1 to 14.4 supra, the Respondent-department, after a lapse of a considerable amount of time, sent a letter informing that the letters have been forwarded to the Vigilance Section of the Respondent-department for acting on the request of the Government. However, nothing further has been heard on the same.

14.6. From the above, Government notes that despite categorical requests to submit the CCTV footage of the cameras in question and seeking clarification and views of the Respondent-Department on the timelines of

the CCTV footage submitted by the Applicant in the Affidavits, there has been no response on the part of the Respondent-department suggesting the acceptance of the claims of the Applicants by the Respondent-department and as a result leaving the Government with no alternative but to veer to the conclusion that the averment in the affirmed Affidavits of the Applicant are as the events unfolded on the said day and that the Panchanama was flawed.

15. Applicants have been contesting that the panchanama dated 25.03.2014 was unreliable and have pointed out several discrepancies and have also individually given a timelined chronology of the events on the day of the seizure, based on the CCTV footage viewed by them on the permission granted by the trial court of the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai and have also filed separate affidavits to support their contention that the events as seen in the CCTV footage are contradictory to the panchanama drawn and also to further their argument that there was no concealment and exchange of the gold jewellery and that the Applicant No. 1 was prematurely intercepted and that they were falsely implicated in the case.

16. Government, taking note of the fact that CCTV footage was not made available by the Respondent-department, considers contents of the Affidavits submitted by the Applicants to the Court after viewing the CCTV footage and recording the timeline of events in the CCTV footage as the correct factual position. In the event, and in the interest of justice and fairness, Government holds that the seizure is vitiated and the same deserves to be set aside. Government finds that it would be appropriate for the case to be remanded back to the Original Adjudicating Authority to ascertain the facts after taking into consideration the claims and

counter claims involved in the case and to arrive at a conclusion after taking into consideration the factual happenings of the events in the case. Applicant No. 1 will make a relevant customs declaration before the Original Adjudicating Authority, which will be dealt with in accordance with the law by the Original Adjudicating Authority.

17. In view of the above, Government sets aside the Orders-in-Appeal Nos.MUM-CUSTM-PAX-APP-1060/2018-19[S/49-29/2016AP] pertaining to Applicant No. 1) and No. MUM-CUSTM-PAX-APP-1059/2018-19 [S/49-27/2016 AP] (pertaining to Applicant No.2) both dated 30.01.2019 [Date of issue: 05.02.2019], passed by Appellate Authority and remands the cases back to the Original Adjudicating Authority for fresh consideration on the lines as discussed above.

18. The Revision Applications are disposed in terms of the above.

Shrawan
19/10/23
(SHRAWAN KUMAR)

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

779-

ORDER No. 780 /2023-CUS (WZ) /ASRA/ DATED 19.10.2023

To,

1. Shri Vinay Kumar, 1-2-593/17, Gagan Mahal Colony, Domalguda, Hyderabad- 500 029.
Address No 2: Shri Vinay Kumar, C/o Advani, Sachwani and Heera, Advocates, Nulwala Building, Groud nFloor, 41, Mint Road, Fort, Mumbai 400 001.
2. Shri Sanjay Agarwal, Villa No. 306, Palm Meadows, Kompali, Hyderabad-500 029.
Address No 2: Shri Sanjay Agarwal, C/o O.M.Rohira, Advocate, 148/5, Uphaar, 10th Road, Khar (West), Mumbai 400 052.
3. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati Shivaji International Airport, Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai Zone - III, Awas Corporate Point, 5th Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
2. M/s Advani, Sachwani and Heera, Advocates, Nulwala Building, Ground Floor, 41, Mint Road, Fort, Mumbai 400 001.
3. Shri O.M.Rohira, Advocate, 148/5, Uphaar, 10th Road, Khar (West), Mumbai 400 052
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Notice Board.

